

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

ADVOCACY PROGRAMME

YEAR II

CIVIL BRIEF

BARON v. GOODEN

NANCY ANDERSON

PARTICULARS OF CLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.HCV 1234 of 2006

BETWEEN

DEON BARON

CLAIMANT

AND

MYRTLE GOODEN

DEFENDANT

1. By an Agreement in writing dated May 17, 2005 and made between the Claimant and the Defendant, the Claimant agreed to purchase and the Defendant agreed to sell property situated at 123 Berry Lane, Elliotville, in the Parish of Southland for the sum of \$4,000,000.00. A copy of the Agreement is attached to this Claim.
2. COMPLETION in the Schedule of the Agreement provided that the purchase should be completed by December 9, 2005.
3. Although the time fixed by the Agreement for completion of the purchase has passed the Defendant has failed and refused to take any steps to complete the purchase.
4. At all material times the Claimant has been and remains ready, willing and able to perform his obligations under the Agreement.

AND THE CLAIMANT CLAIMS:

- (1) Specific performance of the Agreement.

- (2) All necessary and consequential accounts, directions and inquires.
- (3) Damages for breach of contract in addition to or in lieu of specific performance.
- (4) Further or other relief.
- (5) Costs.

Signed B.F. Peirce
Attorney-at-law

I certify that all the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

Dated the 24th Day of April, 2006

Signed : Deon Baron

The Claimant's address for service is that of his Attorney-at-law, Benjamin Franklin Peirce of 15 High Street, Elliotville in the Parish of Southland whose telephone number is 123-1234 and fax number is 123- 3456.

Filed by Benjamin Franklin Pierce, Attorney-at-law of 15 High Street, Elliotville in the Parish of Southland whose telephone number is 123-1234 and fax number is 123- 3456.

DEFENCE AND COUNTERCLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.HCV 1234 of 2006

BETWEEN

DEON BARON

CLAIMANT

AND

MYRTLE GOODEN

DEFENDANT

1. The Defendant admits the Agreement referred to in paragraph 1 of the Particulars of Claim.
2. The Defendant denies paragraph 2 of the Particulars of Claim and states that the Completion date under the Agreement was September 12, 2005.
3. The Defendant denies that the Claimant is entitled to specific performance of the Agreement.
4. On September 12, 2005, the date fixed by the Agreement for completion of the purchase, the Claimant was not ready and willing to complete the purchase.
5. By Notice to Complete served on the Claimant's attorney-at-law on the 7th of October, 2005 the Defendant called upon the Claimant to complete the purchase of the property in accordance with the terms of the Agreement on or before November 07, 2005, but the Claimant failed to do so.

6. As a result of the Claimant's failure to complete the purchase of the property, the Defendant gave notice to the Claimant rescinding the Agreement by letter dated November 11, 2005.
7. Accordingly, it is denied that the Claimant is entitled to the relief claimed in the Particulars of Claim.

COUNTERCLAIM

8. The Defendant repeats paragraphs 1-6 of the Defence.
9. Because of the Claimant's inability to pay the balance of the purchase price on the date for completion, the Defendant is entitled to treat the Agreement for Sale as rescinded.

AND The Defendant counterclaims:

- (1) A declaration that the said Agreement for Sale dated May 17, 2005 is rescinded;
- (2) Further or other relief;
- (3) Costs.

I certify that all the facts set out in this Defence and Counterclaim are true to the best of my knowledge, information and belief.

Signed: Myrtle Gooden

DATED THE 16 DAY OF MAY, 2006

The Defendant's address for service is that of her Attorney-at-law, James Goodfellow, of 45 Queen Street, Elliotville, in the Parish of Southland whose telephone number is 123-7654 and fax number is 123- 9876.

Filed by James Goodfellow, Attorney-at-law, of 45 Queen Street, Elliotville, in the Parish of Southland whose telephone number is 123-7654 and fax number is 123- 9876.

REPLY TO DEFENCE AND DEFENCE TO COUNTERCLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.HCV 1234 of 2006

BETWEEN DEON BARON CLAIMANT
AND MYRTLE GOODEN DEFENDANT

1. Save as is expressly admitted, the Claimant joins issue with the Defendant on her Defence.

2. As to paragraphs 2 and 4 of the Defence, the Claimant repeats paragraph 2 of the Particulars of Claim and states that the date for Completion in the Agreement of Sale was December 9, 2005.

