



**IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE
CAYMAN ISLANDS CIVIL DIVISION**

**CICA (Civil) Appeal No. 0002 of 2023
(Formerly Cause No. GC 0073 of 2021)**

BETWEEN

**(1) SAMUEL REID
(2) MERVELIN REID**

APPELLANTS

AND

LOOKOUT HOLDINGS LIMITED

RESPONDENT

Before: **The Rt. Hon. Sir John Goldring, President
The Rt. Hon. Sir Alan Moses, Justice of Appeal
The Rt. Hon. Sir Jack Beatson, Justice of Appeal**

Appearances **Mr. James Chapman, Chapmans Legal Ltd for the
Appellants**

**Mr Colm Flanagan and Ms Amanda Minto, Nelsons for the
Respondent**

Heard: **30 August 2023**

Draft circulated: **8 September 2023**

Judgment delivered: **22 September 2023**

JUDGMENT

Moses, JA

1. This is an appeal against a judgment of the Honourable Kirsty-Ann Gunn (Acting) dated 8 February 2023 in which, in an action brought by the respondents (Lookout)

against the Appellants, she declared that a series of agreements entered into between Lookout and the appellants (Mr and Mrs Reid) had been terminated and made consequential orders including an order that Mr and Mrs Reid give vacant possession of parcel 235, the land the subject of the dispute.

2. On 30 August 2023 the court heard the appeal and dismissed it. These are the court's reasons.
3. The facts found by the judge are central to this appeal. Before identifying some of the relevant facts I should record that they were found by the judge after a two-day trial in which the Reids' credibility was much in issue. In reaching her conclusions of fact, the judge rejected important aspects of their account of their dealings with Lookout.
4. In this appeal the appellants, through their counsel Mr Chapman, accepted that it was not open to him to challenge those factual findings. He was right to do so. The judge's factual findings could not be overturned unless it could be shown that she had reached a conclusion she was not entitled to reach (see e.g. *Henderson v Foxworth Investments Ltd* [2014] 1 WLR 2600 at [67]).
5. Lookout sells parcels of land in Bodden Town for the development of single-family homes. For the assistance of those who may not be able to afford the deposit necessary to obtain a mortgage, it has developed a scheme which gives an opportunity for a prospective purchaser to pay a deposit over a one-year period. At the end of that period, a prospective purchaser may either pay the remaining purchase price, either with a mortgage or from their own funds or through a finance agreement with Lookout. Lookout retains title to the land until the purchase price has been paid in full.
6. On 23 April 2018 Mr and Mrs Reid entered into an agreement described as a Deposit Agreement which read:

“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 \$117,000.00 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 seven days of the due date, Lookout has the option to either terminate this agreement and return all funds paid to date or charge interest, 10% per annum from the default date for the remainder of the term.

The purchaser will have three options to pay the outstanding remaining balance on the first day of (12 months after first 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.”*

7. The Judge found, contrary to the evidence of the Reids, that Mr Reid had made only one payment of \$3500 between May 2018 and April 2019, that the Reids were in breach of the deposit agreement and that, accordingly, Lookout was entitled to terminate the agreement (Judgment [29]. Numbers in brackets hereafter refer to the judgment).
8. In late December 2018 the Reids built a “dwelling structure” on the Plot. The Judge rejected the evidence that they had been encouraged to do so. On the contrary they were told they could not do so [28]. Later she described the fact that they had spent money on filling what was otherwise swamp land and building a small dwelling as “most unfortunate” but “a misfortune of their own making” [66].
9. On 5 April 2019 Lookout served a termination letter, and asked the Reids to vacate the Parcel immediately. Mr Reid acknowledged receipt of the letter but pointed out that although the letter said it contained a cheque for the return of \$4608 paid to date, no cheque was enclosed. This was correct. The cheque was to be kept until the land was vacated. The money was, however, offered by Ms Hurlston, the office manager, but Mr Reid, as the Judge found, refused to take it [42].

10. The Judge found that two further irregular payments, as she described them, were made one of \$1000, the day following the termination letter and another of \$2000, on 14 June 2019. Both were unsolicited [43]-[44]. Despite a letter from Lookout's attorneys dated 17 July 2019, the Reids remained in occupation. This led to a meeting, the details of which were disputed.
11. The Judge found, accepting the evidence of Lookout's Office Manager and Director and rejecting the evidence of the Reids, that on 5 August 2019, the parties orally agreed that the arrears owed, agreed at \$1000, would be paid forthwith, the remaining purchase price would be paid in full by the end of September 2019, various works of extension, clearing and repair would be undertaken, and the house completed within 12 months.[46]
12. The Judge found that none of those terms were met. In particular, no further payments were made [56]-[58].
13. On 22 July 2020, Lookout sent a letter telling the Reids they were in breach of the second August 2019 agreement and requiring them to vacate.
14. They did not. On 25 July 2020, Lookout and the Reids entered into a third agreement on the same terms as the second, August 2019 agreement but with a date for payment of the full price changed to September 2020. [60]-[61].
15. No payments were made between July 2019 and August 2020 but some sporadic payments were made thereafter. By 8 August 2020 despite a payment of \$3000, Mr and Mrs Reid were still in arrears and were in breach of the agreement to pay the full purchase price by September 2020.[62]-[63]
16. Lookout served a further letter on 8 April 2021 terminating the third, July 2020, agreement.
17. On the basis of those facts the Judge concluded that Lookout had validly terminated all three agreements and that consequently the Reids remained in illegal possession of the land [64] and [68].

18. Mr Chapman on behalf of the Reids points out that they were unrepresented and asserts that they must have found the approach of Lookout, in making further agreements, after the termination of the initial agreement, confusing. There is no finding to support this assertion. The Reids gave evidence which demonstrates they understood the issues, and knew what they were required to do. Their evidence was disbelieved.
19. Mr Chapman argued that the initial Deposit Agreement was never validly terminated but that, by accepting and not rejecting a number of unsolicited payments, Lookout is shown either not to have accepted the Reids' repudiatory conduct or is, in some way, estopped from reliance on its purported termination.
20. This submission is not sustainable. The facts show that there were three linked but separate agreements. There was a valid termination of all three agreements. The fact that Lookout chose to enter into two further agreements did not, in any way, debar them from relying on the termination of all three, once, as the Judge found, the Reids had failed to comply with the terms of those agreements.
21. Lookout did not waive its right to terminate the first deposit agreement when it entered into a second agreement in August 2019. That first agreement was ended. Had the Reids complied with the terms of that second agreement they would eventually have been entitled to purchase the land. But when they failed to do so, Lookout was entitled to terminate that agreement and did not waive that right by entering into a third agreement in July 2020. Again, when the Reids failed to comply with the terms of that third agreement, Lookout was entitled to terminate it.
22. The Reids never acquired any interest in the land. Mr Chapman seemed to suggest that since the infill and building work was obvious and valuable that conferred on them some right not to be evicted. This was not properly arguable. It seemed to be suggested that some form of estoppel had been created in reliance on promises from Lookout. But no promises were ever made by Lookout. On the contrary, the Reids knew they should not have spent money on infill and building on land which they had never acquired.

23. The case raised questions only of fact. There was no arguable misapplication of the law which was straightforward. The judge reached the right conclusions for the right reasons. It was for those reasons the court dismissed this appeal.