

IN THE CARIBBEAN COURT OF JUSTICE  
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF THE EASTERN  
CARIBBEAN SUPREME COURT (SAINT LUCIA)

CCJ Appeal No LCCV2024/003  
LC Civil Appeal No SLUHCMAP2023/0001

BETWEEN

EXQUISITE HOMES LIMITED

APPELLANT

AND

GEEST INDUSTRIES (ESTATE) LIMITED

RESPONDENT

Before: Mr Justice Anderson  
Mme Justice Rajnauth-Lee  
Mr Justice Barrow  
Mr Justice Jamadar  
Mme Justice Ononaiwu

Date of Judgment: 10 June 2025

**Appearances**

Mr Horace Renison Fraser for the Appellant

Mrs Cynthia Hinkson-Ouhla, Mrs Esther Greene-Ernest and Ms Carol Gideon-Clovis for the Respondent

*Contract – Breach – Whether Court of Appeal erred in finding no evidence of repudiatory breach of contract prior to acquisition of land by the Government.*

*Land – Compulsory acquisition – Acquiring lands for public purpose – Government acquisition of land by private treaty – Land Acquisition Act, Cap 5.04, ss 3 and 6.*

## SUMMARY

This is an appeal, originating from Saint Lucia, from the decision of the Court of Appeal of the Eastern Caribbean Supreme Court. The respondent, Geest Industries (Estate) Ltd ('Geest'), contracted to sell to the appellant, Exquisite Homes Ltd ('Exquisite Homes'), 52.6 acres of land (registered as 'Parcel 314'). Before the completion date of the contract, the Crown compulsorily acquired Geest's lands, including Parcel 314. This appeal concerns whether Geest committed a repudiatory breach of the contract prior to the Crown's acquisition of Parcel 314.

Geest first attempted to sell Parcel 314 to Exquisite Homes through a contract executed in December 2013 ('the 2013 agreement'). As that contract was not fulfilled by its completion date, Geest treated the contract as terminated. In March 2016, the Government indicated its intention to purchase Geest's lands, inclusive of Parcel 314. In August 2018, Geest made a proposal to the Government for acquisition of its lands and confirmed this proposal in January 2019. In March 2019, Geest was informed that Cabinet had approved the acquisition of all of its lands.

On 27 June 2019, Geest entered into a second contract with Exquisite Homes for the sale of Parcel 314 ('the 2019 agreement'), which was carded for completion on 27 July 2019. Geest disputed the authority of its then Managing Director, Mr Maximilus Johannes, to execute this agreement on its behalf. On 8 July 2019, the Governor General issued a declaration for the compulsory acquisition of Geest's lands, which was first published in the Gazette on 16 July 2019. The second declaration was published on 22 July 2019 before the completion date of the agreement. Geest subsequently returned to Exquisite Homes the deposit paid under the contract.

Exquisite Homes brought a claim in the High Court for damages for breach of contract and unlawful interference with contractual relations. Exquisite Homes contended that Geest committed a repudiatory breach of the contract by inviting and negotiating with the Government the compulsory acquisition of the land. The trial judge determined that the 2019 agreement had superseded the 2013 agreement but had been frustrated by the

Government's acquisition of Parcel 314 before the completion date. Having determined that the contract was frustrated, the judge considered to be moot the issue of whether Geest had committed a repudiatory breach of the contract. The Court of Appeal upheld the High Court's ruling that the 2019 agreement had been frustrated and found that Exquisite Homes had failed to show evidence of a repudiatory breach of the agreement by Geest.

Exquisite Homes appealed to the Caribbean Court of Justice against the judgment of the Court of Appeal on two grounds, one of which was withdrawn at the hearing. Accordingly, the sole ground of appeal for this Court's consideration was whether the Court of Appeal erred in finding no evidence of a repudiatory breach of the 2019 agreement by Geest prior to the Government's acquisition of Parcel 314. Exquisite Homes contended that the Government's acquisition of Parcel 314 was based on a private treaty resulting from negotiations with Geest and was not a compulsory acquisition on the Government's motion. Exquisite Homes maintained that Geest's negotiations with the Government concerning acquisition of the land and the Cabinet's approval of the acquisition prior to the execution of the 2019 agreement disabled Geest from performing its obligations under the agreement. Exquisite Homes also attempted to show evidence of Geest's refusal to honour its obligations under the 2019 agreement.

