IN THE SUPREME COURT OF NEW ZEALAND

SC 64/2005
[2006] NZSC 42

	BETWEEN	EASTERN SERVICES LIMITED Appellant
	AND	NO 68 LIMITED Respondent

Hearing: 28 March 2006

Court: Elias CJ, Blanchard, Tipping, Anderson and Eichelbaum JJ

Counsel: H C Keyte QC, D L Schnauer and C Latham for Appellant
R B Stewart QC and E St John for Respondent

Judgment: 15 June 2006

JUDGMENT OF THE COURT

A. The appeal is dismissed.

B. The respondent is awarded costs of $15,000 together with disbursements to be fixed if necessary by the Registrar.

REASONS

(Given by Anderson J)

[1] This is an appeal from a decision of the Court of Appeal, which reversed a judgment of the High Court given by Baragwanath J. The case concerns the application of the doctrine of laches in circumstances where the purchaser of a right of way delayed more than 20 years in seeking a registrable transfer from the vendor.

[2] The appellant, Eastern, then called Beltons Holdings Limited, was the registered proprietor of two adjoining pieces of land in Auckland, numbers 68 and 70 Anzac Avenue. On each was a commercial building. In 1977 the appellant contracted with a social club, Maritime, to sell it number 68.

[3] The memorandum of agreement for sale and purchase also provided for the appellant to create and transfer to Maritime a right of way easement over part of 70, although its obligation to do so was conditional on its obtaining all necessary consents. Maritime wanted the right of way in order to give it vehicular access to a parking area to be constructed in the building on 68, and the agreement acknowledged that. Number 68 was transferred to Maritime which paid the full price of $150,000 apart from the sum of $10,000 which, in accordance with the terms of the agreement, was retained pending council approval of the right of way.

[4] A plan showing the creation of the right of way was approved by Auckland City Council. It was deposited in the Land Transfer Office in March 1979. Its form permits the creation of a registered easement over 70 in favour of 68. Maritime authorised the release to the appellant of the $10,000.

[5] The agreement relating to the easement provided that the cost of construction of the way should be borne as to one-half by Maritime and one-half by Eastern; and that after three years from the date of settlement, but not earlier, either could call on the other party by six months notice in writing to proceed with the construction. There were also provisions that the cost of future maintenance should be borne equally; that references to grantor and grantee included their successors in title; and that all differences between them including construction and maintenance should be referred to arbitration.

[6] Engineering works were undertaken to render the right of way usable by vehicles. Maritime contributed in work and materials to some extent, assessed by Baragwanath J as representing nine per cent of the value of the works. Additional engineering improvements to the access way were carried out in 1985 but Maritime did not contribute to the cost of those improvements. More than two decades passed

without Maritime calling for the appellant to perfect Maritime's title by executing a registrable transfer of the easement.

[7] In 1980 Mr Moore, the surveyor who prepared the Deposited Plan, had written to Eastern and enclosed a copy of a letter to Auckland City Council noting that the car parking on Maritime's land "is not now to be formed". When called to testify at trial, Mr Moore could not explain what he meant by that comment.

[8] In March 1999 Mr Macdonald senior, the mind and institutional memory of Eastern after the sale to Maritime, died. Mr W Kelsey, the manager of the company which carried out the construction of the physical access way has also died. Further, many of the appellant's historical business records have been lost.

[9] Members and invitees of Maritime actually passed over the access way but they appear to have done so to carry out activities beyond the contemplation of the grant. These included deviating from it in order to enter a door in the Maritime building to access a boxing ring, that door not being contiguous to the right of way; and using part of it for parking cars. Neither of these activities would have been permitted under the proposed grant. That latter activity stopped in the late 1990s when a car parking company became the manager of Eastern's building and deterred such use by having cars towed away.

[10] Although the agreement for sale and purchase recorded an intention that Maritime would create a parking area in its building, to which the right of way would give access, Maritime did not in fact carry out the necessary construction works. Maritime had no obligation to Eastern to do so.

