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IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Before: P.L. Crill, C.B.E. - Deputy Bailiff
Jurat H. Perree
Jurat D.E. Le Boutillier

Between	Eileen Margaret Lane	First Plaintiff
and	Martin Stuart Lane	Second Plaintiff
and	Justin Warren-Gash	Third Plaintiff
and	Ruth Rose Lane	Defendant

Advocate J.A. Clyde-Smith for the Plaintiffs
Advocate R.J. Michel for the Defendant

In 1967 Mrs. Ruth Rose Lane married Mr. Brian William Lane. On the 23rd March, 1972, Mr. and Mrs. Lane bought Cramond, 4 Kimberley Grove, St. Lawrence, jointly and for the survivor of them. Subsequently, their marriage broke down and Mrs. Lane obtained a divorce against her husband in the Family Division of the English High Court. In the latter part of 1977 the parties reached an agreement on ancillary matters. On the 15th November, 1977, that agreement was embodied in an Order of the High Court, the relevant parts of which are as follows:

" IT IS ORDERED BY CONSENT:-

1. That the Respondent do pay by way of lump sum to the Petitioner the sum of £3,187.05 being the balance of £23,000 undertaken to be provided by the Respondent within 14 days of the date hereof, and the further sum of £24,000 within three months of the date hereof.

2. The Respondent do transfer to the Petitioner or as she may direct £16,689.00 nominal value of Nottingham Manufacturing Company Limited 6 1/2 per cent convertible unsecured loan stock 1993/98 within 28 days of the date hereof.

3. That the Petitioner do transfer to the Respondent all that her interest in reversion in the Funds subject to a settlement dated 4th October 1968 and made between Florence Stuart Lane of the first part and Eileen Margaret Lane of the second part and the Respondent and Kathleen Sherer of the third part and to execute all such necessary Deeds and documents to give effect to such transfer in the form of the draft Assignment already submitted.

4. That the Petitioner do transfer to the Respondent or to such person or persons as he may direct all her estate and interest in the property known as 'Cramond', 5 Kimberley Grove, Rue du Haut, Jersey, Channel Islands and do execute a Power of Attorney in favour of a person nominated by the Respondent and/or such other documents as are necessary to effect such transfer and to enable registration thereof to be effected before the Royal Courts of Jersey".

The obligations of both parties under that Order were fulfilled as regards items 1 to 3. As regards clause 4, Mrs. Lane appointed Mr. Andrew Green, an English Solicitor working with Perrier & Labesse as her Attorney in Jersey. The form of the power was as follows:-

"KNOW ALL MEN BY THESE PRESENTS that I, RUTH ROSE LANE nee Coverdale of 23 Budleigh Court, Jason Close, Brentwood, Essex, in England the divorced wife of BRIAN WILLIAM LANE of Cramond, Kimberley Grove in the Parish of St. Lawrence, Jersey in the Channel Islands have by virtue of an Order in THE HIGH COURT OF JUSTICE, Family Division, Probate Registry dated the 15th day of November One thousand nine hundred and seventy-seven, named, constituted and appointed ANDREW QUENTIN SCHOFIELD GREEN an English Solicitor of Piermont House, 33 Pier Road in the Parish of St. Helier, Jersey aforesaid, to be my true and lawful Attorney in the said Island of Jersey AND IT IS EXPRESSLY DECLARED that the said Attorney shall have power to do such acts and things, and to ~~exclude~~ execute all such deeds and instruments as in the opinion of the said Attorney may be necessary or requisite for the sale of my interest in the premises known as Cramond, Kimberley Grove in the Parish of St. Lawrence, Jersey aforesaid, or the vesting of my said interest in the said BRIAN WILLIAM LANE or as he shall direct, such sale or vesting to be made in my name and my said Attorney shall be liable to account for the proceeds of any sale of my said interest solely to the said BRIAN WILLIAM LANE AND FOR THIS PURPOSE the said Attorney shall have power to act and appear and my person to represent in all actions, businesses and affairs before all Courts of Law and before all Judges, Commissioners and Arbitrators, AND generally to act as my Attorney or Agent in the said Island of Jersey in relation to the premises".

