

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 731 of 2022**

**BETWEEN:**

**RUPERTO JOAQUIN ROSADO WAIGHT**

Claimant

**AND**

**MANUEL BERNADO GOMEZ**

**Appearances:**

Brandon Usher for the claimants

Lynden Jones for the defendant

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25 September 2024

16 October 2024  
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**JUDGMENT**

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*Contract law – Practice and Procedure - Property law - Law of Property Act, Cap 190 - Sale and transfer of leasehold title – validity of contract - rent-to-buy agreement - specific performance – CPR 10.5(4) – Bald denial – Defendant required to give reasons in their defence for denial of a claimant’s plea*

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- [1] **HONDORA, J.:** The claimant, Mr Ruperto Juaquin Rosado Waight (Mr Waight) and the defendant, Mr Manuel Bernado Gomez (Mr Gomez) have been at loggerheads since at least 2018. Their dispute centres on a property in Corozal district that is owned by Mr Gomez. Mr Waight, who has lived on the disputed property since 2013 as a tenant of Mr Gomez says he bought it from Mr Gomez in 2016 and that the parties agreed on the payment of the purchase price through a rent-to-buy arrangement. Mr Waight has instituted these proceedings, and he seeks either specific performance of the land sale and purchase agreement or damages. Mr

Gomez, on the other hand, says the 2016 contract for the sale and transfer of his leasehold title is null and void and wants an order evicting Mr Waight from the disputed property. And thus, the battle lines were drawn and court-enabled mediation failed to get the parties to settle the matter on agreed terms.

#### I. Context

- [2] Mr Waight instituted legal action against Mr Gomez via a fixed date claim form issued on 3 January 2023. Mr Waight's case is that he started looking for a property to rent in San Joaquin village in Belize's Corozal district in 2013. He says that he came across upon a property known as Lot C-2, San Joaquin Village, Corozal District Belize, measuring 0.28 acres (the property/Lot C-2). The property was uninhabited and derelict. It was overgrown with bushes and the yard was filled with debris. On the property was a bungalow, which he says was a shell with no room divisions, kitchen or bathroom. It also had no piped water or electricity.
- [3] Following enquiries, Mr Waight found out that the property was owned by Mr Gomez, who happened to be a distant relative of his mother. Mr Waight reached out to Mr Gomez and expressed an interest in renting the property. In **April 2013**, Mr Gomez agreed to rent the property to Mr Waight on an "as is basis" for the sum of \$100 per month.
- [4] Mr Waight moved onto the property in 2013 and, at his expense, set about making the property habitable for him and his family. In his pleadings, Mr Wight listed a number of repairs, which he made to the property. He averred that he replaced the roof and the main door and window frames, which rotten. He also cleared the brush on the yard, sought and secured access to piped water and mains electricity. He installed partitions to create rooms, including a toilet and a shower. In his pleadings, Mr Gomez did not dispute Mr Waight's assertions in this regard. His response was that he did "*not know the exact fixtures made to the property*". I took it that by 'fixtures', Mr Gomez meant the repairs and renovations, which Mr Waight claims to have made to the property.
- [5] Three years down the line and following further discussions, Mr Waight offered to purchase Mr Gomez's leasehold title over Lot C-2. Those discussions resulted in a written agreement dated **7 March 2016** in which it was agreed that Mr Waight would purchase Mr Gomez's leasehold title for \$30,000. Its common ground between the parties that at that time, Mr Gomez's leasehold title to Lot C-2 needed to be renewed as it had lapsed for non-payment of annual fees to the lands department. According to Mr Gomez, Mr Waight agreed to assist him to

regularise his leasehold title.