[11] In 2002 Maritime sold its land to the respondent and assigned to it the agreement for sale and purchase with Eastern. In 2003, after this litigation had commenced in the High Court, Eastern sold 70 to a company associated with the family of its members, but no transfer from Eastern has been registered. Although situations may arise where the rights and obligations of the successors in title of parties could have significance in relation to a laches defence, this litigation has been conducted on the basis that the successors are to be regarded as having the identical

interests and obligations of their predecessors. We propose to follow that mutually acceptable approach. Our doing so should not be considered indicative of a general principle of surrogacy in similar cases. That is because the fact that undue delay may be attributable only to a plaintiff's predecessor may bear on the equities between the relevant parties.[1]

[12] On 1 May 2003 Maritime called on the appellant to transfer legal title to the right of way. When Eastern refused to do so the respondent sued for specific performance. The appellant's defence included a plea of laches. Whether the appellant is entitled to set up that doctrine in bar of the respondent's claim for specific performance is the issue on this appeal.

A case of equities

[13] The respondent's prayer for specific performance and Eastern's defence of laches require a balancing of equities. As Viscount Radcliffe said, in delivering the advice of the Privy Council in *Nwakobi v Nzekwu*:[2]

> Laches is an equitable defence, and to maintain it and obtain relief a defendant must have an equity which on balance outweighs the plaintiffs' right.

[14] The respondent, as the successor of Maritime, has an equitable interest in 70 in terms of the agreement for an easement. Maritime paid valuable consideration as required by the agreement for sale and purchase of 68. That consideration related in unspecified part to the right of way. Maritime also added value to 70 in monies' worth to the extent of nine per cent of the value of the physical construction of the way.

[15] Baragwanath J's evaluation of the defence of laches appears to have been influenced by his conclusion that payment by Maritime of half of the construction costs of the right of way was "a condition of its entitlement to it". Given that, the fact that Maritime did not pay half the construction costs led Baragwanath J to

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[1] *O'Connor v Hart* [1983] NZLR 280, 292-293 (CA). See also *Nwakobi v Nzekwu* [1964] 1 WLR 1019 (PC), referred to at 292 of *O'Connor v Hart*.
[2] At 1026.

conclude, as a probability, "that Maritime accepted that it simply never qualified to call on Beltons for title to the right of way and that is why the matter was left for 25 years".[3]

[16] The Court of Appeal observed that Baragwanath J's finding of a conditional entitlement was not in issue on that appeal and that it was not part of the present respondent's case that the circumstances had already given rise to an equitable easement.[4] Notwithstanding that, it is indisputable that whatever may be the correct construction of the contract the respondent did acquire an equitable interest, and in argument before this Court counsel for the appellant responsibly accepted that.

[17] Because there was no appeal against the Judge's interpretation we must proceed on the basis that Maritime's right to have its equitable easement converted into a registered legal right of way was conditional upon payment of the balance of its 50 per cent of the construction costs. Delay in that respect could always be remedied by adjusting the outstanding amount to a present day value or by the imposition of interest.

Laches

[18] Eastern puts its case on laches on two bases. It says, first, that even if it could not demonstrate actual prejudice arising from delay, the length of the delay itself was such as to preclude relief to the respondent. Implicit in such assertion, as counsel for the appellant acknowledged, is the proposition that mere delay without actual prejudice may defeat an equitable claim on the grounds of laches.

[19] In any event, says the appellant, it can demonstrate actual prejudice. Its argument is premised on a reasonable possibility that Eastern and Maritime came, at some unknown time, to an arrangement whereby for a consideration also unknown, Maritime relinquished its right to the easement. The appellant argued that it has lost the opportunity to establish the existence of such an agreement because during the

[3] *No 68 Ltd v Eastern Services Ltd* HC AK CP431-IM02 9 August 2004 at [82].
[4] *No 68 Ltd v Eastern Services Ltd* [2006] 2 NZLR 43 at [30].

period of the respondent's delay the appellant has lost the potential witnesses and evidence referred to previously herein at para [8].

[20] That premise is, in the submission of Eastern's counsel, tenable in view of a number of facts. These are:

(a) In 1980 Eastern spent approximately $26,000 on the construction of the driveway.

(b) In 1985 it spent a further sum upgrading the right of way.

(c) No claim was made by Mr Macdonald against Maritime for half the costs of such works.

(d) As Mr Moore's 1980 letter shows, some arrangement had been reached or decision made not to proceed with the engineering works to Maritime's building.

