

Michaelmas Term
[2026] UKPC 39
Privy Council Appeal No 0119 of 2025

JUDGMENT

Teresa De Silva (Respondent) *v* Dindial's Hardware Limited (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Lloyd-Jones
Lord Briggs
Lord Hamblen
Lord Doherty
Lord Snowden

JUDGMENT GIVEN ON
13 November 2026

Heard on 19 October 2026

Appellant
Terrence Bharath SC
Reza Ramjohn
(Instructed by Sheridans Solicitors LLP)

Respondent
Seenath Jairam SC
Jerome Rajcoomar
Shantal Jairam
(Instructed by Shantal Jairam)

LORD BRIGGS:

Introduction

1. The outcome of the dispute which gave rise to this appeal concerns the interaction between two principles of the law of Trinidad and Tobago about conveyancing. It has been common ground at all stages of this litigation that in all relevant respects the law of Trinidad and Tobago is the same as the law of England and Wales. The first principle is that a party to a contract for the sale of land for the performance of which time is not of the essence may not treat a failure to complete the contract by the other party on the contractual date for completion as a ground for terminating the contract for breach unless the party wishing to terminate has first served a notice on the other party making time of the essence, specifying a further reasonable date for completion, and the other party has failed to complete on that further date. The second principle, which may be said to operate (where it applies) as an exception to the first, is that where the purchaser under such a contract discovers that the vendor neither has title to convey the relevant property nor any legally enforceable right to obtain such title, then the vendor can treat the contract as terminated without even having to wait for the contractual date for completion. The Board will for convenience label these principles as (i) the completion notice principle and (ii) the no title principle.

2. In the present case the appellant Dindial's Hardware Limited ("Dindial") agreed to purchase land in Trinidad and Tobago from the respondent Teresa de Silva ("Mrs de Silva") under a contract which, as explained below, did not make time of the essence. Mrs de Silva failed to complete on the contractual date for completion. Dindial then purported to terminate the contract, without first serving a notice to complete. In response Mrs de Silva forfeited Dindial's deposit. Dindial's claim to recover the deposit succeeded before the trial judge but failed in the Court of Appeal. Dindial therefore appeals to the Board.

The facts

3. By a written contract dated 12 October 2016 ("the October Contract") Mrs de Silva contracted to purchase a freehold property in Maraval ("the Maraval Property") from one Abdul Latif Kazim ("Mr Kazim") for US$1.5 million (then equivalent to about TT$10 million). The October Contract recited that the Maraval Property had been part of the estate of the late Ebrahim Kazim, who had died on 6 March 2016, that Mr Kazim was the executor of his will and that for convenience (because Mr Kazim lived in New York) he had appointed a Mr Abdul Hafeez Ali ("Mr Ali") as his Attorney for the purpose of obtaining a grant of probate and carrying out the administration of the estate.

4. Recital E to the October Contract provided as follows:

> "The Purchaser is fully aware that the Property forms a part of the Estate aforementioned and that whilst it is hoped that the Grant of Probate in relation thereto will be obtained on or before the 31st December, 2016, having regard to the length of time these applications usually take at present, the date for completion of the Contract set out in the Agreement hereinafter contained will be on or before the 28th day of February, 2017 of which time shall not be of the essence."

5. The October Contract provided (at clause 2) that the deposit was a mere US$100. By clause 3 the balance of the purchase price was to be payable upon the expiry of 21 days' written notice to Mrs de Silva of the obtaining of the grant of probate. Clause 5 provided for the transfer of the Maraval Property to be made "to the Purchaser or to whomsoever she shall direct". The October Contract was signed by Mr Ali as Attorney for Mr Kazim.

6. By a contract ("the November Contract") dated 10 November 2016 Mrs de Silva agreed to on-sell the Maraval Property to Dindial for TT$13 million. A 10% deposit was paid upon exchange. By clause 2 the balance was to be paid to the vendor "on the date fixed for completion". Clause 4 provided that "Completion shall take place on or before the 28th day of February, 2017." Clause 6 provided for the Vendor to provide, prior to the date fixed for completion, an up-to-date receipt for payment of land and building taxes, and a WASA Clearance Certificate ("the clause 6 documents").