3. The Claimant denies that he was unable to pay the balance of the purchase price on the completion date as alleged in paragraph 9 of the Counterclaim and repeats paragraph 4 of the Particulars of Claim and states that the Defendant is not entitled to the relief sought in her Counterclaim, or any relief at all.

I believe the contents of this Reply and Defence to Counterclaim to be true and I am duly authorized to make this statement on behalf of the Claimant.

Dated the 29th day of May 2006

Signed: B. F. Pierce
Attorney-at-law for the Claimant

Filed by Benjamin Franklin Pierce, Attorney-at-law of 15 High Street, Elliotville in the Parish of Southland whose telephone number is 123-1234 and fax number is 123- 3456.

WITNESS STATEMENT - CLAIMANT, DEON BARON

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO.HCV 1234 of 2006**

BETWEEN DEON BARON CLAIMANT
AND MYRTLE GOODEN DEFENDANT

**WITNESS STATEMENT OF DEON BARON
DATE: MARCH 03, 2007**

Deon Baron says-

1. I live at 14 First Street, Elliotville, in the Parish of Southland and I am a mechanic working at my own business at 363 Bray Street, Elliotville.
2. I know the premises at 123 Berry Lane, Elliotville, in the Parish of Southland and have had my eye on it for expansion of my business.
3. In May, 2005 I spoke to the owner of the land, Myrtle Gooden, about purchasing the land and she agreed to sell it to me for \$4M.
4. She took me to her attorney-at-law, Mr. Goodfellow on May 17, 2005 and we signed an Agreement for Sale and I paid the deposit of \$400,000.00. I got a copy of the Agreement at this time.
5. That the date of completion was set for 12/09/05 that is December 09, 2005 as I was to cash in a fixed deposit on the day before, December 08, 2005 so I would have the cash to pay the balance of the purchase price on the next day.
6. I told Ms. Gooden about this fixed deposit before we went to the lawyer's office and therefore expected to see that date on the Agreement for Sale.
7. The lawyer, Mr. Goodfellow asked me if I had my own attorney and I told him I would use him as I did not want to pay for two lawyers, but he told me I should

have my own attorney and so I told him my attorney's name as this attorney had represented me in a traffic court case about three months before.

8. In October, 2005 I received a Notice from Ms. Gooden's attorney stating that I should pay the balance of the purchase price on November 7, 2005 and I immediately went to see her.
9. I spoke to Ms. Gooden and told her that the completion date was not till December 9th but she said 'No" and said she wanted her money immediately.
10. I told her I would have the money on December 9th as agreed and I came to her attorney with the money that day, but he refused to take it from me.
11. I also got a letter from Ms. Gooden's attorney dated November 11, 2005 saying the sale was off, but I did not believe it was off as I had until December 09th to pay the money.
12. That I believe Ms. Gooden is refusing to complete this sale as she has learned that she can get more for the land now that it has been announced that the new highway will pass right by the land.
13. I got a valuation in January, 2006 from Mr. Realo Vantor, a valuator, who states that the land is worth \$6M now.
14. I have been ready, willing and able to pay the balance of the purchase price since December 9, 2005.

Statement of Truth -

I believe that the facts in this witness statement are true.

Signed: D. Baron

Date: March 03,2007

WITNESS STATEMENT - REALO VENTOR

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO.HCV 1234 of2006**

BETWEEN DEON BARON CLAIMANT
AND MYRTLE GOODEN DEFENDANT

Witness for the Claimant: Realo Ventor
Date: March 03, 2007

Realo Ventor says:

1. I reside at 67A Apple Avenue, Elliotville in the Parish of Southland and am a land valuator and have my office at Shop 14 Trade Centre, Southland Mall, Elliotville.
2. I have a Bachelor's degree in Business with a major in valuation and property management from the University of the West Indies, Elliotville Campus and have been a registered land valuator for fifteen years.
3. On January 12, 2006 I was asked by Mr. Deon Baron to visit, view and make a valuation of premises at 123 Berry Lane, Elliotville in the Parish of Southland.
4. Mr. Baron instructed me that he had entered into an agreement with Myrtle Gooden to purchase the property and that he intended to use the property to expand his business as a mechanic.
5. I visited the premises on January 14' 2006 and also visited the Transport Ministry where I examined plans for Highway 2005.
6. I used the income capitalization approach of appraisal(often referred to simply as the "income approach")to value the premise as a commercial and

investment property, because this approach is intended to directly reflect or model the expectations and behaviors of typical market participants, this approach is generally considered the most applicable valuation technique for income-producing properties.