(e) Cars related to Maritime were towed away from the right of way.

(f) In 1995 Mr Macdonald commissioned plans for a new building on 70. These contained columns which, if constructed, would impede physical use of the right of way.

(g) Mr Macdonald never said anything to key staff or to his two sons about the right of way.

(h) Maritime made no move to exert the "right", pay money, or open the side wall of its building where the right of way would have provided entry.

(i) Maritime sold the property without mentioning the right of way.

[21] That argument found favour with the High Court. On the approach he took to the construction of the agreement, Baragwanath J examined the significance of the

absence of evidence in terms of the basis on which Maritime did work on the construction of the access in 1980. He decided as follows:

> [103] … Here the status quo has been an absence of any expectation held by Beltons or communicated by Maritime that Maritime should receive a registered easement. Any expectation on the part of Maritime has slumbered for many years without there being any prospect of its waking: so much so that Maritime did not mention the topic to Mr McNichol [the principal of the respondent] as relevant to the price. Maritime acquiesced in the delay.
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> [104] Further, after so long the dulling of memory can be and in this case has been shown to be acute and of considerable importance. *Orr v Ford* (1989) 167 CLR 316 considered as bearing on the laches decision whether the delays have resulted in "loss of evidence". Where, as here, the absence of vital evidence as to what was the basis on which Maritime performed its work results from Maritime's delay, that is powerful fuel for the laches argument.
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> [105] It has not been established that Maritime ever entered into possession; it appears consistent with the evidence that the boxers [invitees of Maritime] went on to Beltons' property with permission of Mr Scotch Macdonald rather than in right of Maritime; and in the absence of Mr Macdonald it would be unjust to find otherwise. Others who used the right of way and parked on the Beltons' land were towed away. So while Beltons' expenditure on architects fees is not by itself enough to constitute estoppel, the delay has made it impossible to have reasonable confidence as to the basis on which Maritime's contributions were made or to clear as to their value. The delay has prejudiced Beltons.
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> [106] In these circumstances I am satisfied that the combination of the lack of any certainty that Maritime really did have any intention to proceed; the effect on memory of the long delay; the planning and expenditure by Beltons on development; and the prospect of defeating long-held reasonable expectations on the part of Beltons, requires equity to follow the statutory limitation law and hold that the plaintiff's laches bar its claim for equitable relief.

[22] The Court of Appeal took a different view. It considered that there was difficulty in identifying any area where evidence may have been lost, through the delays, which could have given a different complexion to the issues in the case. That Court concluded:[5]

> While it is always possible that Mr Macdonald senior, in particular, might have been able to give some evidence concerning events in 1980, or thereafter, that pointed directly to abandonment by Maritime of its rights, that is too highly speculative a proposition to carry significant weight in balancing the equity of the parties' positions.

[5] At [66].

[23] The Court of Appeal, cognisant of an argument relating to the height of the right of way, which argument has no relevance in the case before this Court, summed up the situation in these terms:

> [70] The reality of this case is that during the period of lengthy delay, little happened in relation to no. 70, which was not tenanted in the latter stages. It is not possible to identify circumstances linked to the delay which prejudiced the respondent. It follows that the respondent has not been placed in a situation because of the delay which makes it unreasonable or unconscionable to allow the appellant to enforce its rights. In brief, the appellant's contractual rights are not outweighed by the equity of the respondent's position.
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> **Specific performance**
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> [71] Time was not of the essence in relation to the performance of the purchaser's obligations, now those of the appellant, under cl 20 of the 1977 agreement. Granting specific performance will not, for the reasons indicated, prejudice the respondent. The present case is accordingly one where, although the appellant and its predecessor have certainly not been "ready, desirous, prompt and eager" to obtain performance of the respondent's obligations, it has an equitable interest under the agreement which it now simply seeks to have perfected by obtaining the legal estate in return for payment to the respondent of what is due. In the circumstances we are satisfied that the equitable remedy of specific performance should be granted, despite the delay but subject to such conditions as are appropriate fully to provide for the respondent's financial contractual expectations if the easement was given.
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> [72] The contract provides for a payment to be made to the party constructing the right of way amounting to one half of the costs incurred. Given the lapse of time since works were done in 1980 and 1985, we consider that the equity of the respondent's situation will be adequately met if it receives a payment that is related to the current notional cost of the works which Mr Moore in 2004 put at approximately $90,000. That payment should also take into account that the 1995 plans will require some adjustment to incorporate access to the premises. Some flexibility is also required in relation to the height of the access way. Overall we are satisfied that these matters will all be fairly provided for if we order, as a condition of specific performance, that the appellant pay to the respondent $50,000 and that leave be given to either party to apply to the High Court to amend the contractual requirement concerning the height of the right of way.
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> **Outcome of appeal**
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> [73] The appeal is accordingly allowed and specific performance ordered, subject to the conditions concerning payment of $50,000 by the appellant to the respondent and leave to apply concerning the height of the access way. The cross-appeal is dismissed. We award the appellant the costs provided for in the formal orders made in the Court's judgment.