7. Clause 7 of the November Contract provided for the return of the deposit if the Vendor should be unable to complete by reason of a defect in title. Clause 8 entitled the Vendor to forfeit and retain the deposit as liquidated damages "should the Purchaser be unwilling or unable to complete the purchase of the Property on the date fixed for completion thereof".

8. By not later than 10 November 2016 (the precise date remains in issue) Dindial had been given a copy of the October Contract. Although some parts of it (such as the amount of the deposit payable thereunder) may have been redacted, it is clear that there was by means of Recital E disclosure to Dindial that Mrs de Silva's ability to convey depended (inter alia) upon Mr Kazim obtaining the benefit of a grant of probate.

9. By the contractual date for completion of both contracts (28 February 2017):

(i) Probate had not been granted,

(ii) The clause 6 documents had not been provided by Mrs de Silva to Dindial,

(iii) Neither Mr Kazim nor Mrs de Silva were in a position to complete as vendors under their respective contracts,

(iv) Dindial had decided that it would prefer not to proceed with its purchase.

10. Without serving a notice making time of the essence for completion of the November Contract, Dindial emailed Mrs de Silva's agent (and husband) Mr Ramcoomarsingh on 4 March 2017, referring to the November Contract and stating:

> "Further to our conversation last week, we reiterate that we request a refund of the downpayment of $1,300,000.00 made on November 10th 2016 as the required documents have not been provided to us to submit to our Bankers."

The "required documents" were what the Board has labelled the clause 6 documents above. The "downpayment" was the 10% deposit. By this email ("the March email") Dindial asserted a right to treat the November Contract as at an end.

11. There followed party and party correspondence in which:

(i) Dindial asserted that Mrs de Silva had no title to the Maraval Property, such that, although time was not of the essence of the contract, it was entitled to the return of the deposit, and

(ii) Mr Ramcoomarsingh asserted on behalf of Mrs de Silva that Dindial had repudiated the November Contract, such that Mrs de Silva was entitled to forfeit the deposit.

12. Meanwhile on 23 June 2017 Mr Ali obtained a grant of letters of administration with the will annexed, for the use and benefit of Mr Kazim, thereby opening the way for the delayed completion of both transactions. The clause 6 documents were obtained in July and August 2017 and, on 24 August, Mr Ali assented to the vesting of the Maraval Property in favour of Mr Kazim. Without prejudice negotiations with a delayed completion in mind came to nothing, and Mrs de Silva eventually decided not to proceed with her purchase of the Maraval Property. Dindial commenced the present claim for the return of the deposit in December 2017.

13. There is a miscellany of further factual issues which the parties to this appeal would wish to pursue. For reasons which will briefly be explained in due course they are

either not available or unnecessary to pursue. The above factual summary is sufficient for the Board to decide this appeal.

The reasoning of the courts below

14. Both the trial judge (Boodoosingh J) and the Court of Appeal (Kokaram, Brown-Antoine and Donaldson-Honeywell JJA) gave detailed reserved judgments from which their reasoning sufficiently appears. It is only necessary for the Board to provide a brief summary.

15. The trial judge concluded that, once the contractual date for completion had arrived, there was no need for Dindial to serve notice making time of the essence of the November Contract. This was not because time was already of the essence (it clearly was not, and this had been conceded on Mrs de Silva's behalf in pre-action correspondence). Rather it was because Mrs de Silva suffered from a fundamental defect in her title as at the contractual date for completion which entitled Dindial to walk away from the contract without having to make time for completion of the essence. This Dindial had done by the March email, which had been sufficient to bring about a discharge of the November Contract by reason of Mrs de Silva's breach.

16. In so concluding the trial judge relied, as to the law, upon extracts from *Emmet and Farrand on Title*, looseleaf ed, vol 1, from *Barnsley's Conveyancing Law and Practice*, 4th ed (1996), and upon a dictum from Sir Robert Megarry V-C in *Pips (Leisure Productions) Ltd v Walton* (1980) 43 P & CR 415. They each recite what the Board has labelled the no title principle.