At that time Mrs. Lane was no longer residing at Cramond and between the making of that Order and the death of Mr. Lane in a motor accident on the 23rd February 1983, while

he was resident and domiciled in England, he had the use of the former matrimonial home. Mrs. Lane, who gave evidence before us, said that during the marriage she and her husband had not resided in Jersey permanently. Mr. Michel submitted that Mr. Lane's use of Cramond stemmed not from the agreement embodied in the Family Division's Order of the 15th November, 1977, but from the terms of the purchase itself. She did not come to Jersey again after the divorce, except after Mr. Lane's funeral, having learned that the transfer of her interest had not been effected into the name of her former husband. She cancelled the Power of Attorney and installed herself in the home, where she still is. In the Bonn case (reported in 1971 Jersey Judgments at page 1731) the Court decided that a joint owner has only a contingent interest, that is to say, a "bien futur ou a venir". During their joint lives each co-owner has an identical right to enjoy the whole of the property. On the death of either the survivor acquires the whole property by operation of the law of ius accrescendi (Le Sueur -v- Le Sueur (1968) J.J. at page 889). There are thus two interests in jointly held properties. Because each of them is a right of property it is an immeuble and the title of each joint owner can only be changed by the passing of the appropriate "contrat". It follows that until that "contrat" is "passed" any co-owner's title, in this case Mr. Lane's, to occupy the jointly owned house, is and was, imperfect, and could not therefore stem from the original purchase simpliciter.

Originally, there were three Plaintiffs to this action. The First Plaintiff was the devisee under the will of real estate of the deceased, which is dated 3rd February, 1983. The Second Plaintiff is the eldest son and principal heir of the deceased; and the Third Plaintiff is one of the three executors named in the deceased's will, which covered all his assets with the exception of this property in Jersey and which was issued out of the Probate Division of the Royal Court in favour of the Third Plaintiff, on the 29th June, 1983. It was accepted that it was now necessary only for the action to be pursued in the name of the First Plaintiff and the submissions to the Court followed that acceptance of the position accordingly. It will be convenient to refer to the First Plaintiff as "The Plaintiff".

The Plaintiff now seeks from this Court an Order that the Defendant should transfer Cramond to her or be awarded damages. By consent she added a further Prayer at the hearing in the following terms:

"If the Defendant should fail to effect the transfer of the property before the Royal Court within 28 days of judgment then the Viscount be authorised to transfer the property on her behalf to the First Defendant or her heirs by passing before the Royal Court a "contrat hereditaire" in due form of law".

There is one preliminary matter to be settled first. Given that the Court has to ask itself whether at the date of his death, and assuming also that the Power of Attorney had not been revoked, Mr. Lane could have set in train the necessary formalities for the contrat to be passed, did such right as he had accrue for the benefit of the devisee, the Plaintiff, under his will of realty? Mr. Michel submitted this right was personal to Mr. Lane because of the terms of the Power of Attorney and could not be transmitted to his heirs. To this Mr. Clyde-Smith replied that whilst the Defendant's obligation to transfer her interests (we shall come to what these were later) was a substantive obligation, the manner, that is to say, the Power of Attorney, was only procedural.

The question whether Mr. Lane's right could be transmitted to his heirs was an issue between the parties in the Family Court in March 1984, some twelve months after Mr. Lane's death. All the parties, including the present Defendant, agreed to ask the Court, in the words of Sheldon J. who summarised the applications on page 4 of his Judgment: "(a) for a declaration that the Order of the 5th November, 1977, insofar as it remains unperformed remains valid, and enforceable against the Respondent notwithstanding the death of the deceased, and (b) for such consequential orders and directions as may be necessary to give effect to the requisite property transfer, alternatively, (c) they are asking for the repayment by the Respondent of all sums paid by the deceased under an Order which, ex hypothesi and taken as a whole would have become abortive". Only the matter of the declaration, again by agreement, was proceeded with. It is true that Sheldon J. was of course applying English Law, but the Law Reform Miscellaneous Provisions Act 1934, is, in the main, very similar to our Customary Law Amendment (Jersey) Law, 1948, and the fundamental question for him, as he put it, was whether the claim, by reason of Section 1 of the 1934 Act, survived for the benefit

of, or as the case may be, against Mr. Lane's estate. After reviewing the authorities he found that Mr. Lane before his death, could have applied to the Court for an Order which would have had the effect of compelling his wife to comply with the Order of November, 1977. She had submitted to the English jurisdiction and had she remained in the United Kingdom, an Order might well have been sought and obtained against her in personam.