In delivering the judgment of the Court, Ononaiwu J agreed with the Court of Appeal's finding that Exquisite Homes failed to provide evidence that Geest committed a breach of the 2019 agreement prior to the Government's acquisition of Parcel 314. In reviewing ss 3 and 6 of the Land Acquisition Act, the judge noted that the compulsory acquisition procedure entails the Governor General making a declaration that the land should be acquired for a public purpose and the publication of this declaration in two issues of the Gazette, with the land vesting absolutely in the Crown after the second publication. Section 6 requires, as part of the compulsory acquisition procedure, negotiations between the Government and landowner for the purchase of the land by voluntary agreement and specifies that such negotiations may commence before publication of the declaration. Section 3(4) of the Land Acquisition Act affirms the ability of the Government to acquire land for a public purpose by means of a private treaty. As this method of acquisition is

legally founded on a voluntary agreement between the parties, rather than the Land Acquisition Act, there is no need for a declaration by the Governor General as to the Government's intention to acquire the land for a public purpose and the publication of that declaration in the Gazette.

Ononaiwu J concluded that the evidence in this case demonstrated compulsory acquisition, rather than acquisition by private treaty, of Parcel 314. The judge found that Exquisite Homes had provided no evidence of an agreement between the Government and Geest for acquisition of Parcel 314. Instead, Exquisite Homes had referred to a sequence of events, all of which occurred before the execution of the 2019 agreement, which point to the negotiations between the Government and Geest that are part of the compulsory acquisition procedure, pursuant to s 6 of the Land Acquisition Act. Ononaiwu J did not consider that any of the other evidence cited by Exquisite Homes could substantiate a repudiatory breach of the agreement by Geest.

The Court therefore dismissed the appeal and awarded to Geest the agreed costs of the appeal.

#### **Cases referred to:**

*Blairmont Rice Investment Inc v Kayman Sankar Investments Ltd* [2021] CCJ 7 (AJ) GY, [2021] 5 LRC 433; *E Johnson & Co (Barbados) Ltd v NSR Ltd* (1996) 49 WIR 27 (BB PC); *Exquisite Homes Ltd v Geest Industries (Estates) Ltd* (LC CA, 28 February 2024); *Exquisite Homes Ltd v Geest Industries (Estates) Ltd* (LC HC, 29 December 2022).

#### **Legislation referred to:**

**Barbados** – Land Acquisition Act, Cap 228; **Saint Lucia** – Land Acquisition Act, Cap 5.04.

## **JUDGMENT**

#### **Reasons for Judgment:**

Ononaiwu J (Anderson, Rajnauth-Lee, Barrow and Jamadar JJ concurring) [1] – [37]

**ONONAIWU J:****Introduction**

[1] This is an appeal against the judgment of the Court of Appeal of the Eastern Caribbean Supreme Court (Saint Lucia), which upheld the finding of the High Court that an agreement for the respondent, Geest Industries (Estate) Ltd ('Geest'), to sell land to the appellant, Exquisite Homes Ltd ('Exquisite Homes'), was frustrated by the acquisition of that land by the Crown prior to the completion date of the agreement. The issue arising in this appeal is whether the Court of Appeal was wrong to find that Exquisite Homes failed to show evidence that Geest committed a repudiatory breach of the agreement before the Crown's acquisition of the land. In dismissing the appeal, this Court agreed with the Court of Appeal's finding that Exquisite Homes failed to demonstrate a repudiatory breach by Geest of the agreement.

**Factual Background**

[2] Exquisite Homes entered into an agreement dated 16 December 2013 to purchase from Geest 52.6 acres of land (later registered as 'Parcel 314'), which was to be dismembered from a larger parcel of land in Belair, Castries, for the sum of \$1.5 million ('the 2013 agreement'). The purpose of the purchase was construction of a housing development for sale to low-income earners. Exquisite Homes paid the requisite initial deposit.

[3] Exquisite Homes faced challenges in obtaining the required approval from the Development Control Authority ('DCA') of its Environmental Impact Assessment Study and was unable to comply with its further payment obligations. By the time

approval from the DCA had been obtained, the completion date for the 2013 agreement had long passed.