17. The Court of Appeal relied upon the completion notice principle (as labelled above) and concluded that it was not, upon the facts of this case, displaced by the no title principle. Accordingly Dindial could not treat the November Contract as discharged on or after the contractual date for completion without first making time of the essence. Thus the March email had itself been a repudiatory breach, which Mrs de Silva was entitled to accept (as she did) in treating the November Contract as discharged by Dindial's breach, and the deposit as forfeited.

18. The central reason why the Court of Appeal concluded that the judge was wrong to apply the no title principle was because Mrs de Silva had, by the October Contract, a legal right to require Mr Kazim to transfer the Maraval Property to her, so that she could give good title to Dindial. Having noted that an executor derives his title from the will, but can only prove his status as executor by a grant of probate, Donaldson-Honeywell JA continued, at paragraph 53:

> "Therefore, the delay in obtaining a grant of administration of the estate did not amount to a fundamental defect in the title of the Appellant which would allow for termination without notice on the completion date."

The appeal to the Board

19. In its detailed Written Case Dindial did squarely challenge the Court of Appeal's key conclusion that the no title principle did not displace the completion notice principle because Mrs de Silva had a sufficient right to compel Mr Kazim to transfer the Maraval Property to her. The Board will address that question below. But the Board will first address a number of additional grounds and factual assertions put forward on Dindial's behalf.

20. First, and this formed the central plank in the oral submissions of Mr Bharath SC for Dindial, it was said that a delay in the grant of probate was by no means Mrs de Silva's only or even main difficulty in transferring the Maraval Property to Dindial on completion. Her main problem was financial. Completion of the November Contract would yield for her only TT dollars, whereas the price she had to pay under the October Contract was in US dollars. But conversion of TT dollars into US dollars in Trinidad was not to be assumed to be easily achieved, all on a (necessarily) single completion day. And Mrs de Silva had provided no evidence of any other source of funds for completing the October Contract.

21. The trouble with this ingenious submission, whether right or wrong in fact, was that it was not part of Dindial's case at trial. It had never been pleaded in what was a careful and detailed exchange of statements of case, although lack of finance was mentioned in re-examination by Mr Ramcoomarsingh in the context of the decision, much later, not to proceed with the October Contract, after the November Contract had been terminated. The point about lack of finance was mentioned in general terms in submissions in the High Court and the Court of Appeal, but Mrs de Silva had been given no opportunity at any earlier stage to deal with this new point, and it would be a plain injustice, and contrary to its settled practice, for the Board to engage with it now. Quite apart from the question whether she had any other source of finance, the assertion that TT dollars can be difficult to exchange for US dollars in Trinidad does not prove itself. It would need to be made good by evidence.

22. Secondly, perhaps rather less adventurously but still for the first time, Mr Bharath submitted that what was eventually obtained in June 2017 was not a grant of probate in favour of Mr Kazim (the vendor under the October Contract) but only a grant of letters of administration with the will annexed, not to Mr Kazim, but to Mr Ali for Mr Kazim's use and benefit. Again, since the question whether this created any difficulty of enforcement

of the October Contract for Mrs de Silva might turn on evidence about Trinidadian probate practice, it was far too late to raise it for the first time before the Board. Nonetheless, the fact that Mr Ali promptly assented to the vesting of the Maraval Property in favour of Mr Kazim strongly suggests that even if it were to be examined in detail there would prove to be nothing at all in this point.

23. Thirdly, it was submitted for the first time before the Board that, if all else failed, Dindial should obtain equitable relief from the forfeiture of the deposit. Again, if this relief was to be sought it should have been pleaded, and any evidential or other issues about it dealt with before the trial judge. While in the event Dindial's success at trial made relief from forfeiture unnecessary, the judge could still have made any relevant findings of fact, so that the question of equitable relief could have been dealt with in the Court of Appeal, if necessary. The result is that it is simply far too late for the question of equitable relief from forfeiture to be raised for the first time before the Board.