[24] There was evidence at trial by longstanding members of Maritime indicating that club members thought that all the paperwork in respect of the right of way had been attended to and that the engineering works for a car park and access to it was put off for financial reasons. It must have been perceived by the club's management that no tangible benefit would be obtained in exchange for a monetary contribution by it to the construction costs. Payment by Maritime would give Eastern exclusive actual use for only half the cost. In all the circumstances it may be the case that Maritime and Mr Macdonald agreed, tacitly or otherwise, that Eastern would not pursue Maritime for a further contribution until Maritime was in a position to use the physical right of way in the manner originally envisaged.

[25] But the most likely explanation for the way the parties acted over the years is that Maritime did not call for a conveyance of title because its members thought the paper work had been done, and Mr Macdonald did not seek a further contribution from Maritime for the cost of the works in the early 1980s because only Mr Macdonald's interests were getting any significant benefit from the works.

[26] In *Orr v Ford*[6] a majority of the High Court of Australia[7] made the following observation about prejudice and speculation:

> The question of prejudice resulting from unavailability of evidence necessarily involves some degree of speculation, but it is not a question of pure speculation. The issue is not whether evidence may have been lost but whether evidence which may have cast a different complexion on the matter has been lost.

[27] The appellant relies on the absence of former possible witnesses and business records to raise a question whether some arrangement may have been entered into on which the witnesses could comment and the documents might record. Although at first blush that proposition may seem to meet the principle stated in *Orr v Ford*, it still needs to be examined in terms of reasonable possibilities. Otherwise, *Orr v Ford* would seem to be a prescription for the purely speculative approach which it eschews. In our view, the evidence does not give rise to any reasonable possibility

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[6] (1989) 167 CLR 316, 330.
[7] Wilson, Toohey and Gaudron JJ.

that Maritime and Mr Macdonald senior came to an agreement that Maritime would write off entirely the value of the contribution it had made to the physical works, and would surrender, not only physical use of the right of way, but also legal entitlement to the easement granting it. Maritime owned it in equity and believed the paper work in relation to it had been done. Mr Macdonald was the business man. His business interests were dealings in real estate. If there had been a surrender to his company of that valuable asset surely he would have told his staff and sons. The fact that he said nothing strongly suggests there was nothing to say, and surely he would have wished to have it documented.

[28] In our view, the factual basis of the appellant's premise, on an item by item basis as well as in combination, is too speculative. The absence of a request for financial reimbursement and Mr Moore's letter are consistent with the more tenable possibility mentioned earlier in this judgment. The towing away of parked cars adds nothing, since Maritime's members and invitees could not lawfully park on the right of way even if Maritime had taken registered title. The fact that the 1995 plans were not proceeded with is equivocal since they could not be implemented if an equitable easement was believed to exist. None of the other matters are of any real evidential significance. The appellant can point to the fact of appreciable delay on the part of Maritime, but not to any prejudice to the appellant. Sometimes delay will leave a party anxiously in suspense but that is not the case here.

Delay without prejudice

[29] Spry's *Equitable Remedies*[8] states:

> It is established by the course of authorities that proceedings for specific performance will not fail merely because the plaintiff has been guilty of unreasonable delay. In order that relief be refused it is necessary that it should further appear that, as a consequence of that delay, it would be unjust that the plaintiff should obtain an order of specific performance. Admittedly there have been cases in which the lapse of time has been treated as itself a bar. But for the greater part they are early cases, which were decided at a time when the doctrine of laches had not been fully developed; and the few later cases that appear to have followed the early decisions should be treated

[8] Spry, *Principles of Equitable Remedies* (6ed 2001) 230-231 (citations omitted).