- [4] In or around August 2014, Geest's Managing Director, Mr Maximilus Johannes ('Mr Johannes'), informed the Board that he had discovered nine occupiers on a portion of Parcel 314. In spite of the delay and occupation of part of Parcel 314, Exquisite Homes considered the 2013 agreement to still be in force, having a caution against the land registered in 2016. However, Geest held a different view that the agreement had been terminated due to Exquisite Homes's default in making payments and obtaining the DCA approval timeously. Geest decided that the Government should acquire all of its lands, including Parcel 314. By a letter received on 23 March 2016 (but erroneously dated 23 March 2015), the Government notified Geest of its intention to acquire the remaining parcels of land owned by Geest, situated at Cul-de-Sac, Castries. On 17 August 2018, at the invitation of the Government, Geest submitted a proposal for the acquisition of the lands for 3 million and confirmed that proposal on 24 January 2019. On 11 March 2019, Geest was informed that Cabinet had approved the acquisition of all of Geest's lands, including Parcel 314.
- [5] On 27 June 2019, Exquisite Homes and Geest entered into another agreement, on different terms, for the sale and purchase of Parcel 314 ('the 2019 agreement'). The new purchase price was for the sum of \$1.15 million and the completion date was 30 days after, namely, 27 July 2019. Exquisite Homes paid a deposit of \$500,000 as required by the agreement. Geest disputed Mr Johannes's authority to execute the 2019 agreement on its behalf.
- [6] The Governor General, acting on the advice of Cabinet, issued a declaration on 8 July 2019 for the compulsory acquisition of Geest's lands, which was published in the Gazette on 16 July 2019. The second publication was made on 22 July 2019, before the completion date set for the sale of Parcel 314. Geest subsequently returned the deposit of XCD500,000 to Exquisite Homes.

## **History of Litigation**

### **(a) The High Court**

[7] Exquisite Homes brought a claim against Geest (and originally the Attorney General) for damages for breach of contract and unlawful interference with contractual relations. The total claim was for the sum of \$14,148,747. In its amended statement of claim filed on 4 March 2020, Exquisite Homes contended that Geest's actions in inviting and negotiating with the Government the compulsory acquisition of the land amounted to a repudiatory breach of the contract. Exquisite Homes also alleged that Geest caused the Government to interfere with the contract. The claim against the Attorney General was subsequently discontinued.

[8] In its defence and counterclaim, Geest alleged that the 2013 agreement was terminated due to the failure of Exquisite Homes to fulfil its obligations under that contract. Alternatively, Geest averred that the parties were mistaken that Parcel 314 was available to be sold with vacant possession when the 2013 agreement was executed and therefore the contract was impossible to perform from the outset. Geest claimed that there could not have been any contractual relations in 2019 since Mr Johannes had no permission from the Board to enter into the 2019 agreement. Geest also maintained that its Legal Advisor, Mr George Charlemagne ('Mr Charlemagne'), sought to induce the Board to accept the 2019 agreement on the basis of representations which were later discovered to be false, causing the Board to refuse to proceed with the agreement. Geest further asserted that the final publication of the notice of acquisition on 22 July 2019 would have served to frustrate any agreement for sale and relieved the parties of any obligations which would have arisen under the 2019 agreement. Additionally, Geest counterclaimed that Mr Johannes and Mr Charlemagne were conspiring to induce Geest to contract with the intent to injure and cause loss to its business. Geest had filed an ancillary claim against Mr Johannes and Mr Charlemagne for breach of fiduciary duty and

wrongful interference with its business interests but this claim was dismissed as a nullity due to the failure to properly file and commence the claim.

[9] In a judgment dated 29 December 2022,<sup>1</sup> St Rose-Albertini J (Ag) found that the 2019 agreement superseded the 2013 agreement. However, even though the 2019 agreement was valid, it was frustrated by the Government's acquisition of Parcel 314 prior to that agreement's completion date, rendering Geest unable to transfer title and vacant possession. In light of her finding that the 2019 agreement was frustrated, the judge considered that the issue of whether Geest caused a repudiatory breach of the agreement no longer arose. On the counterclaim, the judge found that there was no evidence to support Geest's assertions. Both the claim and counterclaim were dismissed and each party was ordered to bear its own costs.

**(b) The Court of Appeal**

[10] Through a Notice of Appeal filed on 31 January 2023, Exquisite Homes appealed to the Court of Appeal on two grounds: first, the trial judge erred in finding that the 2019 agreement had been frustrated by the Crown's acquisition of Parcel 314 and second, the trial judge erred in failing to find that the respondent had breached the 2019 agreement prior to the Government's acquisition of Parcel 314.