7. In my professional opinion, the value of the said premises would increase with the construction of the Highway in the vicinity of the premises.
8. My expert opinion is that the property is currently worth in excess of \$4M and as high as \$6M.
9. I understand my duty to this Honourable Court as set out in Civil Procedure Rules 32.3 and 32.4 and I have complied with that duty
10. I have set out in this statement all matters within my knowledge and area of expertise relevant to this issue.

Statement of Truth:

I believe that the facts stated in this Witness Statement are true and the opinions I have expressed are correct.

Signed: Realo Ventor
Date: March 03, 2007

WITNESS STATEMENT - DEFENDANT, MYRTLE GOODEN

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.HCV 1234 of 2006

BETWEEN

DEON BARON

CLAIMANT

AND

MYRTLE GOODEN

DEFENDANT

DATE: March 10, 2007

Myrtle Gooden says-

1. I reside at 1919 Gold Avenue, Elliotville in the Parish of Southland and I am the registered proprietor of premises at 123 Berry Lane, Elliotville.
2. In May, 2005, I met Mr. Deon Baron and he said he wanted to buy my property at 123 Berry Lane registered at volume 456 folio 123 for \$4M and I agreed.
3. On May 17, 2005 I took Mr. Baron to my attorney Mr. James Goodfellow who prepared an Agreement for both of us to sign. The Agreement now shown to me is the Agreement we signed that day.
4. Mr. Baron paid the deposit but he has never paid the balance of the purchase price which was due on September 12th.
5. In early October, 2005 I instructed my attorney Mr. Goodfellow to try to get my money from Mr. Baron and he said he would send him a Notice to pay by November 7th and I agreed.
6. In November Mr. Baron came to me, I cannot remember the exact day, and he told me he thought the completion day was December 9th and asked me to wait as he would have the money then, but I told him he was wrong and I wanted my money immediately or I would stop the sale. This was the first time I heard about a fixed deposit he had as he never told me before.
7. I have another purchaser who wants to buy the land.

Statement of Truth: I believe that the facts in this witness statement are true.

Signed: Myrtle Gooden

WITNESS STATEMENT - JAMES GOODFELLOW (DEFENDANT)

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO.HCV 1234 OF 2006**

**BETWEEN
AND**

**DEON BARON
MYRTLE GOODEN**

**CLAIMANT
DEFENDANT**

JAMES GOODFELLOW SAYS:

1. I am an attorney-at-law and have my office at 45 Queen Street, Elliotville, Southland and have been an attorney for over seven years. I practice in all areas of law and have done numerous land transactions before this one
2. My client Myrtle Gooden came to me on May 17, 2005 with Mr. Deon Baron and stated that she wanted to sell the premises at 123 Berry Lane, Elliotville to Mr. Baron for \$4M.
3. I prepared an Agreement for Sale and Ms. Gooden and Mr. Baron signed it the same day. Mr. Baron also paid the deposit on that day. I gave him a copy of the Agreement.
4. This is the Agreement dated May 17, 2005 now shown to me.
5. The date for completion was set as September 12, 2005 and I set it out as follows: 12/09/05.
6. At no time on that day did Mr. Baron say he would be able to pay on December 9th.
7. I advised Mr. Baron that it was best for him to have his own attorney and he gave me the name of his attorney-at-law which I put in the Agreement and I gave him a copy of the Agreement which I expected he would take to his attorney.
8. I stamped the Agreement for Sale with the Stamp Duty and paid the transfer tax due.

9. In early October, 2005 Ms. Gooden came to me and asked me to try to get her money from Mr. Baron and I sent him a Notice to pay by November 7th and making time of the essence. This is the said Notice.
10. Mr. Baron did not pay the balance of the purchase price in accordance with the Notice so on November 11, 2005, on Ms. Gooden's instruction I wrote to him rescinding the agreement and returning the balance of the deposit and the stamped agreement and transfer tax receipt.

Statement of Truth:

I believe that the facts stated in this witness statement are true.

Signed: James Goodfellow

Date: March 11, 2007

AGREEMENT FOR SALE

THIS AGREEMENT is made the 17th day of May, Two Thousand and Five BETWEEN MYRTLE GOODEN, Shopkeeper, of 1919 Gold Avenue, Elliotville in the Parish of Southland (hereinafter called the 'Vendor') AND DEON BARON, Mechanic, of 14 First Street, Elliotville, in the Parish of Southland (hereinafter called the 'Purchaser') WHEREBY the Vendor agrees to sell and the Purchaser to purchase ALL THAT PARCEL of land more fully described in the schedule upon the terms set out therein.

