

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. P 211 OF 1985

**BETWEEN**                    **KENNETH CHARLES PASSAILAIGUE**                    **PLAINTIFFS**  
                                         **DONALD GEORGE PASSAILAIGUE**  
                                         **(Executors Estate SYLVIA PASSAILAIGUE,**  
                                         **deceased)**

**AND**                            **LADDY VERNON ANDERSON**                            **DEFENDANT**

Allan Wood , David Batts and Robin Sykes for plaintiff

Muirhead Q.C. & Mrs P. Levers for defendant.

HEARD: October 26, 1992, March 14, 15, 16, 17, June 6, 1994 & May 15, 1997.

**CHESTER ORR, J.**

In this action the plaintiffs the Executors of the estate of Sylvia Passailaigue deceased, seek to recover possession of premises 2A Orchard Road, St. Andrew.

The Statement of Claim is as follows:-

- “ 1. The Plaintiffs are the Executors of the Estate of the late Sylvia Passailaigue and as such are the landlords in respect of premises known as 2a Orchard Road, Kingston 5 in the parish of Saint Andrew.
2. The Defendant was a tenant of the said premises under an oral tenancy from month to month.
3. By a Notice to Quit dated and served on the 10th day of September, 1984 the Defendant's said tenancy was terminated on the 30th day of September, 1985.
4. The Plaintiffs require the premises because the Defendant's rental is in arrears for a period in excess of thirty days and the said Notice so stated.
5. The Defendant has failed and/or refused to give up possession of the said premises to the Plaintiff.”

By an Amended Defence and Counter Claim the defendant stated inter alia.

- “1. The Defendant denies that the Plaintiffs are entitled to possession of the premises referred to in the statement of claim as therein alleged or at all.
2. The Defendant states that he is in possession of the said premises by virtue of a contract for sale entered into between himself and Sylvia Passailaigue, deceased.
3. The Defendant further states that on the 22nd day of August 1974 he entered into a lease agreement with Sylvia Passailaigue deceased, which said lease agreement contained an option to purchase the aforesaid premises known as 2a Orchard Road, Saint Andrew for

the sum of Seventy-five Thousand Dollars (\$75,000.00) upon the Defendant paying ten percent (10%) of the purchase price to the lessor or her attorneys-at-Law.

- “5. That in or about the month of June 1976 the Defendant duly exercised the option by paying to the lessor Sylvia Passailaigue, deceased, the sum of Seven Thousand and Five Hundred Dollars (\$7,500.00) for the exercise of the said option, thereby creating a valid agreement for sale between them and further sum of Seven Thousand and Five Hundred Dollars (\$7,500.00) by way of deposit.
7. That it was agreed that the Defendant should have possession of the said premises paying the sum of Six Hundred and Fifty Dollars (\$650.00) per month for his use and occupation thereof until completion of the sale.
8. That by virtue of the exercise of the said option the Defendant who was already in possession started to effect repairs and construction on the said premises.
- 8a. That the Defendant as owner equity in possession from June, 1976 pursuant to agreement with the said Sylvia Passailaigue made at the time of the exercise of the option hereinbefore pleaded expended the amount as hereinafter stated in improvement and construction of the said premises.
- 8g. Further, the defendant states that the action is wholly unmaintainable owing to laches acquiescence and delay by the Plaintiff as per matters hereinbefore pleaded which the Defendant repeats.
9. That by letters dated 30th August, 1976 and 10th September, 1976 passing between the attorneys-at-Law for the Defendant and for Sylvia Passailaigue, deceased, the said exercise of the option was confirmed and all the terms and conditions therein stipulated and satisfied.”

In the Counter Claim he claimed:-

- “1. A Declaration that a valid Agreement for sale subsists between these parties.
2. An Order for Specific Performance by the Plaintiffs of the said Agreement for Sale.
3. Damages in lieu of Specific Performance.
- 3a. An enquiry as to damages.”

In the Reply the Plaintiffs denied that an Agreement for Sale was entered into

between the defendant and Sylvia Passailaigue, admitted the existence of the Lease Agreement with the option to purchase but denied that the defendant validly exercised the option.

### PLAINTIFF'S CASE

On the 22nd day of August, 1974 Mrs. Passailaigue and the defendant executed a Lease in respect of premises 2a Orchard Road, St. Andrew for a term of (2) years commencing on the 1st September 1974 at a monthly rental of Five Hundred Dollars (\$500.00) during the first year of the term and Six Hundred and Fifty Dollars (\$650.00) per month during the second year payable in advance on the first day of each month.