[11] Geest filed a counter-appeal concerning the validity of the 2019 agreement. It was alleged that the judge erred in her treatment of a payment by Exquisite Homes of \$75,000 to Mr Johannes and the survey plan relating to Parcel 314, which Geest argued should have been produced and registered by Exquisite Homes. Geest also challenged the judge's decision to not award it costs, having dismissed Exquisite Homes's claim.

[12] On 28 February 2024, Thom JA (Ellis and Ward JJA concurring) delivered the judgment of the Court of Appeal.<sup>2</sup> The court held that Geest's lands became vested

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<sup>1</sup> *Exquisite Homes Ltd v Geest Industries (Estates) Ltd* (LC HC, 29 December 2022).

<sup>2</sup> *Exquisite Homes Ltd v Geest Industries (Estates) Ltd* (LC CA, 28 February 2024).

absolutely in the Crown upon the second publication of the declaration of compulsory acquisition on 22 July 2019, in accordance with s 3(3) of the Land Acquisition Act.<sup>3</sup> The second publication amounted to a frustrating event as it occurred before the completion date of the 2019 agreement. The Court of Appeal also held that Exquisite Homes failed to show evidence that there was a repudiatory breach of the 2019 agreement. In that regard, the court found no evidence to support Exquisite Homes's contention that there must have been an agreement between the Government and Geest for the acquisition of the property between the execution of the 2019 agreement on 27 June 2019 and the publication of the first declaration for the compulsory acquisition of the land on 16 July 2019.

[13] The Court of Appeal further found that on Geest's pleaded case, there was no allegation of a bribe or secret profit. While it was not disputed that Exquisite Homes paid to Mr Johannes \$75,000, Geest led no evidence as to the purpose of that payment. In addition, the court found that the absence of a survey plan in relation to Parcel 314 did not nullify the 2019 agreement. Finally, the Court of Appeal decided that the judge erred in the manner in which the issue of costs was treated as no reason was given as to why Geest, as the successful party, was not awarded its costs.

[14] The Court of Appeal therefore dismissed the appeal and directed that Exquisite Homes pay Geest its costs on appeal and in the court below. The court also dismissed the counter-appeal save for the issue of costs, directing that Geest pay Exquisite Homes 75 per cent of the costs of the counter-appeal.

### **Appeal to the Caribbean Court of Justice**

[15] Through a Notice of Appeal to this Court filed on 2 September 2024, Exquisite Homes appealed against the judgment of the Court of Appeal on two grounds: first,

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<sup>3</sup> Cap 5:04.

the Court of Appeal erred when it found that Exquisite Homes presented no evidence to support its case of a repudiatory breach of contract by Geest, and second, the Court of Appeal erred when it failed to direct an inquiry into Exquisite Homes's observation that Geest had breached the implied term of good faith in the contract. At the hearing, Exquisite Homes withdrew the second ground of appeal.

[16] Although Geest did not file a cross-appeal, it contended in its written submissions that Exquisite Homes's payment to Mr Johannes of \$75,000 created a presumption of a secret commission or bribe, which would nullify the 2019 agreement. At the hearing, counsel for Geest, Mrs Hinkson-Ouhla, attempted to raise this argument but accepted that there was no basis for doing so in the absence of a cross-appeal of the Court of Appeal's finding that the 2019 agreement was valid but had been frustrated.

[17] Accordingly, the sole ground of appeal for this Court's consideration is whether the Court of Appeal erred in finding no evidence of a repudiatory breach of the contract by Geest prior to the Government's acquisition of Parcel 314.

### **Analysis and Conclusions**

[18] The thrust of Exquisite Homes's submissions is that the non-fulfilment of Geest's obligation to convey Parcel 314 to Exquisite Homes resulted from Geest's own fault, which strictly had nothing to do with the Crown's acquisition of the land per se. Exquisite Homes argued that Geest's actions in negotiating and reaching an agreement with the Crown in respect of acquisition negate the existence of a lawful excuse for non-performance and do not support the claim that the contract was frustrated. Exquisite Homes contended that Geest committed a repudiatory breach of the 2019 agreement before the first and second publication of the acquisition notices in the Gazette. Therefore, by the time of the first publication, the contract had already been at an end and could not have been frustrated by the second publication in the Gazette.