- [6] Mr Waight says that he paid Mr Gomez a deposit of \$5,000 for Lot C-2 in November 2016. According to Mr Waight, **on or around 2018**, he entered into a further oral agreement with Mr Gomez to the effect that he would use the monthly rental payments to purchase Lot C-2, which transformed the original rental agreement into a rent-to-buy agreement.
- [7] Mr Waight states that in **January 2021**, Mr Gomez unilaterally increased the rent payments by \$50, which he says he reluctantly accepted. In **October** of the same year, Mr Gomez again increased the rent/rent-to-buy amount by another \$50, which meant that Mr Waight's monthly rent obligations increased to \$200. According to Mr Waight, this caused him "financial strain". However, he agreed to pay the amount requested by Mr Gomez. Mr Gomez admits to increasing the rent to \$200 per month.
- [8] In **November 2021**, Mr Waight learnt that Mr Gomez had regularised his leasehold title to the property.
- [9] By letter dated **23 January 2022**, Mr Waight wrote to Mr Gomez reminding him of their 7 March 2016 agreement and asked to complete the purchase. That letter was also signed by the Chairman of the San Joaquin Village. In the letter, Mr Waight stated that:
- "The purchase price of \$30,000BZE was agreed upon the lot. An initial payment of \$5,000BZE was made to you.
- The balance was agreed to be paid to you upon the completion of all the paper works in order for you to obtain the lease certificate from the Lands Department.
- As time passed, you kept re-assuring and promising me that you were working on the paperwork and also you were collecting a monthly rental fee.
- Now that the paperwork process has been completed, and the land paper from the Lands Department has been released, I would like to continue the purchase as signed in the agreement dated 01 March 2016.
- Looking forward to completing the land purchase transaction with you."
- [10] Mr Waight did not get a written response to his letter, which was incorrect in one part. It referred to a 1 March 2016 agreement. In his pleadings and oral evidence Mr Gomez did not address this letter.
- [11] On **12 April 2022**, Mr Gomez went to Lot C-2 and gave Mr Waight verbal notice to vacate the

property. In response, Mr Waight reminded Mr Gomez of their agreement whose existence Mr Gomez is said to have denied. According to Mr Waight, Mr Gomez informed him that if he wanted to purchase the property, he would need to pay \$65,000 for it.

[12] On **13 April 2022**, Mr Gomez served on Mr Waight a formal written notice to vacate the property within one month. Mr Waight refused to do so.

[13] In **May 2022**, Mr Gomez commenced eviction proceedings against Mr Waight before the Magistrates Court. On reviewing the land sale and purchase agreement, the presiding magistrate dismissed Mr Gomez's eviction action. According to Mr Waight, on the day Mr Gomez's eviction action was dismissed, Mr Gomez approached him outside the court room and repeated that if Mr Waight wanted the leasehold title over the property, he would have to pay \$65,000.

[14] Mr Waight avers that as of that date, he had already paid \$14,100 towards the purchase price (i.e., through the \$5,000 deposit and the monthly rent-to-buy payments). For his part, Mr Gomez does not dispute the amounts paid over to him but denies that there was in existence a rent-to-buy agreement. He does, however, accept that Mr Waight paid him \$5,000 towards the purchase price of Lot C-2.

[15] On **26 September 2022**, Mr Gomez issued a further Notice of Eviction. It is clear that as of **13 April 2022**, Mr Gomez no longer intended to abide by the terms of the 7 March 2016 agreement and wanted Mr Waight to leave Lot C-2.

[16] In response, Mr Waight instituted these proceedings in which he is claiming:

- (a) specific performance of the 7 March 2016 land purchase and sale agreement; and
- (b) an order mandating Mr Gomez (the defendant) to transfer Lot C-2 to him on his payment of the balance remaining on the purchase price.

[17] In the alternative, Mr Waight claims:

- (a) Special damages and unjust enrichment relating to what he called the "*significant investments [that he says he made to Lot C-2] from April 2013 to April 2022*" in the sum of \$10,117.34; and
- (b) general damages.

[18] In his defence dated 7 July 2023 Mr Gomez stated that:

- (a) Mr Waight did not comply with the terms of the land purchase and sale agreement. In this regard, he alleges that the 7 March 2016 agreement was supplemented by an oral agreement, which required Mr Waight to assist Mr Gomez with securing paperwork from the lands department and that he failed to do so resulting in Mr Gomez incurring costs; and
- (b) he made numerous attempts to evict Mr Waight and incurred costs.

[19] Relatedly, Mr Gomez counter-claims and seeks:

- (a) a declaration that the 7 March 2016 land sale and purchase agreement was “null and void”;
- (b) an order evicting Mr Waight from Lot C-2;
- (c) alternatively, an order that Mr Waight pay him the sum of \$60,000 for the purchase of the disputed property; and
- (d) costs.

[20] This matter came up for trial on **25 September 2024**. The claimant called four witnesses while Mr Gomez did not call any. At the conclusion of the trial, the parties’ legal counsel made submissions and undertook to file and exchange written submission by 11 October 2024.