There are two further principles set out in Sheldon J's Judgment which are relevant to the present case. They follow each other at pages 7 & 8 and are as follows:

"Nevertheless Mr. Coleridge did resist the present application upon the grounds (a) that the granting of a declaration was a discretionary matter and (b) that, in the particular circumstances of this case, such a discretion should not be exercised in favour of the applicants. He also invited me to adjourn the hearing of the application in order to enable the respondent, if she were so minded or able to do so, to file further evidence. As he was unable, however, to suggest any respect in which the respondent might be able either to challenge the evidence filed on behalf of the applicants or to introduce any new matter of possible relevance to a decision whether or not to grant the declaration, I was not prepared to grant the adjournment for which he asked. Nor, indeed, in that context, should it be overlooked that although the respondent had had since the 25th October, 1983 (when the proceedings in Jersey were commenced) to raise any defence on the merits to the applicants' claim (including to their claim based on the concept of unjust enrichment") none had been forthcoming, save in the terms to which I have already referred.

As to Mr. Coleridge's principal argument, I agree that the power to make a binding declaration of right is a discretionary power and one which is to be exercised with caution. I also bear in mind the words of Lord Dunedin in Russian and Industrial Bank v British Bank for Foreign Trade (1921) AC 438 at p 448, which were quoted with approval by Lord Kilmuir in Vine v National Dock Labour Board (1957) AC 488 at p 500:

"The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought".

Clearly, moreover, those requirements are satisfied in the present instance. Prima facie, therefore, I am, of the opinion that the applicants are entitled to the declaration sought unless there are some other supervening circumstances which should persuade me to exercise my discretion in favour of the respondent. Such circumstances would include any which would lead the court to refuse to enforce an executory order, as in Thwaite v Thwaite (1982) Fam. 1, on the particular facts of which the court held that it would have been inequitable to have ordered the husband to complete an order for the transfer of some property. In the present instance, however, the only matter relied on by the respondent in this context is the deceased's delay in requiring Mr. Green to act on the Power of Attorney given to him by the respondent pursuant to the order of the 15th November, 1977. In fact, that delay has been explained in affidavits sworn by Mr. Martin Stuart Lane, the deceased's elder son, and a partner in the firm of solicitors now acting for the applicants in the proceedings in this court, and by Mr. Julian Anthony Clyde-Smith, partner in the firm of advocates acting on their behalf in the Jersey action. In my judgment, moreover, it is an explanation which is to be accepted and which removes the only objection raised to the making of the declaration for which the applicants ask. On the evidence available, indeed, it is difficult to find any merits whatever in the actions of the respondent; nor, in my opinion, is the court likely readily to subscribe to a state of affairs which would enable a party to reap the benefits of an earlier order -- particularly an order made by consent -- while successfully escaping its obligations".

This Court is satisfied that the defendant had every opportunity to raise all relevant defences in the course of the application in March 1984, had she wished to, and in our opinion she is now prevented from raising them here, as the Order is conclusive between the parties. See Rule 185(2) of Dicey and Morris 'The Conflict of Laws'(9th edition).

Thus the question of delay is not a matter which is now before us and need detain us no longer.

For the Plaintiff, Mr. Clyde-Smith asked the Court to grant relief under four heads:

1) The Comity Rule.

2) Sanctity of Contract.

3) The Doctrine of Constructive Trusts.

4) Unjust Enrichment.

We shall consider the first two points together for convenience. Once the agreement was embodied in an Order of the Court as it was in November 1977, then, according to English Law which was the proper law of the contract, the legal effect derived not from the agreement itself, but from the Order. (See de Lasala v de Lasala 1979 2 AER 1146). In the same case there are some interesting observations on the effect of Privy Council and House of Lords' Judgments in jurisdictions such as Hong Kong where, as in Jersey, decisions of the Privy Council are binding on all Courts. Because it is clear beyond doubt, as we have said, that the proper Law of the agreement between the parties in 1977 and indeed when they submitted again to the jurisdiction of the Family Court in March 1984, was English, it follows that in seeking to enforce the agreement Mr. Clyde-Smith submitted that the Royal Court ought to enforce as a matter of comity between the Courts of the United Kingdom and Jersey an Order of a competent English Court properly made, submitted to by the same parties and not appealed. The method of doing so would be to invoke the Court's inherent equitable jurisdiction.