[19] There is no dispute in this appeal as to the legal principles on repudiatory breach, that is, a breach of a contract by one party of such a nature that entitles the other party to treat the contract as discharged. The Court of Appeal applied the principles for determining a repudiatory breach which this Court elaborated in its decision in *Blairmont Rice Investment Inc v Kayman Sankar Investments Ltd*.<sup>4</sup> In that case, Burgess J stated:

In our view, the focus must be on whether the parties expressly or impliedly intended that the legal effect of the breach would depend on the gravity of the consequences of the breach. If the effect of the breach is so serious as to strike fundamentally at the purpose of the contract, then it will be treated as repudiatory, in the same way as if it were a breach of a condition; if it is less serious, it will give rise to a remedy for damages only, in the same way as a breach of warranty.

[20] What is at issue is whether the Court of Appeal erred in its determination that Exquisite Homes failed to provide evidence to substantiate the acts which it claimed constituted Geest's breach of the agreement.

### **The Court of Appeal's Assessment of Whether There Was Evidence of a Breach**

[21] The Court of Appeal was unconvinced that the actions of Geest or other events cited by Exquisite Homes demonstrated any breach by Geest of the 2019 agreement. First, the court was not persuaded that Geest's refusal to honour the agreement was evidenced by Ms Valerie Rapier ('Ms Rapier'), the Chairperson of the Board and major shareholder of Geest, informing Mr Charlemagne on 24 July 2019 that Geest would not proceed with the 2019 agreement. The court considered that this communication could not lead to a breach of the agreement as it took place after the 2019 agreement was frustrated by the Crown's acquisition of Parcel 314.

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<sup>4</sup> [2021] CCJ 7 (AJ) GY, [2021] 5 LRC 433 at [42].

[22] Second, the Court of Appeal did not find that Exquisite Homes provided any evidence that Geest had entered into an agreement with the Government between 27 June 2019 and 16 July 2019 (when the first notice was published) for the Crown to acquire Parcel 314. Exquisite Homes had urged the court to find such evidence based on a sequence of events, namely, telephone discussions in August 2018 between Ms Rapier and Senator Isaacs of the Government's desire to acquire Parcel 314, in which Ms Rapier was invited to submit a proposal and requested \$3 million for the acquisition; a letter dated 24 January 2019 confirming Geest's proposal; the notification of Geest on 11 March 2019 of Cabinet's decision to acquire Geest's lands, including Parcel 314; and a letter dated 19 March 2019 notifying Ms Rapier that Geest's proposal was accepted by the Cabinet. Noting that all of these events occurred before the execution of the 2019 agreement, the Court of Appeal found that there was no evidence that Ms Rapier or any of Geest's officers approached the Government to acquire Parcel 314 after the 2019 agreement was executed.

[23] Third, the Court of Appeal found no evidence that Geest entered into the 2019 agreement when it was not in a position to perform its obligations under that agreement. While the Government had decided in March 2019 to acquire Geest's lands, including Parcel 314, no steps were taken in accordance with the Land Acquisition Act until July 2019 when the publications were made in the Gazette, after the 2019 agreement was executed. The Court of Appeal noted that Geest had no control over whether the Government would proceed with its decision made in March 2019, noting that the evidence showed that discussions for the Government to acquire the Geest lands dated back to 2010.

[24] Finally, the Court of Appeal rejected Exquisite Homes's submission that Geest's return of the \$500,000 deposit deprived Exquisite Homes of the right to seek compensation from the Crown. Ms Rapier had instructed Mr Charlemagne on 24 July 2019 to return the deposit to Exquisite Homes, after the second publication on 22 July 2019 when the land was acquired and vested in the Crown. Geest, not being able to complete the sale, was required to return the deposit.