## II. Issues arising

[21] I find, as agreed by the parties in their pre-trial memorandum, that the issues arising for resolution in this matter are:

- (a) whether the 7 March 2016 contract is valid;
- (b) whether in 2018 the parties entered into a valid oral rent-to-buy agreement;
- (c) whether Mr Waight is entitled to a remedy of specific performance or damages, if the answers to (a) and (b) above are in the affirmative; and
- (d) whether Mr Gomez is entitled to an eviction order, if the answers to (a) and (b) above are in the negative.

### **(a) *Whether the parties entered into a valid agreement on 7 March 2016***

[22] This question is best addressed in two parts, i.e., whether the parties entered into a written agreement on 7 March 2016, and if so, whether that 7 March 2016 agreement is valid or as Mr Gomez has put it “null and void”.

(i) *Did Mr Gomez and Mr Waight enter into a written agreement on 7 March 2016?*

- [23] This question arises only because in his oral evidence, Mr Gomez disputed that he entered into a written agreement with Mr Waight. However, on the evidence, his plea is plainly untenable, and I can dispose of this issue in short order.
- [24] Mr Waight attached to his pleadings and tendered into evidence a copy of the 7 March 2016 contract document. Mr Gomez did not at any point in his defence or witness statement plead that he was unaware of the 7 March 2016 contract or that he was not party to the same. Mr Gomez's legal counsel was aware of and pleaded Mr Gomez's defence on the basis that the parties had entered into an agreement on 7 March 2016. Mr Gomez's plea is that that agreement was null and void. However, as I explain in section (ii) below, neither Mr Gomez nor his lawyer provided any logical basis for the plea that the agreement was null and void.
- [25] The evidence is clear that: (a) Mr Waight offered to purchase Lot C-2 from Mr Gomez and that Mr Gomez accepted the offer; (b) Mr Waight offered and Mr Gomez accepted consideration of \$30,000 for the property; (c) through the 7 March 2016 agreement, the parties intended to create a legal relationship and that neither was acting under duress, mistake or under some misapprehension or limitation; (d) Mr Gomez and Mr Waight had legal capacity to enter into the contract; and (e) the terms of the 7 March 2016 agreement and the parties' intentions were certain regarding Lot-C2 and the relevant purchase price. Mr Gomez did not allege that Mr Waight failed to disclose any material fact or that any terms of the 7 March 2016 contract was unconscionable.
- [26] Section 55(1) of the Law of Property Act provides:
- "No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised."
- [27] In this case, the parties reduced their agreement to writing, which is the 7 March 2016 contract document. In the defence and counterclaim filed on his behalf, Mr Gomez accepts that the parties entered into the 7 March 2016 agreement. In the circumstances, I hold that Mr Waight has established to the appropriate standard that there is in existence an agreement between him and Mr Gomez for the sale and purchase of Lot C-2 and that that agreement is actionable.
- [28] During cross-examination, Mr Gomez was asked repeatedly about the existence of the 7 March

2016 agreement and he repeatedly stated that it did not exist. His evidence under cross-examination on this issue was contrary to what he stated in his defence, counterclaim and witness statement. In response to a question from Mr Usher, counsel for the claimant, Mr Gomez stated that he had an oral but not a written agreement with Mr Waight only for the sale of land. This could not be true given the written agreement dated 7 March 2016, which was tendered into evidence and the terms of which he conceded in his pleadings. In addition, Mr Gomez's oral testimony flew in the face of his lawyer's understanding of the matter as set out in para. 31 of the pre-trial memorandum, which refers to the "*Land Purchase Agreement of March 7 2016*" and his skeleton arguments filed on 11 October 2024 where he stated that "*On or about the 7<sup>th</sup> day of March 2016, the Claimant and the Defendant entered into a Purchase Agreement for the property.*" In addition, in these proceedings, Mr Gomez is seeking an order declaring the 7 March 2016 agreement null and void. He would not have made that counterclaim if there was not in existence a written agreement dated 7 March 2016.

[29] I found Mr Gomez's evidence troubling. Was his inconsistent evidence the result of his inability to adequately recall facts or his inability to read and write or was it because he was not being truthful with his lawyer and the court or was it due to the fact (which he stated in court in response to my question) that he had diabetic retinopathy and had not brought his reading spectacles to the hearing? On balance, it is more likely than not that Mr Gomez spun, and entangled himself in, a web of intractable untruths.