Clause 3(c) of the Lease contained an option to purchase the premises in the following terms :-

“(c) In consideration of the sum of Two Dollars (\$2.00) the Lessor grants the Lessee the option to purchase the said premises at any time within the term hereby created at the price of Seventy-five Thousand Dollars (\$75,000.00). The Lessee may exercise this option by paying to the Lessor or her Attorneys-at-Law ten percent of the purchase price and executing contract to purchase on the usual terms.”

The defendant duly entered into possession of the premises and operated a garage thereon. Mrs. Passailaigue then resided in Canada. There was correspondence between the parties and their respective Attorneys as follows:-

“15th June 1976.

Mrs. S. Passileague  
20 Aurora Ct.  
Agincourt  
Ontario  
Canada

Dear Madam,

Owing to the economic situation in the country at the present time I am unable to obtain the required amount of mortgage for purchase of the premises 2a Orchard Road, Kingston 5.

The price of \$75,000.00 is frightening off all prospective lenders. It is suggested that a decrease in the selling price to a figure of around \$60,000.00 would be more likely to attract a favourable response on the money market.

Alternatively, the lease could be renewed for another two years and the option to purchase extended until

the the earliest time that the money situation becomes less tight.

The best possible solution, however, would be for you to hold the mortgage yourself with the premises as collateral after the payment of a deposit. If such a course is adopted a deposit of \$25,000.00 would be offered in acceptance to you, and if not, you could state what you consider reasonable deposit.

Your kind co-operation in this matter is solicited.

I am,  
Yours faithfully,  
(Sgd.) L.V. Anderson."

"10th August 1976.

Dear Mrs. Passailaigue,

Thank you for your letter of 3rd August 1976 which I received today.

I note in your letter that you have agreed which I confirm that you have reduced the purchase price of the above premises by \$15000 making the purchase price now \$60,000. I also note in your letter that you are prepared to hold a second mortgage on the premises of \$30,000.

Needless to say I appreciate this gesture. Please instruct your attorneys to prepare a new purchase agreement at the new figure when on execution I am willing to exercise the option by payment of \$7,500. My attorneys are Mrs. & Mrs. K. Von Cork of 72 Church Street.

Best regards.

(Sgd.) L.V. Anderson."

The defendant denied authorship of this letter. Miss Jones, a legal secretary in the firm of Judah, Desnoes & Company gave evidence that she received it from Mrs. Passailaigue. It was enclosed in an envelope addressed to her (Miss Jones) and postmarked in Canada on the 18th August 1976.

"30th August, 1976.

Messrs. Judah, Desnoes & Co.,  
Attorneys-at-Law,  
4 Duke Street,  
Kingston.

ATTENTION: MR. LEE

Dear Sirs,

Re: Proposed sale 2A Orchard Road, Kgn. 5  
Mrs. Sylvia Passailaigue to Mr. Vernon Anderson.

We act on behalf of Mr. Vernon Anderson in connection with the proposed sale of the above property.

We are instructed that the sale price has been agreed at \$60,000.00 with a deposit of \$7,500.00, and that your client is prepared to carry a mortgage of \$30,000.00.

Would you kindly let us have the necessary contract of Sale for execution by our client as well as a photocopy of the title.

Your early attention would be appreciated.

Yours faithfully,

KARL VON CORK & COMPANY

Per: (Sgd.) Norma Von Cork."

"10th September, 1976.

"Messrs. Karl Von Cork & Co.  
 Attorneys-at-Law  
 72 Church Street  
 Kingston.

Dear Sirs:

Re: Proposed Sale 2A Orchard Road -  
S. Passailaigue to V. Anderson

We acknowledge receipt of your letter of the 30th August, 1976, and note that you are acting for the Purchaser - Mr. Laddy Vernon Anderson.

We confirm the purchase price of \$60,000.00 and that Mrs. Passailaigue is prepared to grant a first mortgage of \$30,000.00 for 5 years at 12%. Mrs. Passailaigue has also advised us that the terms of the sale are acceptable, but your client must pay up all the arrears of rent immediately and produce to us the receipt for taxes paid up to date.

Subject to the above conditions being fulfilled, a Contract of Sale will be prepared by us for execution by your client.

Please advise what arrangements are being made with regard to the payment of the balance of purchase money.

