

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G0073/2021

BETWEEN:

LOOKOUT HOLDINGS LTD

PLAINTIFF

AND

SAMUEL REID

FIRST DEFENDANT

MERVELIN REID

SECOND DEFENDANT

Appearances: Mr C Flanagan and Miss White for the Plaintiff
The Defendants in person
Date of Hearing: 1 & 3 November 2022
Date of Judgment: 8 February 2023



JUDGMENT

1. The Plaintiff is Lookout Holdings Ltd (“Lookout”), a company registered in the Cayman Islands. Mr John Broadbent is the Director of Lookout, while Ms Sheron Hurlston is the Office Manager for the company. Both have given evidence in these proceedings. Mr Harvey Stevenson is a shareholder of Lookout and has been referred to during these proceedings although neither party has sought to call him. The Defendants are Mr Samuel Reid and Mrs Marvelin Reid, husband and wife.
2. This is Lookout’s claim commenced by Writ of Summons for a declaration that various agreements between the parties with respect to the purchase of Bodden Town Block 43E Parcel 235 (“parcel 235”) have been terminated; an order that the Defendants give vacant possession of the parcel and that the Plaintiff be granted leave to issue a Writ of Possession for said parcel. The Plaintiff had initially also sought damages and costs, however, at the commencement of the trial they abandoned those claims in favour of seeking vacant possession. There had also been a claim for damages in respect of a second parcel of land (“parcel 236”), however, that too was abandoned.
3. The Plaintiff is the owner of land situated in Bodden Town. The Plaintiff is engaged in selling parcels of land to private individuals for the development of single-family homes. Lookout also provides financing for the purchase of parcels in that subdivision. In order to assist

purchasers who may not have the necessary deposit to secure financing, Lookout offers a scheme which allows a prospective purchaser to pay a deposit over a one-year period. (“the deposit agreement”). After the year expires, the prospective purchaser is required to pay the remaining purchase price, either by self-financing (e.g. bank mortgage) or through a finance agreement with Lookout. Lookout retains title to the land until the purchase price has been paid in full.

4. The Defendants entered into an agreement with Lookout for the purchase of parcel 235 on 23 April 2018. The terms of the agreement were as follows:

“We Lookout Holdings Ltd agree to hold the aforesaid Parcel 235 on the basis that the Purchase Price is CI\$118,108.00 and a deposit of CI\$1,108.00 has been paid as of April 23, 2018. The remaining balance of CI\$117,000 will be paid by monthly instalments of CI\$500.00 commencing on June 1, 2018. The remaining balance will be interest free for the first year as long as all monthly payments are made on a timely basis. In the event that any monthly payment is not made within 7 days of the due date, Lookout has the option to either terminate this agreement and return all funds paid to date or charge interest at 10% per annum from the default date for the remainder of the term.

The purchaser will have 3 options to pay the outstanding remaining balance on the 1st day of (12 months after 1st 500 payment) May 1, 2018.

- 1) *Pay the remainder in full*
- 2) *Obtain a bank mortgage for the remaining balance or*
- 3) *Financing will be available through Lookout Holdings Ltd on terms and conditions to be agreed.*

The aforesaid terms and conditions are hereby agreed as evidenced by the payment of the deposit and our signatures to this agreement.”

5. The agreement is signed by both Mr and Mrs Reid and Lookout. Lookout refers to this agreement as a “deposit agreement”.