[30] On the facts, I find that Mr Waight and Mr Gomez entered into a written agreement on 7 March 2016 for the purchase and sale of Lot C-2.

*(ii) Was the 7 March 2016 agreement null and void?*

[31] Mr Gomez's defence is that the 7 March 2016 agreement was null and void. However, Mr Gomez did not provide any grounds supporting his claim that the agreement was a nullity.

[32] I requested Mr Jones, counsel for Mr Gomez, to address the court on the claim that the 7 March 2016 agreement was null and void. Mr Jones' submission on this issue, which was central to his client's case was surprising because it constituted of nothing more than a bald assertion that the agreement was null and void. Learned counsel undertook to provide the court with relevant authorities and motivating arguments in his written submissions.

[33] The defendant's skeleton argument did not, however, contain any authorities addressing the

issue of whether the 7 March 2016 agreement was null and void. Rather, learned counsel pointed to a note written signed by Mr Gomez on 24 August 2018 in which he stated that he was giving Ms Oralia Waight (Mr Waight's mother) one year, i.e., until 24 August 2019, to pay off the remainder of the purchase price of \$30,000. The note also stated that "*In the event of \$30,000 (Thirty Thousand) is not made then the contract will be null.*"

[34] The 24 August 2018 note did not alter the terms of the 7 March 2016 agreement or render it null and void. The note was written by Mr Gomez and handed to Mr Waight's mother. Its terms, unless accepted by Mr Waight were not binding on him.

[35] Mr Gomez bears the onus of demonstrating to the appropriate standard that the 7 March 2016 agreement was null and void. In these proceedings, Mr Gomez has not pleaded, and the facts do not support any suggestion, that (a) the 7 March 2016 contract was tainted by illegality or fraud; (b) the terms of the agreement were vague or impossible to fulfil; or (c) there was no consideration.

[36] The only other statement, which Mr Gomez made in support of his counterclaim that the 7 March 2016 contract was a nullity is that Mr Waight was obliged but failed to assist him to regularise his leasehold title. He uses that alleged failure to say Mr Waight breached the agreement for the sale of the land.

[37] First, any assistance that Mr Waight may have undertaken to provide was not inserted in the 7 March 2016 agreement. The onus of proving that any such promised assistance was a material term of the contract fell onto Mr Gomez. Mr Gomez made no attempt either in his pleadings or oral evidence to demonstrate that the alleged promised assistance was a material term of the contract. I hold that had it been the parties' intention to make Mr Waight's assistance to Mr Gomez a material term of the contract, they would have inserted a provision in the 7 March 2016 contract to that effect.

[38] Second, assuming that the parties had agreed that Mr Waight would assist Mr Gomez to regularise his leasehold title, any failure on Mr Waight's part could, at a stretch, have made the agreement voidable and not null and void.

[39] In the end, Mr Gomez managed to regularise his leasehold title, which cleared the way for the parties to uphold their respective contractual rights and obligations. Mr Gomez's primary



complaint is that he incurred expenses in regularising his leasehold title. It is surprising that Mr Gomez would consider that any expense he incurred in ensuring that he was able to regularise his leasehold title is an expense to be borne by Mr Waight or that it had any bearing on the validity of the underlying contract. In addition, assuming that there had been an agreement that Mr Waight would bear the cost, his claim against Mr Waight would be limited to the cost thereof. Any dispute over that issue would not vitiate the 7 March 2016 agreement.

[40] In the circumstances, I dismiss Mr Gomez's defence and counterclaim because he has failed to discharge his onus of demonstrating that the 7 March 2016 agreement was null and void and that it was, as a consequence, unenforceable.

[41] Mr Gomez's counterclaim for eviction was based on his plea that the 7 March 2016 contract was null and void. In view of my finding that the 7 March 2016 agreement is valid, I also dismiss Mr Gomez's claim for the eviction of Mr Waight and his family from Lot C-2. Mr Gomez has not set out any basis in fact or law justifying an order evicting Mr Waight from Lot C-2. I also dismiss Mr Gomez's counterclaim that Mr Waight breached the 7 March 2016 agreement because that assertion has also not been substantiated.

