

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2024/CLE/gen/01011

IN THE MATTER OF MONIQUE BASTIAN et. al

AND

IN THE MATTER OF ALL THAT piece, parcel or lot of land and being Lot no.
344 situate in Eaton Road in Yellow Elder Gardens on the island of New Providence

B E T W E E N

MONIQUE BASTIAN

CLAIMANT

AND

RICARDO NEWMAN (THE ESTATE OF VIOLA COKER (nee BAIN))

DEFENDANT

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Fedner Dorestal for the Claimant
Judith Smith for the Defendant

Hearing Date(s) 8 April 2026

JUDGMENT

WINDER, CJ

This is the action of the Claimant (Bastian) seeking specific performance of an agreement purportedly made by the late Viola Coker nee Bain (Coker) for the sale of certain property situated at 344 Eaton Road, Yellow Elder (the Property).

[1.] Bastian's case is that she moved into the Property in 2010 as a rent paying tenant and subsequently entered into a lease to purchase agreement. The Property was derelict as the previous tenant had to be evicted. Bastian claims to have conducted extensive repairs to the Property.

[2.] Coker died on 22 December 2014 leaving two children surviving her, Diedre Roberts and the Defendant Ricardo Newman. Diedre Roberts died on 22 June 2019. Newman applied for and was granted Letters of Administration on January 23, 2024.

[3.] Bastian says that when she learnt that Coker had died, she approached Coker's Attorney, Boodle, who advised that he had not received any further instructions concerning the lease. Bastian alleges that Boodle acted for her and Coker in the transaction and but for the deaths of Coker, Diedre and Boodle, the commitment would have been completed. Bastian asserts that she only has limited documentation to prove her case as Coker, Diedre, Boodle and her contractor have died. She says that she has lost receipts, and no one was else was present at the time the agreement was struck with Coker.

[4.] In September 2024 the Magistrate's Court ordered the eviction of Bastian from the Property. Bastian, who did not attend court, claims that she only became aware of the legal matter when the order of eviction was served on her residence, as she was out of the jurisdiction.

[5.] This claim was brought in response to the Magistrate Court's decision. This claim was made by Originating Application on 8 November 2024, as against the Defendants seeking the following relief:

- (a) Specific Performance of the contract for sale.
- (b) A declaration that the Claimant Monique Bastian is the rightful owner of the said property.
- (c) Alternatively, the return of Forty-Eight Thousand (\$48,500) and Five Hundred Dollars... representing payments and monies spent to improve the said property.
- (d) Damages, costs and such other relief as the Court deems just.

[6.] Bastian subsequently filed a Statement of Claim which provided as follows:

- 1) The Claimant is and was at all material times a Bahamian residing in the city of Nassau, on the island of New Providence. The First Defendant is and was at all material times and now by her estate the beneficial owner of the said property. The Second Defendant claims to be the beneficiary of her estate.
- 2) By a contract made in 2013 between the parties, it was agreed that the said property would be purchased for \$60,000 in the currency of the Commonwealth of The Bahamas. The First Defendant agreed to sell and the Claimant agreed to buy the freehold interests with vacant possession in relation to the freehold land known as lot number 344 in the Subdivision known as Yellow Elder Gardens Subdivision in the city of Nassau on the island of New Providence one of the islands of the Commonwealth of The Bahamas.
- 3) The title to the property is registered at lands registry Nassau Bahamas in Volume 3440 at pages 394 to 400. The contract incorporated the standard conditions of sale. The Claimant has been and continues to be in possession of the land the subject of the sale since the execution of the sales agreement. The late attorney Richard L Boodle Esquire held the same at his chambers.
- 4) The claimant has attempted to comply with or alternatively attempted to complete the terms of the contract, but could not do so, due to the deaths of the First Defendant, her immediate beneficiary her daughter, and the attorney who acted on both their behalf, Mr. Richard L Boodle Esquire.
- 5) The Second Defendant was unknown to the Claimant at the material time. Hence the same made the final obligations in terms of payments under the contract of sale impossible to complete.
- 6) The Claimant seeks specific performance of the contract. Notwithstanding the fact that she has been at all material times in possession of the said property. Hence, the balance remaining would be \$13,500 in the currency of the Commonwealth of the Bahamas.

AND THE PLAINTIFF CLAIMS:

- (1) Specific Performance of the contract for sale;
- (2) Alternatively a declaration that the Claimant is the rightful owner of the said property post solutionem; and
- (3) Further or other relief the court deems just and the costs

[7.] The Defendant is the personal representative of Coker, having obtained letters of administration. The Defendant filed a Defence denying the entitlement of Bastian to an Order for Specific Performance and putting her to strict proof of the investment in the Property or the payment of rent.

[8.] At trial, Bastian gave evidence and called Samantha Bastian as a witness in her case. Richardo Newman gave evidence in his case.

[9.] Bastian's evidence in chief was to be found in the affidavit filed on 6 February 2025, an affidavit filed on 1 May 2025 and in a Witness Statement. The Witness Statement merely refers to the affidavits.