The law – applied to the facts

1: The completion notice principle

24. The existence of the completion notice principle, as stated in para 1 above, is not in doubt. It is underpinned by unchallenged authority, eg *Stickney v Keeble* [1915] AC 386, a decision of the House of Lords. It was referred to without adverse comment both by the trial judge and by the Court of Appeal, and it is not as such challenged on this appeal.

25. Nor is it arguable that the November Contract made time for completion of the essence. Although, unlike the October Contract, there was no express provision that time was not of the essence, the general rule is that time for the completion of a contract for the sale of land is not of the essence unless the parties provide otherwise, and the November Contract did not do so. Clause 7 (already summarised above) provided for the return of the deposit if the vendor was unable to complete due to a defect in title, but was silent as to when that inability should be judged.

26. Perhaps the strongest indication that time was not of the essence (apart from the silence of the November Contract on the point) was that the October Contract had been provided by Mrs de Silva to Dindial by (at the latest) the time when the November Contract was made. It was therefore part of the context in which the November Contract was made, and relevant to its construction. The October Contract provided in express terms that time for completion was not to be of the essence, because of anticipated delays in getting probate. Since it was plain to both parties to the November Contract that Mrs de Silva's prospects of getting title depended upon when Mr Kazim obtained probate, and

that time for his transfer of title to the property to her was not of the essence, it would have been commercially irrational for the November Contract to have provided otherwise.

2: The no title principle

27. The principle that if a contracting purchaser discovers that their vendor has no title at all, no right to obtain it from someone who has it, but merely a hope of getting it in time, then the purchaser may walk away from the contract (ie treat it as discharged due to the vendor's fault) has less authority to support it, but its existence was not challenged either by the courts below, or by counsel in their submissions to the Board. The earliest case to which the Board was referred in which the principle is enunciated is *Forrer v Nash* (1865) 35 Beav 167. The plaintiff agreed to grant to the defendant a lease for 21 years, with a right to re-let; but he had only a term of 20 years, and could not under-let without the consent of his landlord. The defendant walked away from the contract, and the plaintiff then sued for specific performance, having in the meantime obtained the landlord's consent. Giving judgment for the defendant, Sir John Romilly MR said, at p 171:

> "I am of opinion that when a person sells property which he is neither able to convey himself nor has the power to compel a conveyance of it from any other person, the purchaser, as soon as he finds that to be the case, may say, 'I will have nothing to do with it.' The purchaser is not bound to wait to see whether the vendor can induce some third person (who has the power) to join in making a good title to the property sold."

28. *Forrer v Nash* was followed by Sir Robert Megarry V-C in the *Pips (Leisure Productions) Ltd v Walton* case (para 16 above). There the subject matter of the sale was an existing lease, but it had been forfeited by the landlord by the time of the contract, leaving the vendor only with a claim against the landlord for relief from forfeiture. The ratio of the case was that the contract made time for completion of the essence, because the lease was a wasting asset. But the Vice-Chancellor added that, even if time had not been of the essence, the purchaser was still entitled to walk away from the contract once aware of the forfeiture, and notwithstanding that the vendor might still obtain relief. He cited *Forrer v Nash* as stating the general principle but acknowledged that it was about the equitable remedy of specific performance rather than any common law right, such as a right to damages, about which he considered that the authorities were less than clear. He concluded that the purchaser's right to treat the contract as at an end applied also to common law remedies. At p 175 he continued:

> "I find some difficulty in the concept of a right of rescission which operates in equity but not at law as relieving the

> purchaser from specific performance, but leaving him exposed to an action for damages if the vendor obtains a proper title before the last day for completion. Contracts for the sale of land differ from most other contracts for sale in that they contemplate a period between contract and completion which will suffice, inter alia, for the investigation of title. If the day after the contract is made the vendor tells the purchaser that he, the vendor, has [no] title, but that he has hopes of getting title in time for completion, so that until he has got it he cannot deduce title, I cannot see much justice in telling the purchaser that he can rescind the contract forthwith so as to escape from specific performance, but that if he does so he will remain at risk of damages in case the vendor succeeds in obtaining a title in time … The vendor is often said to be under a duty to disclose any latent defects in his title; and on this footing it would be strange if, having failed to disclose a complete but latent absence of any title at all, he were to be held able to recover damages if he obtains a title by the time for completion. His so-called duty of disclosure may instead be regarded as more of a warning to him that if he does not disclose latent defect of title he will not be able to require the purchaser to take such title as he has as constituting compliance with his obligation to convey what he has contracted to convey. But however it is put, I would, despite some hesitation, in view of the state of the authorities, hold that upon discovering that a vendor has no title or power to convey what he has contracted to convey, the purchaser may thereupon treat the contract as at an end, both at law and in equity. In saying that, I speak only of defects such as the absence of title in this case, and not of minor deficiencies, removable defects and so on."