***(b) Whether the parties entered into a rent-to-buy agreement***

[42] Mr Waight's case is that in 2018 he entered into an agreement with Mr Gomez to pay the purchase price for Lot C-2 using the monthly rental payments. And that this agreement supplemented the terms of the written agreement settled on 7 March 2016, which did not directly address how Mr Waight was to pay for the purchase price, i.e., whether the parties intended for the purchase price to be paid in one or more lumpsums or instalments. For his part, Mr Gomez denies the existence of any rent-to-buy agreement. However, he did not explain what agreement the parties entered into regarding the payment of the \$30,000 purchase price.

[43] For the following reasons, I uphold Mr Waight's plea that the parties entered into a valid oral agreement on the payment of the purchase price through a rent-to-buy arrangement.

***(i) CPR 10.5(4) duty to give reasons for denial of facts pleaded by the other party***

[44] In these proceedings, Mr Gomez has not provided an alternative explanation on the parties' agreement on the payment by Mr Waight of the purchase price. His defence constitutes of nothing more than a bald denial. This is surprising and ultimately operates against him. It also

demonstrates that Mr Gomez did not intend to prove any different version of the parties' agreement on the contract's payment terms.

[45] Civil Procedure Rule (CPR) 10.5(4) provides:

"Where the defendant denies any of the allegations in the claim form or statement of claim-

- (a) the defendant must state the reasons for doing so; and
- (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence."

[46] In this case, Mr Gomez did not give any reasons for denying Mr Waight's claim that the parties entered into a rent-to-buy agreement. In addition, Mr Gomez did not indicate that he intended to prove a different version of events from that given by Mr Waight and has not done so. On this basis alone, I would dismiss Mr Gomez's bald denial and consider whether the information provided by Mr Waight demonstrates that the parties entered into a rent-to-buy agreement.

*(ii) The defendant's pleadings point to the existence of an oral rent-to-buy agreement*

[47] In para. 31(b) of the pre-trial memorandum, Mr Jones indicated that both he and Mr Usher (counsel for the claimant) were of the view that one of the issues falling for determination was whether "*the oral agreement of 2018 between the parties is a legally binding agreement, and, if yes, what the legal implications of such agreement?*" The 2018 oral agreement refers to rent-to-buy agreement.

[48] That there is a clear concession by Mr Gomez's legal counsel that in 2018, the parties entered into an oral agreement in 2018 providing for the payment of the \$30,000 purchase price through a rent-to-buy arrangement. If Mr Jones did not intend to concede the claimant's plea that in 2018 the parties entered into an oral agreement in terms of which the rental payments were to be used to pay for the purchase price, he would have insisted on a different formulation of the issue arising for resolution by the court.

*(iii) Parties' course of conduct*

[49] Further, I would uphold Mr Waight's plea drawing on the parties' course of conduct.

[50] First, in the 7 March 2016 agreement, the parties did not state that the purchase price was due on the signing of the agreement, nor did they give a specific date or dates for the payment of the purchase price. This made sense because at the time, Mr Gomez had not regularised his leasehold title – a fact, which Mr Gomez concedes. I hold that the parties understood and

agreed that the purchase price would be paid after Mr Gomez had regularised his title, which at the material time was work in progress.

- [51] Second, to secure his interest and rights as set out in the 7 March 2016 agreement, Mr Waight paid Mr Gomez \$5,000 towards the purchase price on 7 November 2016. He did not make any other payments pending confirmation that Mr Gomez had regularised his leasehold title. This is proof that the parties accepted that the total purchase price would be paid in instalments and not in one lump sum.
- [52] Third, after regularising his leasehold rights over Lot-C2, Mr Gomez did not inform Mr Waight that he needed to pay the purchase price in one lump sum, which is what one would have expected if that were the parties' agreement. In his pleadings and oral testimony, Mr Gomez did not state that Mr Waight was in breach of their agreement because he did not pay the purchase price in one lump sum. Were that the case, one would have expected him to state this clearly and unequivocally. Rather his gripe is that Mr Waight had agreed but failed to assist him to regularise his (Mr Gomez's) leasehold title and that he had incurred costs in so doing. Relatedly, Mr Gomez's 24 August 2018 note is proof that he expected the purchase price to be paid in instalments and the issue between the parties relates to the amount to be paid per month.
- [53] Fourth, in his pleadings and oral evidence, Mr Gomez did not state that as far as he was concerned, there existed between him and Mr Waight two separate agreements, i.e., a tenancy agreement in relation to which Mr Waight paid rent and a separate land purchase agreement, which had separate payment terms. I hold that Mr Gomez would not have failed to mention this, if in truth the parties' relationship comprised of two separate agreements with different payment terms.
- [54] Fifth, Mr Waight is a man of limited means. This much is obvious from the circumstances of this case. To secure a house for his family, Mr Waight could only afford \$100 for a property that was in a state of significant disrepair. It is also common cause between the parties that at the time, Mr Waight was assisted in paying the rent by his mother who was his main intermediary with Mr Gomez. These circumstances support the conclusion that the purchase price was to be paid in instalments and not in one lumpsum.
- [55] Sixth, Mr Gomez increased rent only in 2021 and after he had reinstated his leasehold title over