## Whether the Court of Appeal Erred in Finding No Evidence of a Breach

- [25] In support of its contention that the Court of Appeal erred in finding no evidence of a repudiatory breach, Exquisite Homes sought to distinguish the present case from *E Johnson & Co (Barbados) Ltd v NSR Ltd*,<sup>5</sup> a Privy Council decision which the trial judge and Court of Appeal considered when determining whether the 2019 agreement had been frustrated by the Government's compulsory acquisition of the land. In that case, the Judicial Committee held that the publication of a notice under s 3 of the Barbados Land Acquisition Act (which initiated the compulsory purchase procedure) after the parties exchanged contracts for the sale of land but before the contractual date for completion was not a frustrating event as the vendor was still in a position to give vacant possession. In the present case, the trial judge and Court of Appeal found that the 2019 agreement was frustrated when the compulsory acquisition of the land became final and the land vested in the Crown on the second publication of the notice in the Gazette on 22 July 2019, in accordance with s 3(3) of the Land Acquisition Act. Both courts considered that Geest would have been rendered incapable of giving vacant possession on the completion date of the agreement.
- [26] Exquisite Homes argued that the present case differed from *E Johnson & Co (Barbados) Ltd* because the Government's acquisition of Parcel 314 was based on a private treaty resulting from negotiations with Geest and was not a compulsory acquisition on the Government's motion. Mr Fraser, counsel for Exquisite Homes, could not point to any document evidencing this agreement between Geest and the Government for the acquisition of Parcel 314. However, he argued that such an agreement could be inferred from the letter of 23 March 2016 from the Government informing that the Cabinet had agreed to acquire the Geest lands in the public interest, as well as the letter dated 17 August 2018 from Ms Rapier, making a proposal to the Government for acquisition of those lands for \$3 million. Exquisite Homes argued that Geest knew that prior to the execution of the 2019 agreement it

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<sup>5</sup>(1996) 49 WIR 27 (BB PC).

was negotiating with the Crown to acquire its lands and if Parcel 314 were included among the lands to be acquired, Geest would be in breach of the contract because it would not be able to deliver the title to that parcel. Exquisite Homes therefore submitted that by entering into the 2019 agreement with full knowledge of this fact, Geest committed a breach of the 2019 agreement simpliciter.

[27] Exquisite Homes also pointed to evidence which showed that at the date of the execution of the 2019 agreement, the Cabinet had already approved the acquisition. This evidence included the witness statement of Ms Rapier, which averred that on 11 March 2019, Senator Isaac informed her by telephone that the Cabinet had approved the acquisition of the Geest lands in its entirety, as well as the testimony of Mr Douglas Rapier, the other shareholder of Geest, that the acquisition process started in March 2019. Exquisite Homes argued that when the Governor General made the declaration on 8 July 2019 regarding the acquisition based on the agreement reached between Geest and the Cabinet of Ministers, Geest had disabled itself from completing its obligation under the 2019 agreement.

[28] Exquisite Homes further cited evidence which, it submitted, demonstrated that the Board of Geest refused to honour its obligations under the 2019 agreement. In this regard, this Court was directed to Geest's further amended defence, the witness statement of Valerie Rapier and the testimony of Valerie and Douglas Rapier, which alleged that the Board refused to proceed with the 2019 agreement on discovering to be false the statements made by Mr Charlemagne to induce Geest to accept the agreement. Exquisite Homes also referred to a letter dated 24 July 2019 from Ms Rapier to the Chief Surveyor which confirmed that requests from Mr Johannes and Mr Charlemagne regarding reversal of the Government's acquisition of Parcel 314 should be disregarded.

[29] Exquisite Homes sought to further distinguish the present case from *E Johnson & Co (Barbados) Ltd*, in which the vendors purported to rescind the contract after the first notice of intended compulsory purchase was issued and were found to have

breached the contract as they had been in a position to give vacant possession on completion. Having contended that Geest had committed a breach of the contract before the first and second publications in the Gazette, Exquisite Homes argued that the question as to whether the acquisition was effected before the date for the completion of the contract did not arise.

[30] We do not consider that the Court of Appeal erred in finding that Exquisite Homes failed to provide evidence that Geest committed a breach of the 2019 agreement prior to the Government's acquisition of Parcel 314. We agree with Geest that Exquisite Homes's argument is misconceived and fails to consider the evidence on record, the nature and function of a compulsory acquisition and the applicable law.

[31] The Land Acquisition Act governs the process by which the Government can compulsorily acquire land for a public purpose. Sections 3 and 6 of the Act, which are relevant to this appeal, provide:

### **3. ACQUISITION OF LAND**

- (1) If the Governor General considers that any land should be acquired for a public purpose he or she may cause a declaration to that effect to be made in the manner provided by this section and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose.
- (2) Every declaration shall be published in 2 ordinary issues of the Gazette and copies thereof shall be posted on one of the buildings (if any) on the land or exhibited at suitable places in the locality in which the land is situate, and in the declaration shall be specified the following particulars in relation to the land which is to be acquired –
  - (a) the parish or district in which the land is situate;
  - (b) a description of the land, giving the approximate area and such other particulars as are necessary to identify the land;

- (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;
  - (d) the public purpose for which the land is required.
- (3) Upon the second publication of the declaration in the Gazette as aforesaid the land shall vest absolutely in the Crown.
  - (4) This section does not prevent the acquisition of lands for public purposes by private treaty.