6. In June that same year, Lookout and the Defendants entered into another agreement for the purchase of parcel 236 for CI\$104,831.00 on the same terms with a down payment of CI\$2,400 being paid upfront and further monthly payments of \$500 starting 1 August 2019. The final instalment of the purchase price was due 1 May 2019.
7. The Plaintiff avers that the deposit agreements did not grant the Defendants any rights over the land save for a license to visit and keep the land tidy. Title to the parcels was never transferred to the Defendants and so Lookout remains the registered owner.
8. The Defendants accepted that they did not make any payments beyond the initial down payment for parcel 236 and before the commencement of these proceedings they relinquished possession of it. Lookout does not seek any orders with respect to parcel 236.
9. With respect to parcel 235, the Defendants made a lumpsum payment of CI\$3,500 on 21 June 2018 putting them in credit under the agreement. However, the parties are at odds as to whether any further payments were made between June 2018 and January 2019. This is one of many issues I will have to determine.
10. In late December 2018 the Defendants erected a dwelling structure on parcel 235. Lookout avers that this was done in breach of the agreement as the Defendants only had a license to visit the property not to develop it. The Defendants accept that they built the house without planning permission from the Central Planning Authority. They do, however, assert that Ms Hurlston repeatedly encouraged them to build on the land and so they believed they had Lookout's permission to proceed as they did. Lookout denies that the Defendants were encouraged by any staff to build and claims that on the dwelling coming to their notice, they advised the Defendants that they were not permitted to build on the land until it had been paid for in full. This is another issue I will have to determine.
11. In April 2019 Lookout wrote to the Defendants advising them that they were in arrears putting them in breach of the deposit agreement which Lookout was then seeking to terminate forthwith ("the termination letter"). The Defendants' final position at trial is that they were not in arrears. Upon receipt of the letter the Defendants made a lumpsum payment of CI\$1,000.00 on 8 April 2019 and a further payment of CI\$2,000.00 on 14 June 2019 which



placed them temporarily back in credit. Lookout asserts that these were unsolicited payments as they had terminated the agreement. By 1 July 2019 the Defendants were in arrears again. On 19 July 2019 Lookout's attorney wrote to the Defendants advising them that in accordance with the termination letter sent in April 2019 the deposit agreement was terminated and the Defendants should vacate the land and pull down the dwelling by 2 August 2019.

12. The parties met without their attorneys on 5 August 2019. Mr Broadbent, Mr Stevenson and Ms Hurlston, the office manager, were in attendance for Lookout. Both Defendants attended the meeting. During this meeting the parties struck an agreement which would reinstate the deposit agreement and permit the Defendants to remain in occupation of the property on the Defendants meeting certain conditions ("the August 2019 agreement"). The terms were not reduced into writing and are now in dispute. Lookout avers that the Defendants agreed -

- (i) To pay the arrears in full which were agreed to be \$1,000 as at mid-August;
- (ii) To make full repayment under the agreement, which included the remaining balance of the purchase price, by the end of September 2019;
- (iii) To provide architectural drawings within 2 weeks; and
- (iv) To complete repairs, renovations and extensions to the dwelling as agreed within three months, including
 - (a) Application of foam and marmoran;
 - (b) Placing the property in a state of good repair;
 - (c) Removal of all vehicles and materials from the land; and
 - (d) To extend the dwelling to 2000 square feet.

13. The Defendants accept that they agreed to pay the arrears which they said they did immediately. This is in dispute. The Defendants also accept that they agreed to, and did,

- (a) apply foam and marmoran to the building,
- (b) ensured the property was in good repair; and
- (c) removed building material from the site.

14. However, the Defendants dispute that they agreed to

- (a) pay the purchase price in full by the end of September 2019,
- (b) remove the vehicles; or
- (c) provide architectural drawings.



15. The Defendants' case at trial was that Lookout had agreed to allow the deposit agreement to continue until they were able to secure third party financing, however long that may take.
16. Lookout avers that the Defendants almost immediately breached the terms of the August agreement meaning that the deposit agreement was never reinstated, while the Defendants assert that they complied with all terms as they assert them to have been and so the deposit agreement should be deemed to have been reinstated with an open-ended date for payment.
17. The terms of the original deposit agreement are not in dispute. What is disputed is whether the Defendants had authority to build on parcel 235. I must also determine whether the Defendants were in arrears when Lookout sent the termination letter in April 2019. In the absence of a written agreement, I must also determine the terms of the August agreement for reinstatement from the testimony of the parties present to the meeting, with the exception of Mr Stevenson who has not been called by either party.
18. The Defendants remained in occupation of parcel 235 and made further monthly payments. The level and frequency of these payment is once again in dispute. In July 2020 Lookout's attorneys wrote to the Defendants once more advising them that they were in breach of the August 2019 agreement and that the deposit agreement was terminated and demanding vacant possession within 7 days.
19. On 25 July 2020 Mr Broadbent and Mr Stevenson met with the Defendants again. Lookout asserts that the parties once again agreed to reinstate the deposit agreement if the Defendants complied with the terms of the August agreement and paid the purchase price within a specified period ("the July 2020 agreement"). The Defendants accept that there was a meeting but denied that there was any fresh agreement as they were told all was in order under the August 2019 agreement and payments continued.
20. Lookout asserts that the Defendants once again failed to comply with the terms of the July 2020 agreement and so on 6 April 2021 Lookout's attorneys wrote to the Defendants again this time advising them that the July 2020 agreement was terminated and that they should vacate the property forthwith. The Defendants refused to comply and remain in occupation of parcel 235 to this day.