Lot C-2. In fact, Mr Gomez unilaterally increased rent twice in 2021, i.e., in January 2021 and in October 2021. Prior to that period, i.e., between 2013 and 2021, Mr Gomez had not increased rent payments. Mr Gomez did not aver that he made the rent increases because rent prices for the property needed to be raised in line with changes in the rental market. The only reasonable inference is that Mr Gomez increased the rent because he wanted Mr Waight to pay for the purchase of the property in more substantial instalments than the \$100 initially agreed under the 2013 rental agreement, which was superseded by the 7 March 2016 land sale and purchase agreement.

[56] Another peculiar feature of this case, which supports the conclusion that the parties entered into an oral rent-to-buy arrangement is that Mr Gomez did not visit Lot C-3 save to serve Mr Waight with an eviction notice on 12 April 2022. I find that it is more likely than not that Mr Gomez did not visit the property since 2018 or make any regular enquiries about the state of the property or regarding anything that required to be repaired because he had sold the property to Mr Waight and that the rent agreements, which were raised from \$100 to \$200 and later \$250 were done as part of a rent-to-buy arrangement.

[57] Before me, there was no other evidence or testimony from Mr Gomez tending to indicate that the parties entered into any other agreement relating to the payment of the purchase price outside of the \$5,000 down payment and the monthly instalments, which I find were increased in view of and to cater for the payment of the purchase price.

[58] In these proceedings, Mr Waight's evidence on the issue of the rent-to-buy agreement was consistent. Overall, on the stand, he was a highly credible witness. The same cannot be said of Mr Gomez. He was evasive, refused to answer questions put to him and had to be repeatedly reminded both by the court and his counsel to answer the questions put to him. He contradicted his own defence and witness statements, including on whether he ever entered into a written agreement with Mr Waight on the sale of Lot C-2. Despite clear evidence, he strenuously argued that he entered into a written agreement with Mr Waight's mother and sold the property to her and not Mr Waight. In the circumstances, I prefer Mr Waight's evidence over Mr Gomez's bald denials on the existence of an agreement for the purchase price for Lot C-2 to be paid through the rent-to-buy instalments.

[59] On the totality of the facts, I find that it is more likely than not that Mr Gomez increased the rent payments in 2021 to cater for the oral rent-to-buy agreement, which replaced the parties' 2013

tenancy agreement.

**(c) Is the claimant entitled to an order for specific performance?**

[60] In these proceedings, Mr Waight has asks the court to issue an order for specific performance or alternatively damages. It is not in dispute that through conduct, Mr Gomez has repudiated the 7 March 2016 agreement. In court, Mr Gomez affirmed that he wanted Mr Waight to vacate Lot C-2.

[61] As noted in ***Classic Property Developments (South East) Ltd v Ghausul Islam*** [2015] EWHC 2958 (Ch), at para. 186:

“Where a party to a contract by his words or conduct evinces an intention not to perform the contract, he thereby repudiates the contract. The innocent party then has the option of affirming the contract or accepting the repudiatory breach as discharging the parties' obligations under the contract. See *Chitty on Contracts* at §24-018.”

[62] In this case, Mr Waight has elected to affirm the 7 March 2016 agreement and to challenge the repudiation. In addition, he insists on specific performance of the 7 March 2016 agreement.