> as either containing observations made per incuriam, or else turning on different questions, such as the application of a limitation period by analogy, or else as depending in truth on an inference in all the circumstances that the defendant has been prejudiced by the material delay or that there has been acquiescence.
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> By the end of the Nineteenth Century it had become clear that a defendant must establish, in order to make out laches, that the delay of which he complains has caused him to be prejudiced and that for that or some other reason it would be unjust that specific performance should be granted. Unreasonable delay alone is not enough.

[30] However, in *Fitzgerald v Masters*[9] a majority[10] of the High Court of Australia considered that, but for the effect of legislation postponing the right to a transfer, a delay of 26 years on the part of a plaintiff seeking a legal transfer of an equitable estate in land would of itself be a sufficient basis for refusing specific performance. On the other hand, Dixon CJ and Fullagar J held[11] that the respondent's equitable interest in the land could not be lost or destroyed by mere inaction on his part. It could be lost or destroyed only by release or express agreement on his part, or if the deceased with whom the contract had been made had lawfully rescinded the contract. There appeared to be no circumstances, apart from delay as such, which would make it inequitable to decree specific performance.

[31] In *Baburin v Baburin (No 2)*[12] an appellate bench of the Supreme Court of Queensland considered a claim to set aside share transfers by the appellant to her sons after a delay of 19 years. McPherson J expressed the view:[13]

> Delay by itself is said to be no bar to relief in equity. Of this the pace of proceedings in the Chancery Courts of old no doubt afforded such a compelling example that it could not, in all honesty, have been ignored by adopting any other principle. At a time when those courts were absorbed almost exclusively in investigating details of settlements of land and estates of ancient demesne and trusts of investments at 5 per cent in the consolidated funds, such an attitude was understandable and may have been tolerable. It is, however, ill-suited to a society grown accustomed to measuring accrual of interest in fractions of a day, and assessing the capacity to discharge it by reference to overnight fluctuations in the currency of payment.
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> In any event, even if delay alone remains no bar, the accompanying events bring changes that courts are sometimes powerless to reverse. The passing

[9] (1956) 95 CLR 420.
[10] McTiernan, Webb and Taylor JJ.
[11] At 433.
[12] [1991] 2 Qd R 240.
[13] At 244.

> of time begets expectations and assumptions on which parties reasonably act and order their affairs. In such circumstances even equity refrains from unravelling the transactions that lie at their foundation, or from doing so many years after the event.

[32] In *Nelson v Rye*[14] Laddie J expressed the opinion that "… mere delay alone will almost never suffice" thereby indicating some unwillingness to accept the absolute proposition expressed in *Spry*, to which we have referred earlier.

[33] Nor has the New Zealand Court of Appeal been prepared to endorse an absolute principle in the terms suggested in *Spry*. In *Neylon v Dickens*[15] Cooke P, giving the judgment of the Court, said:

> Whether hard-and-fast requirements for a successful defence of laches in any context can be identified is very doubtful. There is a useful discussion in Meagher, Gummow and Lehane, *Equity: Doctrines and Remedies* (2nd ed, 1984) chapter 36, where the authors say "in view of the confused state of the later authorities, certainty on the point is not possible" but give the opinion that mere delay does not constitute laches. The only opinion that we would venture is that it may be unwise to depart from the classic exposition of the doctrine by [Lord Selborne LC], delivering the judgment of the Privy Council in *Lindsay Petroleum Company v Hurd* (1874) LR 5 PC 221, 239-241,[16] which treats the length of the delay and the nature of the acts done during the interval as always important in arriving at a balance of justice or injustice between the parties, but stopped short of laying down that detriment is always essential. It is understandable that textbook writers often find the ostensible certainty of abstract propositions more attractive than those whose task it is to try to decide actual cases in accordance with law.