21. The Defendants case is that they have always complied with any and all agreements between the parties and that Lookout's witnesses have conspired against them in order to evict them from parcel 235 which they believe is being done at Ms Hurlston's behest. No specific reason was articulated as to why Ms Hurlston, who the Defendants claim to have been very friendly with, would have a grudge against the Defendants other than that Mr Reid had been doing unpaid work for her and she had finished with his services. The Defendants also opined that maybe Lookout was motivated to terminate by a desire to sell the land at a higher price.
22. As can be seen from the forgoing, this matter is straightforward with regards to the law: on the facts, as I find them to be, was there a breach of the conditions of the various agreement which entitled the Plaintiff to terminate the deposit contract, and did they validly do so? Most of the issues to be determined by the court are factual. Because the factual matrix beyond the original deposit agreement is based on verbal agreements the credibility of the witnesses is crucial. I must determine on the balance of probabilities what was said by the parties and what action they took, if any.
23. I wish to state from the outset, that because the Defendants were acting in person, I gave them a lot of latitude. For example, there were several occasions when the Defendants would make statements to the tribunal about matters that were not contained in their witness statements or had not been raised in their oral evidence or put to the Plaintiff's witnesses. The Defendants tried to explain the discrepancies by claiming that their attorney had omitted relevant material from their statements and that this was the reason they decided to part ways with him. Another reason was that they 'had been waiting for the right time to tell the court everything'.
24. The Defendants' legal footing also changed: in pre-trial correspondence and pleadings the Defendants suggested that after the April 2019 termination letter Lookout, by accepting the monthly deposits, had agreed to fund the land purchase in its entirety thereby accepting their tenancy of the land, yet at trial they claimed that the Plaintiff's had extended the deadline for payment of the full purchase price to allow them to secure bank financing.
25. While I did make some allowances for the Defendants having to present their case without the assistance of counsel who had prepared the case, the many inconsistencies and vagueness in their accounts left me often doubting the veracity of their evidence. I am not required to

examine all of the discrepancies, but I will address the pertinent evidence where it is relevant to the facts to be determined.

Discussion of the issues



The initial termination of the deposit agreement

26. As I have stated, the terms of the deposit agreement are not in dispute. Ms Hurlston's evidence was that the down payment was paid in cash to her and, thereafter, the Defendants were instructed to make direct payments into Lookout's bank account. She asserted that she would issue a receipt for all payments she logged going into the account which she would provide to the Defendants whenever they attended the office which, according to her, was not often. Ms Hurlston stated that she had to chase the Defendants for payments on several occasions. Ms Hurlston's records document the Defendants missing the May 2018 instalment altogether and the June payment being lodged on 21 June 2018. This payment was for \$3,500 placing the Defendants in credit. However, Ms Hurlston asserted that the Defendants made no further payments and by January 2019 they were in arrears with no further payments being forthcoming until after the termination letter was sent in April 2019.

27. Mr Reid in his evidence stated that he had initially been responsible for making the monthly instalments on the deposit agreement. He appeared to accept that he was not paying the instalments with regularity, insisting that he would pay lumpsums when he received income from his own business. Several times during the early stages of the trial Mr Reid acknowledged that he had been in arrears including in April 2019 even suggesting that Ms Hurlston had agreed to cover for him when he skipped payments. However, late in the trial, when Mrs Reid was giving an account that to the best of her knowledge Mr Reid had paid the instalments on time every month as he had told her he had done so, Mr Reid changed his position, asserting that he had made multiple cash payments to Ms Hurlston which had not been recorded by her and that they were consequently not in arrears at any time. This amounts to an allegation of theft or fraud by Ms Hurlston which was not pleaded and was not put to Ms Hurlston. Mr Reid's assertion of compliance is also inconsistent with the admitted fact that the Defendants had made no monthly payments on parcel 236 at all, meaning that the Defendants were in arrears from the beginning for that parcel too. Mr Reid's changing

position on such a crucial issue as to the frequency of payments led me to believe he was being dishonest in an attempt to bolster his case and explain his wife's inconsistent account.