Sofar as the doctrine of comity is concerned, the Royal Court recognises that if it can it will follow that doctrine. See the Representation of F.M. Dagless 260 Ex 401. Is it then free to use the full equitable principles as understood in the English jurisdiction? In its Judgment in ex-parte Wimborne delivered on the 19th May 1983, the Court reviewed the concept of Equity as known in Jersey and as the following extract from the Judgment shows, it accepted that it should, wherever possible, provide a remedy for wrongs; although not necessarily accepting that its equitable jurisdiction was the equivalent to the rules of equity as practised in the English jurisdiction. The relevant extract is as follows:

"In the course of the main arguments, apart from one citation from Pothier, I was referred exclusively to English cases as if this application were being heard in the Chancery Division of the High Court. I do not object to that but a word of caution is necessary. That the Royal Court is a Court of equity in the widest sense is clear; see, for example, Felard Investments -v- Trustees of the Church of Our Lady Queen of the Universe, (1979) J.J. at pages 18 and 23; the reply of Mr. (as he was then) Jean Hammond, the Bailiff, to the Commissioners of 1861 at Answer 103; and the opinion of the then President of the Jersey Law Society in Re Windeatt's Wills Trust (1969) 2 A.E.R. 324. See also Latter -v- Doyen et Autre (1948) 50H. 305, 311 (N.S.). But that does not mean that the Royal Court has any wider powers than the former Chancellors of the Court of Chancery. Their position is referred to in Paragraph 1204 of Volume 16 of Halsbury's Laws of England (Fourth Edition) as follows:-

"1204. Relationship of equity to common law. Early authorities refer to "conscience", "reason" and "good faith" as the principles which guided the Court of Chancery, and the term "equity" implies a system of law which is more consonant than the ordinary law with opinions current for the time being as to a just regulation of the mutual rights and duties of men living in a civilised society. Yet there was never a time in the history of the Court when the Chancellor was at liberty to follow generally either his own, or professional or common opinions as to what was right and convenient. Law and administration of law are, in all systems, intended as a means of attaining justice, but the means are imperfect. The special imperfections of mediaeval common law were, as to the law itself, that its rules were too strict, and that it did not cover the whole field of obligations; as to its administration, that it had not effectual means of extracting the truth from the parties, that its judgments were not capable of being adapted to meet special circumstances, and that they were often unenforceable through the opposition of the defendant, or were turned into means of oppression. Insofar as it remedied these defects, the Court of Chancery afforded an improved system of attaining justice, but this was the extent of the difference between law and equity.

Each had the same object; each attained it only imperfectly - equity somewhat less imperfectly than law. Both, moreover, were developed in the same way, by decisions given in accordance with precedents and subject to professional criticism. From the beginning the Court of Chancery acted on the maxim that equity follows the law, and, in cases where the legal analogy clearly applied, the rule of law was adopted, however harsh it might be".

Moreover, the conditions in the English Courts which gave rise to the system of law known as equity were not mirrored in the history of the Royal Court. It may well be that "equity" in Jersey inclines more to the French "equite" than its English counterpart. I have not been able to find the word "equite" in the Ancienne Coutume de Normandie, or in the Commentators, but I note that in the Dictionnaire de Droit et de Pratique (of France it is true and not only of Normandy) by De Ferriere, published in 1771, there appears the following under the title of Equite:-

"EQUITE, est un juste temperament de la Loi, que en adoucit la riguer, en consideration de quelques circonstances particulieres du fait.

Ainsi cette equite est un juste retour au droit naturel, en retranchant les fausses & rigoureuses consequences qu'on veut tirer de la disposition de quelque Loi, par une trop regoureuse explication des termes dans lesquels elle est concue, ou par de vaines subtilites que sont evidemment contraires a la Justice, & a l'intention de Legislateur.

Cette equite, que doit etre la regle de la Justice, doit etre preferee a la disposition de la Loi meme, lorsque la question qui se presente a juger n'est pas expressement decidee par la Loi, ou que le sens & les paroles de la Loi peuvent, a cause de leur ambiquité, recevois quelque interpretation.