[10.] Bastian's affidavit of 6 February 2025 provides the following:

- (1) She moved into the property sometime in 2010 as a monthly tenant paying \$400.00 monthly. Coker had recently evicted the previous tenant and the place was in a poor condition. She resided there with her family until she entered into in the lease purchase agreement.
- (2) After executing the lease purchase agreement, the amount became \$500, monthly. Coker told her she could not sell the Property until a pending court case was completed. Bastian said that her attorney Richard Boodle prepared all of the documents for the transaction.
- (3) Coker was paid the money directly into her Bank of The Bahamas account. The sum of \$5,000 was paid, in cash, directly to Boodle as he needed to be paid for his services related to the transaction.
- (4) Bastian began to effect repairs to the Property, as Coker, who had promised to do so could not do so due to her illnesses.
- (5) She conducted extensive repairs including carpentry, masonry, electrical and drywall works. Coker had began to add additional rooms to the structure which had never been completed. She completed those works.
- (6) She was away from the jurisdiction between 2013 and 2014 for one year and resumed the payments to a Mr. Courtney a relative of Coker. She later learned that Coker had died in 2014. She approached Mr. Boodle who advised that he had no further instructions.
- (7) Sometime later, Diedre Daniels, Coker's daughter, resumed collecting the rents. She learned from Deidre that Mr. Courtney had died. Diedre later died and Mr. Boodle later died.
- (8) She continued to maintain the Property until she became aware of an eviction order in the Magistrates' Court.
- (9) But for the deaths of Coker, Diedre, Mr. Courtney and Mr. Boodle this commitment would have been completed. Coker's family was not present when Coker and she were doing business.

[11.] Bastian's affidavit of 1 May 2025 provides the following:

- (1) She makes the affidavit to provide an accounting as to matters related to her purchase agreement and equity in relation to the Property.
- (2) She does not have the lease to purchase document as it was turned over to her attorney.

- (3) About eighteen (18) months after Coker's passing, new documents were executed including a sales agreement and other documents. She wrote to Boodle advising that the purchase price was erroneously stated in the offer document. She exhibits a copy of a memorandum purportedly prepared by Mr. Boodle's office and her letter to Mr. Boodle, as evidence of the agreement.
- (4) Once she paid the deposit to Mr. Boodle in 2013, she began to effect repairs on the Property. She cannot recall when she stopped making rental payments and began making mortgage payments. She says that she continued making payments between 2014 – 2019 of \$500 a month.
- (5) She estimates that she made a total of \$46,500 in payments. The payments were not made exclusively by herself as she and her children contributed. She estimates that she paid about \$35,000 over the years in repairs to the Property.

[12.] Samantha Bastian gave a witness statement which sought to confirm that Bastian did considerable repairs to the Property.

[13.] Ricardo Newman gave a witness statement which he stated that:

- (1) He is the only son of Coker. He obtained letters of administration in relation to her estate on 23 January 2024.
- (2) Coker's sole asset was the Property. He had continually told his mother, Coker, to sell the Property but she was adamant she wanted to retain it and would only ensure that it was rented to prevent vandalism.
- (3) His sister, Deidre, lived in the United States and died on 22 June 2019. He is not familiar with a Mr. Courtney.
- (4) He has reviewed the documents in his possession belonged to his mother and can find no evidence of an agreement for sale or a lease. It seems unusual that Bastian would not confirm payment arrangements with his mother and suspects that she was attempting to avoid paying rent.

[14.] Bastian says that she has a strong claim for Specific Performance on the grounds that:

- (1) The lease to purchase agreement is a written contract. Notwithstanding the agreement was not produced in court it is evidenced by the fact that she continued to remain on the property and there was no evidence of its nonexistence. The essential terms are in existence, parties, price, fee schedule and property.
- (2) Bastian substantially performed the agreement, but for the deaths of Coker, Diedre and Mr. Courtney.
- (3) Long term possession plus improvements suggests equitable relief. She has been in continuous open and notorious possession since 2011 in excess of the 12-year limitation period.
- (4) Ricardo Newman lacks locus standi and credibility.

(5) Equitable factors favors Bastian.

[15.] Bastian says that the Court should order the Estate to accept the sum of \$13,500 balance and convey title to her.

[16.] Having seen and heard the witnesses and observed their demeanor as they gave evidence, I did not accept the evidence of Bastian as being entirely truthful as her evidence reflected many discrepancies. Despite what was in her affidavit she could not recall when she gave evidence as to what her balance was. She could not be consistent on whether Mr. Courtney died before Diedre. She could not be consistent on whether she had an executed mortgage, an agreement for sale or a lease to own.

[17.] I found it incredible that the agreement would permit Bastian to be in occupation of the Property and all of the funds (80% of which has previously been paid for rent) was to be earmarked to reducing the balance of the purchase price and interest was not a consideration. And to top it off, Coker was to effect repairs to the Property at her expense. Whilst parties are free to enter into whatever arrangements they wish, the transaction does not reflect any commercial common sense.