28. Mr and Mrs Reid did also assert that Ms Hurlston had attempted to extort a payment of \$2,000 as part of a negotiating fee for a loan with Scotia Bank which Ms Hurlston denied.

29. Having considered the evidence of all parties, I find that I was not convinced by Mr Reid's changing account or his wife's reliance on his claims of compliance with the agreement. On the other hand, I found Ms Hurlston's assertions of propriety convincing. I am satisfied so that I am sure that Mr Reid only made one payment of \$3,500 under the original deposit agreement between May 2018 and April 2019 and accordingly by April 2019 the Defendants were in arrears by \$1,892.00 and thereby in breach of the deposit agreement. This was a significant breach of the terms. Consequently, on the plain reading of the deposit agreement the Plaintiff was entitled to terminate the agreement forthwith.



The Building

30. Mr Broadbent and Ms Hurlston both assert that the Defendants only had a license to visit parcel 235 and so there was no permission from Lookout to build on the land. The Defendants evidence was that Ms Hurlston had encouraged them from an early stage to build a dwelling and so they decided to fill the land and erect a temporary structure to live in. Mr Reid gave evidence that other purchasers of Lookout land were told the same thing and multiple purchasers had built on their parcels. Mr Reid acknowledged that he had built the structure without obtaining planning permission first; in fact, no application has been lodged to date. At one stage, Mr Reid asserted that he did not know that he needed planning permission to erect the dwelling but at another stage acknowledged that he had known permission was necessary and that he had intended to obtain after-the-fact permission were the Planning Department to ever question the build. Mr Reid made it clear that the structure he erected was only intended to be a temporary residence until he could build his "dream home" on the same piece of land.

31. Mr Broadbent stated that all purchasers of land were told that they could not build or reside or otherwise utilise their parcels until the purchase price had been paid in full and the property transferred to the purchaser. He did not have this conversation specifically with the

Defendants. Mr Broadbent acknowledged that in total seven purchasers had built on their parcels without permission but that he had offered everyone the opportunity to either pull down the structures and get their deposits back or to bring their property up to the standards of the covenants. All offenders other than the Defendants either walked away or became compliant.

32. Ms Hurlston denied encouraging the Defendants to develop the land. She asserted that from inception she had explained to Mr Reid that he had permission to visit the site and keep it tidy but that he was prohibited from building on the site until the purchase had concluded. When she became aware of the development in January 2019, she called Mr Reid into her office and told him again that he was not permitted to build on the parcel and Mr Reid agreed to remove the structure. Ms Hurlston stated that despite her instructions the Defendants continued with the construction following which she told Mr Reid again to desist but construction continued.

33. Lookout called Donald Bolt, a finishing carpenter, who is also purchasing a parcel of land from Lookout. It was his evidence that when he entered into the agreement to purchase his parcel, it was made clear to him that he could not develop the land until he had paid for the land in full and that, to the best of his knowledge, that was what other purchasers were told too. Mr Bolt also stated that he built a large part of Mr Reid's residence. Mr Bolt stated that when he was approached to construct the house, he asked Mr Reid whether he had paid off his land and Mr Reid replied that the building would be constructed without windows so that if anyone asked about the structure the Defendants could claim the building was a shed. Mr Reid asserted that throughout the construction process the Defendants were fully aware that they were breaking the rules when they built their dwelling. Mr Bolt admitted that because the Defendants had not paid him for his work, he was so upset that one evening he threatened Mr Reid with a knife in an effort to extort payment.

34. Mr Reid suggested that Mr Bolt was being dishonest in that Mr Bolt only did minimal work on the dwelling on a voluntary basis and that Mr Bolt had been persuaded by Ms Hurlston to give false evidence. Mr Bolt denied lying to the court.