Le Juge peut donc alors pencher du cote le plus equitable, & le plus approchant du droit de nature, que est appelle fumma ration, in lege 43. ff. de religoisis & sumpt. funer. Autrement il pourroit, pour s'etre attache trop scrupuleusement a la riqueur de la Loi, devenir injuste. Summum jus, summa est quandoque injuris; unde mitigatio juris, quam Cicero, in

Orat. pro Cluentio, Legum laxamentum vocat, stricto juri est anteponeda; maxime si Lex Scripta clara & aperta non sit.

Mais quand la Loi est claire & certaine, qu'elle ne recoit, ni par rapport a sa decision, ni par rapport aux termes dans lesquels elle est concue, aucune interpretation, le Juge est dans l'obligation de la suivre pronctuellement.

Comme il ne lui est pas permit de s'en ecarter au cas qu'il trouve trop d'injustice a la suivre, il doit avoir recours au Prince pour savoire quel Sens il veut qu'on lui donne. Leg. 1, cod. de Legibus".

This passage lends support to my view that, although as I have said, the Royal Court has declared itself a Court of Equity, that does not mean to say that all the principles developed in the English Court of Chancery must necessarily apply. The more so is this the case when that Court is interpreting a number of English statutes and cases based on English Trust Law. Nevertheless, the Royal Court gives relief to someone who is threatened with a wrong which is, of course, an equitable remedy. As the Court said in Sayers -v- Briggs, J.J. Vol. I, part 1, 399 at page 401:

"The Court also believes that it has inherent power to prevent a wrong from being committed before it is done".

Again the equitable remedy of specific performance is not unknown to the Royal Court (see the decision of the Court of Appeal in Taylor -v- Fitzpatrick (1979) J.J. 1. To the extent, therefore, that the cases cited to me assist in interpreting the provisions of the Deed, I have considered them".

The Wimborne case was referred to by the Court in the subsequent case of Trollope -v- Jackson, delivered on the 22nd June, 1983. There the Court said at page 7, in referring to the equitable remedy of specific performance:

"I had occasion in a recent case of the representation of Viscount Wimborne to make some observations about the meaning of equity in this jurisdiction, and I was not prepared, and this Court is not prepared, to equate it wholly with the principles enunciated in the Chancery Division of the High Court of England and Wales. In our view, the word equity in Jersey corresponds mainly to the French 'equite' - in other words, a question of fairness".

That same sense of fairness was expressed in a different manner by Sheldon J. at page 8 of his Judgment. It offends this Court's sense of fairness that whereas Mr. Lane completed what he had undertaken to do in November, 1977, and to some extent Mrs. Lane also, except for the formal passing of the appropriate contract, she should now be able to keep Cramond. However, are we able to do anything about it? We were told by Mr. Barlow, an experienced Chancery Barrister, that if the position were reversed and an English Court were asked to make a similar Order, it would do so. If we were minded to make the Order prayed for by the Plaintiff, what are the impediments in our way?

Mr. Michel submitted that they were as follows:

1) The nature of what Mr. Lane was ordered to transfer in November had, by operation of Jersey Law, been converted into a different estate. We note that Sheldon J. was careful not to decide questions of Jersey Law, which of course govern the transfer of immovables in the Island. However, the wording of the Order is unequivocal and we are unable to accept Mr. Michel's argument that it was limited in the way suggested to the right of Mrs. Lane to occupy the property jointly during the two parties lifetimes. She consented to transfer all her interest in Cramond, which we conceive must be interests both present and contingent. She would not, therefore, be ordered to do more than this if we accepted Mr. Clyde-Smith's submissions and made the appropriate Order.

2) Because, however, Mrs. Lane has now acquired the legal title to Cramond, strong arguments would be needed to remove this right. To this approach may be cited the words of this Court in Ritson & Others v Slous & Others 1973 J.J. at page 2346 ... "we know of no rule of law which prevents this Court from divesting a person of his property when the justice of a case dictates that that be done".

And again we cite the words of this Court, at page 919, in Basden Hotels Limited v. Dormy Hotels Limited, reported in 1968 J.J. ... "but what it amounts to is that courts of justice must have high regard to the sanctity of contracts and must enforce them unless there is good reason in law, which includes the grounds of public policy, for them to be set aside".