SCHEDULE

DESCRIPTION	ALL THAT PARCEL of land part of RETREAT PEN, now known as NUMBER 123 Berry Lane, Elliotville in the Parish of Southland and being the land comprised in Certificate of Title registered at Volume 1213 Folio 987 of the Register Book of Titles.
PURCHASE PRICE	FOUR MILLION DOLLARS – (\$4,000,000.00)
HOW PAYABLE	Deposit of \$400,000.00 on the signing of this Agreement, balance on completion.
COMPLETION	On or before 12/09/05.
POSSESSION	On completion

COSTS OF TRANSFER

Stamp and Registration fees payable shall be borne equally between the Vendor and the Purchaser. Each party shall bear their own Attorneys' costs.

CARRIAGE OF SALE

Mr. James Goodfellow, Attorney-at-law, of 45 Queen Street, Elliotville, Southland

PURCHASER'S ATTORNEY

Ms. Jenifer Smith, Attorney-at-law, of 12 Chapel Street, Elliotville, Southland

SPECIAL CONDITIONS

- (1) It is a condition precedent to the Coming into effect of this Agreement for Sale that same first be signed by both the Vendor and the Purchaser.
- (2) It is understood and agreed that the Vendor's Attorney shall be entitled to stamp this Agreement for Sale with Stamp Duty and Transfer Tax from the deposit and that if for any reason whatsoever the deposit has to be refunded to the Purchaser, the Purchaser shall to the extent of such duty and/or tax so impressed, be deemed to have been refunded same by delivery up to him of the original Transfer Tax receipt and stamped Agreement duly noted by the Vendor as cancelled.

(3) The Attorney's fees for preparing this Agreement for Sale are fixed at \$5,000.00 and shall be borne by the Vendor and the Purchaser equally and each party shall pay their share thereof on the signing of this Agreement.

SIGNED by the Vendor, the said)
MYRTLE GOODEN) *-- Myrtle Gooden --*
In the presence of) MYRLE GOODEN

Frances Goodwoman
WITNESS

SIGNED by the Purchaser, the)
said DEON BARON) *-- Deon Baron*
in the presence of) DEON BARON

Frances Goodwoman
WITNESS

NOTICE TO COMPLETE

TO: JENIFER SMITH,
Attorney-at-law for DEON BARON

DATE: October 7, 2005

I, James Goodfellow, Attorney-at-law for the Vendor, Myrtle Gooden, under an Agreement for Sale dated May 17, 2005 hereby give your client, Deon Baron, the Purchaser under the said Agreement, NOTICE to completion the said Agreement by payment of the balance of the purchase price in accordance with the said Agreement on or before November 7, 2005.

This NOTICE is given as the time for Completion set out in the said Agreement of September 12, 2005 has passed without the said Purchaser completing the said Agreement.

Time is of the essence with respect to this NOTICE and Completion of this Agreement.

DATED THIS 7TH DAY OF OCTOBER, 2005

Per *James Goodfellow*

Mr. James Goodfellow,
Attorney-at-law for the Vendor,
Myrtle Gooden

JAMES GOODFELLOW,
ATTORNEY-AT-LAW

45 Queen Street,
Elliotville, Southland
Phone - 998-1234
E-mail _good@live.com

Mr. Deon Baron,
14 First Street,
Elliotville

November 11, 2005

Dear Mr. Baron,

Re: Agreement for Sale - Premises at 123 Berry Lane

I write on behalf of Myrtle Gooden, Vendor, under an Agreement for Sale dated May 17, 2005. On October 7, 2005, you were served with a Notice to Complete this Agreement by paying the balance of the purchase price on or before November 07, 2005. You have failed to pay the balance of the purchase price as requested.

In the circumstances, on behalf of my client, I hereby inform you that the Vendor considers the Agreement rescinded. Please find enclosed herewith our BNS cheque for \$325,000.00 being the deposit less payment of stamp duty and transfer tax and your costs of the preparation of the Agreement of Sale. Also enclosed is the Stamped Agreement and Transfer Tax receipt.

Yours faithfully,

---*James Goodfellow*

JAMES GOODFELLOW

cc. Jenifer Smith, Attorney-at-law

cc. Myrtle Gooden