35. Mrs Reid's evidence was that Mr Bolt did work on their house but that he had done so voluntarily and that he had been paid in beer rather than money. She also spoke to Mr Bolt



threatening Mr Reid after which she paid Mr Bolt \$500. She also opined that Mr Bolt had been persuaded to give false evidence.



36. The Defendants called Mr Romeo Reid. He entered into an agreement with the Plaintiff to purchase land in 2009. Mr Reid's witness statement suggested that Mr Broadbent and Ms Hurlston had encouraged him to build before he had paid off the land. However, Mr Romeo Reid corrected that statement in the witness box saying that they never encouraged him to build, but rather encouraged him to put on cement boards on the outside of his house and to extend it. The dispute he said he had with Lookout over the covenants had now been resolved. Mr Romeo Reid also stated that he knew he could not build on the land although he never signed any document to that effect and that he assumes that all purchasers knew this. Mr Romeo Reid produced his finance agreement with Lookout and importantly, it is a finance agreement for the entire purchase price which expressly gives Mr Romeo Reid exclusive possession of the parcel with permission to build a dwelling with a minimum floorspace of 2,000 square feet.

37. What the Defendants appear to have failed to realise is that Mr Romeo Reid had an entirely different contract with Lookout: while the Defendants had a deposit agreement which required separate financing to be arranged for the balance of the purchase price after one year, Mr Romeo Reid had a finance agreement spanning many years for the entire purchase price which expressly gave him permission to build and occupy the land. Also, Mr Romeo Reid does not appear to go as far in his evidence of "encouragement" as they had anticipated. Mr Romeo Reid admitted that while he knew Mr Broadbent and Ms Hurlston were encouraging owners to build he had not seen their contracts so he cannot in truth speak to whether Mr Broadbent or Ms Hurlston were encouraging people to build in contravention of their agreements with Lookout. If these people also had finance agreements like Mr Romeo Reid had, then such encouragement would be perfectly proper. Ultimately his evidence does not take the issue of encouragement any further.

38. I find that I am sure that Ms Hurlston spoke the truth about telling Mr Reid that he could not build on the property until the purchase had completed. I accept Mr Bolt's evidence that Mr Reid had known throughout the construction that he was breaking both the conditions imposed by Lookout as well as planning laws. I reject the Defendants assertion that Ms Hurlston or anyone else at Lookout encouraged them to fill the land or build on the land which would have constituted an offence under the Development and Planning Act in any event.

The April 2019 letter

39. It is not disputed that Ms Hurston served the termination letters on Mr Reid on 5 April 2019. The terms of the letter regarding parcel 235 were:

“We note that under the terms of the Deposit Agreement dated April 23, 2018 you are in arrears in payment of your monthly installments. In accordance with the said terms of the agreement we enclose our cheque in the sum of CI\$4,608.00 being the monies you have paid to date and confirm that the Deposit Agreement is terminated. Please vacate the Parcel immediately.”

Mr Reid endorsed the letter stating:



“I acknowledge that I received this letter without a cheque.”

40. Mr Broadbent stated that he had instructed Ms Hurlston not to hand over the cheque until the Defendants had vacated the land. However, according to Ms Hurlston, she had proffered the refund cheques to Mr Reid, but he refused to accept them, something which Mr Reid did not dispute. On the face of it Lookout had sought to terminate the agreement as provided for in the deposit agreement.
41. Mr Reid challenges the validity of the letter because it was signed by Ms Hurlston rather than Mr Broadbent or Mr Stevenson. Mr Broadbent and Ms Hurlston confirmed that she is authorised to sign letters on behalf of Lookout. I consider that as the Office Manager for Lookout it would not be unusual for Ms Hurlston to have such authority. I find there is little merit in Mr Reid’s complaint and that I am satisfied that the termination letter was properly executed.
42. For the reasons I have already outlined, I am satisfied that the Defendants were in arrears under the terms of the deposit agreement and that Lookout was, therefore, entitled to terminate the agreement. I am satisfied that the letter delivered to Mr Reid constitutes proper notice of termination. I am satisfied that even though Mr Reid refused to take payment of the refund the Defendants were still obligated to vacate the land.