[18.] I did not accept that there was an agreement to purchase, written or otherwise. I accept that there was an agreement to rent and that the parties may have contemplated an agreement to purchase, but no such agreement was ever entered into. I have come to this determination for a number of reasons, including but not limited to the following:

(1) Bastian says that the agreement was entered into with Coker prior to her death in 2014, however the following documents, produced by her demonstrated that an agreement was never entered into or that the terms were not settled:

(a) An unsigned and undated memorandum purportedly written by the Chambers of Richard Boodle, which was purportedly addressed to Diedre c/o of the Estate of Coker, outlining a list of material required to complete the transaction including:

(i) The letters of administration in the estate of Viola Bain Burrows [This not only demonstrates that Coker was dead by that time, but also that it was understood that only her estate could complete the transaction. Her estate is not administered until the Defendant obtained letters of administration, eight years later, on 23 January 2024.];

(ii) The Deed of Assent or Assenting Conveyance;

(iii) Letters of Probate resealed in the United States;

(iv) Agreement for Sale [He identifies the costs for him to prepare and duty to be paid];

(v) An Appraisal;

- (vi) Certified copies of documents; and
 - (vii) Executed Conveyance [He again identifies the costs to prepare, and the amount of duty required.];
- (b) A signed letter dated 29 June 2016 addressed to attorney Richard Boodle, where she refers to the memorandum above and indicating that she accepts an offer but disputing the purchase price as \$60,000 and not \$65,000. She also indicates that she understood that the legal fees would be shared and the payments would be made in-house monthly or to a bank account. She ends the letter by saying that she would come in to sign the documents.

Both of these documents are made following the death of Coker, and at the time when the Estate had not been administered and no one lawfully capable of entering into an agreement to sell the Property.

- (2) It is inconceivable that Coker would sell the Property at a fixed price and still agree to effect repairs as Bastian suggested in her affidavit evidence.
- (3) Bastian says that eighteen (18) months after Coker's death, new documents were executed, including a sales agreement and other documents. This is inconsistent with the memorandum and her 2016 letter complaining about the change in price. The memorandum indicated a requirement for the Estate to be administered, however the Estate was not administered until 2024.
- (4) On the witness stand, Bastian could not identify salient terms of the purported agreement to purchase/lease to own. At one time she identifies the arrangement as a mortgage but could not identify what the interest rate was to be. When asked about the interest rate, she said that they had not gotten to that point.
- (5) There was no evidence of any payment in support of the purported agreement other than Bastian's says so. She claimed that Boodle has some of the receipts but that after Coker's death she did not get any receipts from Diedre or Mr Courtney.
- (6) Bastian claimed that Boodle had been given the receipts for six payments she made to the Bank of The Bahamas as well as in relation to the other payments she made to Coker. She says that she retained no copies for herself and that Boodle needed them in the preparation of the transaction documents. However, after the death of Coker, she did not receive any receipts, or insisted on taking any. This failure to take receipts is irreconcilable with the need to give Boodle copies of the receipts in order to prepare the sale documents.

- (7) It is an unreasonable proposition, that Bastian would be making payments with respect to an important financial transaction such as this, by which she was to acquire the Property but would not have insisted on receipts for the payments made in furtherance of the transaction. And even more so, where the persons she is alleging giving the money to was not Coker but agents.

[19.] Although the Defendant was out of the jurisdiction at all material times, I accepted his evidence that his mother was adamant she would not sell, as truthful. It does appear, looking at the memorandum of Attorney Boodle, which was purportedly addressed to Diedre c/o of the Estate of Coker, that it may have been Diedre who evinced a desire to sell. Diedre however, never had the power to sell as she never obtained letters of administration in Coker's estate.

[20.] The burden of proving an agreement existed rests with Bastian. I am not satisfied that she has discharged this burden. In the absence of an agreement, written or otherwise, for the sale of the Property there could be no claim for specific performance or declaratory relief in respect of any ownership of Bastian.

[21.] Bastian's submissions suggest that her long occupation could translate into an equitable interest, having regard presumably to the Limitation Act. This position is untenable as her claim was never adverse to the interests of Coker, through whom she claimed. It was Coker who put her onto the Property and any suggestion of adverse possession is inconsistent with the averments that she paid money to Coker and her agents up to 2020.

[22.] I accept the evidence that the Property was in a poor state when Bastian entered into occupation. This likely accounted for the low rent she paid. I also accept that some funds were expended by Bastian to improve the premises, probably on the belief that she would eventually acquire the Property. I did not find, however, that any promise was made to her or that anything existed which could establish an equitable interest. She has nonetheless received the benefit of living in the Property for the past 16 years at the same low rent, which she has not paid to anyone, on her own account, since 2020.

[23.] In the circumstances Bastian's claim is dismissed with costs to be assessed if not agreed. Bastian is to vacate the Property within 90 days of this judgment.

Dated this 17th day of June 2026


Sir Ian Winder
Chief Justice