[63] Mr Waight's claim is that in dispute is a contract for the sale and purchase of land. He has provided evidence of the repairs and modifications that he has made to the property since 2016, which he says (but is disputed by Mr Gomez) were done with the latter's authorisation. Mr Waight has provided copies of receipts, which he says shows that the repairs and improvements he made to the property cost \$24,217.34. He also asserts that he has part performed the contract and that to date, he has paid \$14,100 towards the purchase price of \$30,000 for Lot C-2. Mr Gomez does not dispute that Mr Waight made repairs to and renovated the property or that he paid \$14,100 towards the purchase price. His defence is that he did not authorise the repairs. Mr Gomez did not dispute that he has not, since 2016, made any repairs to the property. He left that role and responsibility to Mr Waight.

[64] Mr Waight has indicated that he is willing and able to pay the balance of the contract price.

[65] In these proceedings, Mr Gomez has not opposed Mr Waight's application for specific performance. The issue was not canvassed at all in Mr Gomez's defence and neither in his witness statement or skeleton argument. Mr Gomez did not contend that damages are an adequate remedy. Relatedly, it is clear from his counter-claim that Mr Gomez is open to an order for specific performance but on the condition that Mr Waight pay him \$60,000 for the

purchase of Lot C-2.

[66] In view of these particular facts, should the court make an order for specific performance or make an order for damages?

[67] As aptly noted by Trower J in **Southgate v Graham** [2024] EWHC 1692 (Ch), at para. 30:

“Specific performance is an equitable remedy which is not normally available in cases in which damages are adequate to compensate the claimant for the loss he has sustained. Unlike damages, it is not a remedy which is available to the claimant as of right.”

[68] In Cavendish **Square Holding BV v Talal El Makdessi** [2015] UKSC 67, at para. 30, the UKSC explained that the reason specific performance is ordinarily refused where damages would be an adequate remedy is:

“...because the minimum condition for an order of specific performance is that the innocent party should have a legitimate interest extending beyond pecuniary compensation for the breach. The paradigm case is the purchase of land or certain chattels such as ships, which the law recognises as unique. Because of their uniqueness the purchaser’s interest extends beyond the mere award of damages as a substitute for performance.” [Emphasis added]

[69] I find that this is an appropriate case in which this court should exercise its discretion and make an order for specific performance. I do so for the following reasons.

[70] The dispute concerns the sale and purchase of land – the type of contract in relation to which the general rule against an order for specific performance is displaced. Mr Waight’s interest in enforcing the 7 March 2016 agreement extends beyond pecuniary compensation for the breach by Mr Gomez of that contract. It is clear from his and from the evidence given by his four witnesses, including his mother, that Mr Waight intended to build and has built a family home on Lot C-2. He has invested heavily in the property, and he continues to live on it with his family and has done so continually since 2013.

[71] Mr Waight has integrated into the community as reflected by the fact that chairman of San Joaquin Village, where Lot C-2 is located, signed the 23 January 2022 letter written by Mr Waight to Mr Gomez requesting the completion of the 7 March 2016 land purchase agreement.

[72] Mr Waight has part performed the contract, i.e., he has paid almost half of the \$30,000 purchase price. I have also considered the fact that Mr Gomez did not indicate his willingness and ability to pay any damages to Mr Waight if the court – in the exercise of its discretion - were to issue

an order for damages and not an order for specific performance. The balance, in this case, weighs in favour of an order for specific performance.