The August 2019 agreement

43. The day after the termination letter was served, the Defendants made an unsolicited deposit of \$1,000 in Lookout's bank account. This did not clear the arrears. Under the terms of the original deposit agreement the full purchase price would have been due on 1 May 2019. Even if the Plaintiffs had not terminated on the grounds of arrears of the monthly instalments, they at that stage would have been entitled to terminate for non-payment of the remaining purchase price.

44. The Defendants made a further deposit of \$2,000 on 14 June 2019. Neither of the Defendants have asserted that the Plaintiff had at that stage agreed to reinstate the deposit agreement. Consequently, any further deposits were unsolicited. According to Ms Hurlston's records there were no further deposits in June. I was left uncertain whether Mr Reid was asserting that he had continued to make monthly deposits or that he accepted that Ms Hurlston's records accurately reflect his payments. Then there is the continued default on parcel 236 which demonstrates a pattern of default. Mr Reid's inability to provide a clear position on such a crucial issue once again led me to conclude that Ms Hurlston had not been stealing the funds, but rather that these unsolicited payments were irregular.



45. On 17 July 2019 Lookout's attorneys wrote to the Defendants referencing the April termination letter and reiterating that the deposit agreement for parcel 235 had been terminated and that the Defendants were required to vacate. The Defendants remained in occupation of the land even after the letter from the attorney. Mr Broadbent set up a meeting to take place between himself and the Defendants to discuss a way forward. Mr Reid submitted that Ms Hurlston had primed him on what to say at this meeting. Although this was not expressly put to Ms Hurlston, Mr Romeo Reid confirmed that Ms Hurlston had called Mr Reid to make suggestions as to what terms he might want to offer Mr Broadbent in the meeting.

46. The accounts of what happened at the meeting on 5 August 2019 are at odds. Mr Broadbent's evidence was that he wished to find a compromise with the Defendants as he had with the other purchasers who had built houses without permission. The parties struck a deal whereby the deposit agreement would be reinstated on condition that –



- (a) The arrears owed to the plaintiff were paid in full forthwith which was agreed to be \$1,000.
- (b) The remaining sum due under the deposit agreement, which was the remaining purchase price, was paid in full by the end of September 2019.
- (c) The Defendants were to complete certain renovations/repairs and extensions to the building within 2 months, including –
 - (i) Increasing the size of the existing structure to 2,000 square feet;
 - (ii) Apply foam, concrete tiling and marmoran to the property;
 - (iii) To place the property in a state of good repair; and
 - (iv) To remove all vehicles and materials from the land.
- (d) Architectural drawings were to be provided to the Plaintiffs within 2 weeks.
- (e) The final house would be completed within 12 months.

47. Mr Broadbent stated that the requirement to extend the existing building was to bring it in compliance with the covenant applicable to all the subdivisions, namely that houses had to be a minimum of 2,000 square feet.

48. Mr Broadbent said the drawings were requested because Mr Reid had stated that the application for planning permission had already been submitted to the Planning Department. He required the removal of vehicles and materials because the property “looked like a dump”.

49. Mr Broadbent produced his notes of the meeting which he said were made contemporaneously which accords with his account of events save that the note is silent as to when the full purchase price was due. The note appears to confirm that the Defendants agreed to extend the property by 800 square feet, to produce drawings, to remove vehicles and carry out works to the house.

50. Ms Hurlston’s account of the meeting corresponds with that of Mr Broadbent. Her evidence was that the full purchase price was due by the end of September 2019.

51. The Defendants’ evidence was that they agreed to pay the arrears of the monthly instalments, which they said they did immediately. However, their account is that they had assured Mr Broadbent that they were going to secure funding with First Caribbean Bank imminently and so Mr Broadbent did not give a deadline by which the remaining balance had to be paid.

52. The Defendants accepted that they had agreed to carry out the renovations to the existing structure and clean up the property, which they said they did.

53. The Defendants denied that they agreed to extend the building's footprint, stating that the dwelling was only ever intended to be temporary as they intended to build a larger house which they explained to Mr Broadbent. The Defendants also denied agreeing to provide drawings as they said they had not had any drawings made up yet as they did not have the funds. The Defendants also denied agreeing to move the vehicles from the property as they say all vehicles were in good condition and being used at various times.