[34] The classic exposition of the doctrine by Lord Selborne LC bears repetition. The part most often cited is in these terms:

> Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or whereby his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are the length of the delay

[14] [1996] 1 WLR 1378, 1392 (HC).
[15] [1987] 1 NZLR 402, 407.
[16] The Law Report attributes the speech to Sir Barnes Peacock but in the volume's listed Errata there is a direction to read, for Sir Barnes Peacock, "the Lord Chancellor (Lord Selborne)".

> and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

[35] An authority often cited in the same breath as *Lindsay Petroleum* is *Erlanger v New Sombrero Phosphate Company*.[17] We particularly refer to the speech of Lord Blackburn. After referring to Lord Selborne LC's exposition Lord Blackburn said:[18]

> I have looked in vain for any authority which gives a more distinct and definite rule than this; and I think, from the nature of the inquiry, it must always be a question of more or less, depending on the degree of diligence which might reasonably be required, and the degree of change which has occurred, whether the balance of justice or injustice is in favour of granting a remedy or withholding it. The determination of such a question must largely depend on the turn of mind of those who have to decide, and must therefore be subject to uncertainty; but that, I think, is inherent in the nature of the inquiry.

[36] Cooke P again examined the doctrine of laches in *Wellington City Council v New Zealand Law Society*:[19]

> The issues arising under the Society's defences of estoppel, laches and acquiescence, and the contention that Davison CJ exercised his discretion wrongly can conveniently be considered together. Essentially they require consideration of the equities and can be summed up in the question whether it would be unconscionable to grant relief in the light of the reasonable expectations of the parties. As to laches, which on the facts here is the most promising defence from the Society's point of view, it has been accepted in this Court in *Neylon v Dickens* [1987] 1 NZLR 420, 407-409, that the length of the delay and the nature of the acts done during the interval are always important in laying down a balance of justice or injustice between the parties, and that in some cases an inference may be drawn as a matter of commonsense that delay in making a claim has prejudiced the defendant.

[37] We share the caution indicated by Cooke P for the Court of Appeal in *Neylon v Dickens* about endorsing an unqualified principle concerning mere delay without prejudice. This is because the doctrine of laches requires a balancing of equities in relation to the broad span of human conduct. In the abstract, facts and the weight to be given to them are infinitely variable. But in a particular case they have to be identified and weighed for what they are, as a singular exercise.

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[17] (1878) 3 App Cas 1218.
[18] At 1279.
[19] [1990] 2 NZLR 22, 26.

[38] In the present case a matter which must be given significant weight is that the respondent is the owner in equity of the right of way easement. It paid for this with valuable consideration as part of a transaction. Yet the appellant seeks to retain the benefit of what it gave, and at no cost to itself. Further, during the period of delay which it now sets up in bar of the respondent's entitlement it had virtually exclusive practical use of a physical feature to which the respondent has, not insignificantly, contributed. Although a value was not discretely placed on the easement in the original agreement for sale and purchase, and the obtaining of a registrable interest was conditional, it was nevertheless an interest of significant value. This is shown by the reservation of $10,000 of the purchase price which was to be retained on behalf of Maritime.

[39] Equity has been most reluctant to accept that an equitable interest in land could be "lost or destroyed by mere inaction",[20] as shown by cases such as *Sharp v Milligan*[21] and *Williams v Greatrex*[22] which were considered by Baragwanath J. He distinguished them on the basis that they involved actual possession by the plaintiffs. It is the case that actual possession of the land, the subject of the equitable interest, has been considered relevant. But the dominant feature is that in such cases all that needs to be done between the parties is the conveyancing step of transferring the legal estate. That is the position in this case, and of course a right of way easement, although an interest in land, cannot be physically occupied.

[40] We do not, and have not been asked to, take issue with the decision of the Court of Appeal to the effect that the respondent ought pay its share of the cost of physically constructing a usable right of way. But the fact that the respondent will have to pay the present value of past costs for an amenity of which the appellant had virtually exclusive use assists to achieve substantial justice between the parties.

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[20] *Fitzgerald v Masters* at 433, per Dixon CJ and Fullagar J.
[21] (1856) 22 Beav 606.
[22] [1957] 1 WLR 31 (CA).

Result

[41] In the result, we do not accept that the balance of equities requires that specific performance be withheld. The appeal is dismissed. The respondent is awarded costs of $15,000 together with disbursements to be fixed if necessary by the Registrar.

Solicitors:
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