Although we have found that the obligations upon the Defendant stem not from the contract of purchase but from the agreement being embodied in the Court Order of November, 1977, nevertheless that observation of the Court in the Basden Hotels case is significant insofar as it supports the claim of the Plaintiff to enforce her rights under the Order.

3) A proper consideration of York Street Pharmacy Limited v. Rault J.J. Vol. 2 Part II page 65 and Symes v. Couch 1979 J.J. 119, leads to the conclusion that the Court has to confine itself to the examination of the right which Mr. Lane had at the time of his death and that to put the Plaintiff into possession of the house, or to award her damages, would be to extend that right. This submission is an extension of the first objection, except that Mr. Michel said that the Court had erred in the York Street Pharmacy case by, in effect, converting an immeuble into a meuble. We do not think the case is susceptible to such an interpretation. The Court sought to assist the Defendant to the limits of its powers, but no further.

4) Mr. Michel conceded that specific performance was a remedy sufficiently exercised in Jersey, but it was limited in the sense that it required the Plaintiff to have asked the Defendant to complete, and for himself to be ready and willing to do so. Since we have found that the benefit of the Court Order of November 1977, accrues to the Plaintiff, we therefore had to find whether she had taken any appropriate action. Mr. Cyde-Smith told us that she had indeed asked Mrs. Lane to conform to the Order and had issued injunctions and an opposition so that even if that requirement mentioned by Mr. Michel is part of Jersey Law, it had been complied with.

5) Even if the Court were minded not to grant specific performance, but instead to award damages, it had no power to do so. For this submission Counsel cited Felard Investments v. Trustees of the Church of Our Lady Queen of the Universe, (1979) J.J. page 19. The argument is that because in that case the Court found that it had to construe the strict legal position as to the creation or extinction of a servitude, it could not award damages in lieu of enforcing a servitude. That position, in the instant case raised he said a similar difficulty for the Court. But is that so? In that case, the Court was faced with established law that had not been altered, except in one case, for centuries. Here we have a number

of precedents as to what the Court is prepared to do, which show the Court striving to do justice, not by ignoring the established common law, which would be objectionable, but by interpreting it afresh. Can we take the law a step further than the Court was prepared to do in Symes v. Couch? We think it would be right to treat the Defendant as if she were a faithless promisor under an agreement of sale. She corresponds, in our view, to the Defendant in Symes v. Couch. It follows that we think she should not be allowed to shelter behind a procedural defence to an action based upon an agreement embodied in the Court Order of November 1977, upon which all the parties had acted, except in her case as regards clause 4. Using the word equity in the widest sense as I have mentioned it above, we think the words of Megarry J. in Richard West and Partners v. Dick (1969) 2 Chancery page 431 are apposite.

> "Any inability of the Court to enforce the decree 'in rem' is no reason for refusing the Plaintiff such rights and means of enforcement as equity can afford him".

Reverting to the question of the wording of the Power of Attorney, as Mr. Clyde-Smith pointed out there was no time limit. It was therefore at Mr. Lane's discretion as to when to set in motion the Power of Attorney. Secondly, by making a will of realty, disposing of his Jersey immeuble, he had shown that he had not abandoned his right over the property. The reasons which we were told prevented him from effecting the transfer during his lifetime, cannot remove the Plaintiff's rights if, as we have found, she stands in the shoes of Mr. Lane at the date of his death. Her action is not prescribed.

Accordingly, we find that this Court should give relief to the Plaintiff and we make the following Order:

The property will be valued and failing agreement as to its valuation the Court will fix its value. The value is to be a price at which a willing seller and willing purchaser would agree to transact, subject of course to the Housing Committee's consent in the appropriate sale, and with vacant possession.

Once that has been done the Defendant will either - 1) convey the property to the Plaintiff within 6 weeks, or - 2) pay to her the value of the house so found. If she fails to do either of these alternatives, then the Viscount is authorised to pass the contract on behalf of the Defendant and thereafter to put the Plaintiff into possession.

Because we have found for the Plaintiff on the first two submissions of Mr. Clyde-Smith, we do not need to pronounce upon his other two interesting submissions on the doctrine of constructive trusts and unjust enrichment.

The Defendant will pay the Plaintiff's costs.