54. I found that Mr Broadbent and Ms Hurlston's account is simply more probable. I found Mr and Mrs Reid's report of the meeting to be too vague to be credible. I found it highly unlikely that a company in the business of selling land would allow a purchaser who had already established a pattern of default and non-compliance to continue to flout the covenants and not set a deadline for repayment. That did not make financial sense to me. The conditions Lookout outlined were consistent with the covenants and requirements imposed on Mr Romeo Reid through his finance agreement. I felt sure that I could accept Mr Broadbent and Ms Hurlston's evidence of the terms for reinstatement of the deposit agreement as accurate: The Defendants did agree to pay the arrears immediately; to pay the full purchase price by the end of September 2019; to provide drawings to Mr Broadbent within 2 weeks; to tidy up the property in general and keep it in good condition and to complete certain works to the property, including to extend the property by 800 square feet to 2,000 square feet.

55. According to Ms Hurlston's records the Defendants did not make any payments into the Plaintiff's bank accounts after the meeting. Once again, for the reasons I have already explained I conclude that Mr Reid is not being forthright in his sometime assertion that he made all monthly payments as due. I am sure that the Defendants did not make the necessary immediate payment of arrears as agreed. Also, by not paying the full purchase price by the end of September 2019 the Defendants were in breach of that condition of the August agreement too.

56. The Defendants assert that they had been prevented from obtaining the necessary financing for the remaining purchase price because Ms Hurlston refused to provide them with a statement of account. Ms Hurlston denied that either Defendant had ever asked her directly



for such a statement. I found it striking that in contrast to what the Defendants' stated to this court, their attorney's letters and emails exhibited by Mr Reid disclose that his attorney had received a statement of account on 28 July 2019. Mr Reid claims his attorney never gave him the document. I found this assertion to be incredible and reject the Defendants' account on this point in its entirety. I am sure that the Defendants never personally asked Ms Hurlston for the statement of account and that despite being in possession of the statement of account from July 2019 the blame for not securing funding for the purchase rests at the Defendants' door.

57. The Defendants failure to remove the many vehicles from the property also breached the August agreement.

58. The forgoing means that the Defendants failed, almost immediately, to comply with many of the conditions imposed during the August meeting and, consequently, the deposit agreement was terminable. Despite this the Defendants remained in occupation of parcel 235 but made no further payments into Lookout's bank account.

59. On 22 July 2020 the Plaintiff sent another letter to the Defendants advising them that they were in breach of the August agreement and that they should vacate parcel 235 within 7 days. I find that this was a valid termination of the August 2019 agreement. The Defendants did not comply.

60. On 25 July 2020 Mr Broadbent, Mr Stevenson and Ms Hurlston had another meeting with the Defendants. According to Ms Hurlston, the Defendants were offered the opportunity to reinstate the deposit agreement on the same terms as offered in August 2019 with a deadline for final payment set at end of September 2020. Mr Broadbent's evidence was limited on this second meeting. He could recall extending the same terms and conditions with the added condition that the Defendants would surrender parcel 236. He could not recall the deadline for full payment but said that he was sure that he set a deadline as he would not have extended the deposit agreement indefinitely.

61. The Defendants' account of the second meeting was very vague. They asserted that Mr Broadbent confirmed that they had complied with the August 2019 agreement and that they



could take all the time they needed to get financing for the purchase arranged. As far as they were concerned all was in order and they were paying the instalments as agreed.

62. Once again, I was not convinced by the Defendants' accounts. Ms Hurlston's records, which I accept as accurate, reflect that the Defendants made no payments to Lookout between July 2019 and August 2020. A payment of \$3,000 was made on 8 August 2020 which, even if the deposit agreement had been reinstated meant that they were still over \$3,800 in arrears on the monthly instalments alone. I accept Ms Hurlston's account that the deadline for payment of the full purchase price was fixed for September 2020 which the Defendants accept they did not meet. The Defendants assert that the reason they did not secure bank financing in 2020 was again because Ms Hurlston was refusing to give them a statement of account. What is striking is that had this been true then it would have been no trouble for their attorney to have asked for such a statement as he had in 2019, yet no such request was made suggesting that once again the Defendants are trying to mislead the court. In short, the Defendants had breached the most recent agreement by remaining in arrears and not paying the remaining purchase price by September 2020 making the July 2020 agreement terminable.