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#### **6. AUTHORISED OFFICER TO TREAT WITH LANDOWNER**

- (1) As soon as any declaration has been published in accordance with the provisions of section 3, the authorised officer shall, without delay, enter into negotiations (or further negotiations) for the purchase of the land to which the declaration relates upon reasonable terms and conditions, and by voluntary agreement with the owner of the land.
- (2) It is not necessary for the authorised officer to await the publication of the declaration before he or she endeavours to ascertain from the owner the terms and conditions on which he or she is willing to sell his or her land, but no negotiations or agreement is considered to be concluded unless and until the conditions of sale and acquisition have been approved in writing by the Governor General.

[32] The compulsory acquisition procedure specified under the Land Acquisition Act entails the Governor General making a declaration that the land should be acquired for a public purpose. The Act requires publication of this declaration in two issues of the Gazette, with the land vesting absolutely in the Crown after the second publication. Importantly, s 6 requires, as part of the compulsory acquisition procedure, negotiations between the authorised officer and the landowner for the purchase of the land by voluntary agreement. Such negotiations may commence before the publication of the declaration. If negotiations are unsuccessful, the land

can be acquired without the landowner's consent, and questions and claims concerning payment of compensation are to be referred to a Board of Assessment.<sup>6</sup>

[33] Section 3(4) of the Land Acquisition Act affirms the ability of the Government to acquire land for a public purpose by means of a private treaty. This method of acquisition requires the landowner's consent to the sale of land. As the voluntary agreement between the parties, rather than the Land Acquisition Act, is the legal basis for an acquisition by private treaty, there is no need for a declaration by the Governor General as to the Government's intention to acquire the land for a public purpose and the publication of that declaration in the Gazette.

[34] The evidence in this case demonstrates compulsory acquisition, rather than acquisition by private treaty, of Parcel 314. The Governor General caused a declaration for the Government's compulsory acquisition of Geest's lands to be made on 8 July 2024. This declaration was published on 16 and 22 July 2024. Exquisite Homes has provided no evidence of an agreement between the Government and Geest for the acquisition of Parcel 314. Rather, Exquisite Homes has referred to a sequence of events, all of which occurred before the execution of the 2019 agreement, which point to the negotiations between the Government and Geest on the terms and conditions of the sale of the land that are part of the compulsory acquisition procedure, pursuant to s 6 of the Land Acquisition Act.

[35] We disagree with Exquisite Homes that Geest's negotiations with the Government concerning the acquisition of the land or the Cabinet's approval of the acquisition in March 2019, prior to the execution of the 2019 agreement, were actions that would have disabled Geest from performing its obligations under the agreement. At the time the 2019 agreement was executed, there was no certainty or guarantee that the Government would acquire Parcel 314.

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<sup>6</sup> Land Acquisition Act, Cap 5.04, s 11.

[36] We also do not find that Exquisite Homes has shown any evidence of a refusal by Geest to honour its obligations under the 2019 agreement before the Government's compulsory acquisition of the land. The letter dated 24 July 2019 from Ms Rapier to the Chief Surveyor was written after the Crown's acquisition of the lands and does not substantiate a repudiatory breach of the 2019 agreement.

[37] We therefore uphold the Court of Appeal's finding that Exquisite Homes failed to produce any evidence of a repudiatory breach by Geest of the 2019 agreement prior to the Government's acquisition of Parcel 314.

**Disposition**

[38] For the foregoing reasons, the Court orders that the appeal is dismissed and the agreed costs of the appeal, in the amount of XCD50,000, be awarded to Geest.

/s/ W Anderson

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**Mr Justice Anderson**

/s/ M Rajnauth-Lee

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**Mme Justice Rajnauth-Lee**

/s/ D Barrow

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**Mr. Justice Barrow**

/s/ P Jamadar

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**Mr Justice Jamadar**

/s/ C Ononaiwu

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**Mme Justice Ononaiwu**