29. Two points emerge from this analysis. The first is that, if the principle applies to common law liabilities, it must extend to the forfeiture of the deposit as well as damages. The second is that the underlying rationale of the principle is that having no title at all is or may be a latent defect in title which the vendor was under an obligation to disclose before contracting. Thus if the vendor makes it clear at the time of contracting (as here) that his ability to convey depends upon the happening of an event outside his control, such as his vendor's obtaining probate, then the purchaser can hardly use that fact as a basis for then treating the contract as at an end. Support for this analysis is to be found in *Wylson v Dunn* (1887) 34 Ch D 569 at 578, where Kekewich J said that:

> "the doctrine that a purchaser may avoid a contract when he discovers that his vendor has not got that which he contracted to sell—seems to me altogether inapplicable to a case where the vendor in the first instance tells the purchaser, and the

> purchaser knows from all the circumstances of the case, that the vendor has no title, and is not likely to have one for some time."

30. Megarry V-C went on to emphasise that the rule in *Forrer v Nash* only applies where the vendor has no title at all, and no right of any kind to compel a third party to convey the land, rather than a right which fails to lead to specific performance. In the following passage he contrasts a right with a mere hope or expectation:

> "Contracts for the sale of land are based on ownership and rights, and not on mere hopes or expectations, however well founded. A vendor whose contract is supported by an enforceable right to compel a third party to convey the land has a right in support of his contract; and this is so even if in the event his right proves, exceptionally, not to be specifically enforceable but sounding only in damages. A vendor who has no more than the benefit of an unenforceable promise to give him the land, or a claim to relief against forfeiture, has no right which supports his contract, however well-founded his expectations. If disappointed, he has no claim to specific performance or damages, but only his feelings of regret. In my opinion, a vendor who lacks any title to the land that he has contracted to convey, and also lacks any right to compel a third party to convey it, cannot escape from the principle of *Forrer v Nash* [para 27 above] by pointing to his prospects of obtaining a title by being given relief against forfeiture, however excellent those prospects are. He has power neither to convey the land nor to compel anyone else to convey it, and that is the end of the matter."

31. Applying those dicta to the facts of the present case, the Board considers that the Court of Appeal was correct to regard the no title principle as inapplicable. Mrs de Silva had a contractual right as against Mr Kazim to have a conveyance of the Maraval Property either to herself or to anyone whom she should direct, such as Dindial. That right did not depend upon the exercise by any third party (or a court) of a discretion, but the timing of its exercise did depend upon how long as it might take Mr Kazim to obtain a grant of probate. That was a "when" rather than "whether" question. That propensity for a delay was fully disclosed by her to Dindial at the time of the making of the November Contract, by her simultaneous disclosure of the terms of the October Contract and in particular its Recital E.

32. The result is that, since Mrs de Silva did not suffer from the type of fundamental absence of title to which the no title principle applies, there was nothing to displace her right to have time for completion made of the essence by a notice to complete, before the

expiry of which Dindial could not (as it did) purport to treat the November Contract as at an end. This appeal should therefore be dismissed.

33. The Board was pressed by Mr Jairam SC to engage with a legal appraisal of the claim to relief from forfeiture of the deposit, which he submitted was bad in law, and with certain additional factual grounds for dismissing the appeal. The Board does not consider it necessary to do so. As to relief from forfeiture of the deposit, the claim was raised far too late, regardless whether it was good, bad or indifferent. As for the additional factual matters, they do not need to be dealt with, since the Board has concluded that the appeal should be dismissed in any event.