63. I see from Ms Hurlston's records as well as Mrs Reid's deposit slips that Mr and Mrs Reid made further sporadic payments into Lookout's accounts. Despite these payments, if Lookout had agreed to continue repayment at \$500 per month, which I am sure they did not, the Defendants would nevertheless still be in arrears to this day. I reject the Defendants' suggestion that because they made these payments Lookout was implicitly continuing the agreement to purchase. Even with these unsolicited payments being made, it does not change the fact that the Defendants were in breach of the many central conditions of the July 2020 agreement, most notably to pay the final purchase price by September 2020. This is a very significant breach of the terms of the agreement. I am satisfied that Lookout once again validly terminated the July 2020 agreement by letter dated 6 April 2021 and served on the Defendants on 8 April 2021 advising the Defendants that the agreement was terminated and that they should vacate the premises.

64. My final conclusion is that the Plaintiff validly terminated the Deposit Agreement in April 2019 for breach of terms. I am in fact sure that in August 2019, in order to reinstate the deposit agreement, the Defendants agreed to:

- (a) pay the monthly arrears of \$1,000 immediately which they did not.



- (b) pay the full purchase price by September 2019 and again by September 2020, which they did not;
- (c) extend the house they had erected to 2,000 square feet, which they did not;
- (d) keep the property in good condition which they did not;
- (e) remove the vehicles stored at the property which they did not; and
- (f) provide architectural drawings which they did not.

65. In fact, the only thing they agreed to which they did do was to renovate the outside of the building and remove building materials. However, I see from the pictures taken by Ms Hurlston in November 2021 that building materials or similar bulky items have begun to accumulate once again.

66. Given the many parts of the August 2019 agreement that the Defendants failed to adhere to, I am left with no other choice but to find that the Defendants' failures mean that the original deposit agreement was properly terminated by Lookout in April 2019. The Defendants also breached the two subsequent agreements in substantial ways which once again gave rise to a right to terminate by the Plaintiff. I am also satisfied that Lookout properly sought to terminate the agreements on the grounds of these various breaches. Consequently, despite making several unsolicited lumpsum payments, the Defendants have no rights over the land. It is most unfortunate that the Defendants chose to go against the terms of their deposit agreement and spent their hard-earned money on filling the land and building a small dwelling but in the end, they knew they should not have done so. It is a misfortune of their own making.

67. I have considered whether it is fair to require the Defendants to surrender the parcel when they have spent thousands of dollars filling the land and building their temporary home. However, the Defendants have not come to these proceedings with clean hands. They developed the land without permission of the owner or the Central Planning Authority and so they cannot now make a claim in equity.

Conclusion

68. I find that the Defendants never had a right to occupy the land in the first place. The Defendant fell into significant arrears during the term of the deposit agreement therefore giving rise to Lookout's right to terminate. I am satisfied that Lookout properly sought to



exercise that right to terminate by serving the termination letter in April 2019. The Defendants having failed to comply with the conditions of its reinstatement agreed to both in August 2019 and July 2020 Lookout has properly exercised its right to terminate and seek vacant possession. Consequently, the Defendants are in illegal possession of the land.

69. Accordingly, I make the following declaration:

“The deposit agreement and the August 2019 agreement and the July 2020 agreement are terminated.”

I also make the following consequential orders:

1. The Defendants shall vacate and give up to the Plaintiff vacant possession of parcel 235 within 28 days of the date of this Judgment.
2. The Plaintiff shall have leave to issue a Writ of Possession in relation to parcel 235 and the property thereon upon the expiry of 28 days of the date of this Judgment.
3. The Plaintiff shall pay to the Defendants the total of such sums paid by the Defendants on account of parcel 235, interest not being due on such sums.
4. The Plaintiff’s application for damages in respect of parcels 235 and 236 is dismissed.
5. The Plaintiff’s application for costs is dismissed.

70. The Defendants are advised that they may appeal the decision of this court within 14 days of the order being entered.



Hon Kirsty-Ann Gunn
Acting Judge of the Grand Court