- [73] I have also considered the fact that Mr Gomez has not objected to Mr Waight's request for specific performance. Mr Gomez's interest lies primarily in securing more money for the property, i.e., \$60,000 rather than the \$30,000 agreed in 2016.
- [74] Mr Gomez did not allude to any hardship that would arise from an order of specific performance or that the contract would be impossible for him or Mr Waight to fulfil. Relatedly, there is no evidence before this court indicating that an order for specific performance would be unfair or unjust on Mr Gomez.
- [75] Relatedly, I have considered the fact that Mr Waight is in possession of Lot C-2 and has been in possession since the 7 March 2016 agreement and he has a contractual right to the land and an equity interest in the same. In that sense Mr Waight is already an equitable owner of Lot C-2 and is entitled – on the facts of this case - to an order for specific performance (see ***Shegan Dermot Frawley v Anne Marie Brough Neill***, CHANF 97/1573/3).
- [76] An order for specific performance will require the parties to abide by the terms of their 7 March 2016 agreement with the court in exercising its inherent power setting out clear timelines within which the purchase price should be paid in line with the parties' original agreement that the same would be paid in instalments, i.e., via a rent-to-buy arrangement.
- [77] In exercising this court's equitable jurisdiction and acting pursuant to section 45 of the Senior Courts Act, I order that Mr Waight pay Mr Gomez by 31 December 2024 the balance of the purchase price for the period 2022 (i.e., covering the period from when Mr Waight stopped making the rent-to-buy instalments in response to Mr Gomez's eviction notices) to 31 December 2024. According to Mr Usher's written submissions, Mr Waight stopped paying the monthly rentals in April 2022 and instituted legal proceedings. This brings the total for the period April 2022 – December 2024 to \$6,400. Thereafter, Mr Waight shall resume payments settling the balance of the purchase price, which instalments must not be less than \$200 per month. This enables Mr Waight to pay off the balance of the purchase in one or more lump sums or by instalments of not less than \$200 per month.
- [78] If Mr Waight fails to pay the balance due on the purchase price for the period 2022 to 31

December 2024 by 31 December 2024, Mr Gomez is at liberty to approach the court for directions and any relevant orders.

[79] I also order that Mr Gomez must, within 30 days of Mr Waight's payment of the full purchase price of \$30,000, effect transfer of his leasehold title over Lot C-2 to Mr Waight. If Mr Gomez fails to effect transfer of his leasehold title over Lot-C2 to Mr Waight, the latter is granted leave to approach the court pursuant to section 179 of the Senior Courts Act.

[80] In view of my decision, the issues of unjust enrichment, special damages and general damages do not arise for consideration.

### **III. Costs**

[81] Mr Waight has been successful in his claim for specific performance and is entitled to his costs, which, if not agreed, must be assessed.

### **IV. Disposal**

[82] Drawing on the above, I declare and order that:

1. The 7 March 2016 agreement between Mr Manuel Bernado Gomez and Mr Ruperto Joaquin Rosado Waight for the sale by the former and purchase by the latter of the property known as Lot C-2, San Joaquin Village, Corozal District, Belize is valid and enforceable.
2. In 2018, Mr Manuel Bernado Gomez and Mr Ruperto Joaquin Rosado Waight entered into a rent-to-buy agreement with respect to the property known as Lot C-2, San Joaquin Village, Corozal District, Belize.
3. Mr Manuel Bernado Gomez's action seeking the eviction of Mr Ruperto Joaquin Rosado Waight from the property known as Lot C-2, San Joaquin Village, Corozal District, Belize is dismissed.
4. Mr Manuel Bernado Gomez's action for a declaration that Mr Ruperto Joaquin Rosado Waight breached the 7 March 2016 agreement is dismissed.
5. Mr Ruperto Joaquin Rosado Waight shall by 31 December 2024 pay Mr Gomez the balance of the purchase price for the period April 2022 (when he stopped making payments towards the rent-to-buy agreement) to 31 December 2024 in the sum of \$6,400.



6. If Mr Ruperto Joaquin Rosado Waight fails to pay the balance due on the purchase price for the period 2022 to 31 December 2024, Mr Gomez is at liberty to approach the court for directions.
7. Mr Ruperto Joaquin Rosado Waight shall resume monthly payments from 31 January 2025 towards settlement of the balance of the purchase price for the property known as Lot C-2, San Joaquin Village, Corozal District, Belize, which instalments shall not be less than \$200 per month.
8. On the payment by Mr Ruperto Joaquin Rosado Waight of the aggregate sum of \$30,000 to Mr Manuel Bernado Gomez for the property known Lot C-2, San Joaquin Village, Corozal District, Belize, Mr Manuel Bernado Gomez shall cause the said property to be transferred to Mr Ruperto Joaquin Rosado Waight.
9. If Mr Manuel Bernado Gomez fails or refuses to transfer the property known Lot C-2, San Joaquin Village, Corozal District, Belize to Mr Ruperto Joaquin Rosado Waight after payment of the full purchase price of \$30,000, he may apply to the court for relevant orders pursuant to section 179 of the Senior Courts Act.
10. Mr Manuel Bernado Gomez shall pay costs of suit, which if not agreed shall be assessed.

**Dr Tawanda Hondora  
Judge  
High Court**