Yours faithfully,

JUDAH, DESNOES & CO.

P.S. If the interest is not paid within 30 days of the due date then same will be charged at 12 1/2 %."

"21st October, 1976.

Messrs. Judah Desnoes & Co.  
Attorneys-at-Law  
4 Duke Street  
Kingston

Dear Sirs,

Re: Proposed Sale 2A Orchard Road,  
Passailaigue to Anderson

Thank you for your letters of the 10th September and 6th October concerning the above.

We have now received instructions from our client that he is arranging to pay off the arrears of rent. He states, however, that he made no agreement to pay taxes up to date and that this is not his responsibility. Perhaps you would consult with your client further on this.

Mr. Anderson further instructs us that he has made arrangements for a first mortgage and that Mrs. Passailaigue's mortgage would therefore be a second mortgage. We trust that she is prepared to accede to this and await your further comments.  
Yours faithfully,

KARL VON CORK & COMPANY

(Sgd.) Per: Norma Von Cork."

The rental for the premises fell into arrears and suit was filed against the defendant on the 31st August 1977 to recover arrears due from June 1976 to August 1977. Defence was filed on 10th May 1978 but the arrears were paid. Mrs. Passailaigue died on the 7th September 1977.

Rental was in arrears again in 1983 and 1984. Suits were filed and judgment entered against the defendant. A Bankruptcy Notice was served on him and Notice to Quit dated 10th September 1984 was served on him. The arrears of rental were paid in September 1985. Defendant filed a Caveat - (Exhibit 16) on the 26th November 1985.

Donald Passailaigue the son of Mrs. Passailaigue and the sole surviving executor of her estate gave evidence that he had visited her in Canada and they had discussions about the Lease. She had never told him that she had received any payment from the defendant in exercise of the option and part payment of the purchase price of the premises. He had not visited the premises since 1976. A few months after the hurricane in 1988 he had gone to the premises and looked from outside. He did this on other occasions. He

had not gone inside the premises because a valuator on his behalf had been unable to gain access.

He had not insured or effected repairs to the premises nor had the defendant requested him to do repairs. The defendant had never sought his permission to do repairs nor advised him that he had done so. He Passailaigue, was only concerned to see that the defendant vacated the premises as he was not paying the rent.

It was the contention of the plaintiffs that the defendant had never exercised the option to purchase the property and there was no document to indicate that he had done so.

### THE DEFENCE

The defendant testified that he had resided in Canada where he became acquainted with Mrs. Passailaigue and her brother Peter. He returned to Jamaica where he purchased a home from her sister.

At the time he entered into the Lease Agreement with Mrs. Passailaigue, there was an accumulation of garbage on the premises which he had removed at his own expense. Mrs. Passailaigue had promised to re-imburse him to the extent of one half of the cost but she did not. He operated a garage on the premises and was in frequent communication with Mrs. Passailaigue by telephone.

On 13th January 1976 his Attorney wrote the following letter Exhibit 21 on his instructions:-

"13th January, 1976.

Messrs. Judah, Desnoes & Company  
Attorneys-at-Law  
4, Duke Street  
Kingston

Gentlemen:

Re: Lease 2A Orchard Road, Kingston  
5 - Sylvia Passailaigue to Laddy Vernon  
Anderson

I act on behalf of Laddy Vernon Anderson Lessee of the above premises.

My client has instructed me to inform your client that he wishes to exercise his right of option to purchase the property 2A Orchard Road, Kingston 5 in accordance with Clause 3 Sub Clause (c) of a lease Agreement dated

the 22nd August, 1974 between the parties.

As soon as the Agreement of Sale is executed, my client will forward to you the deposit of \$7,500.00 which represents 10% of the purchase price of \$75,000.00.

Kindly treat the matter as urgent as my client wishes to carry out certain re-organisation of the premises to accommodate his business and this will not be in his best interest until the sale is complete.

I look forward hearing from you accordingly.

Thanking you.  
Yours faithfully,  
(Sgd.) C. S. Miller."

He did not recall having seen a reply to this letter.

He received the letter Exhibit 9 from Mrs. Passailaigue. The first page had been lost in the hurricane:-

"You promised I would hear from you this past week, and I never did, you again promised you would phone me today, May 31st and no phone me today, May 31st and no phone call has been received and I haven't left the apartment.

Please let me have photostat copies of the receipts you paid for taxes at 2a Orchard Rd. I must know for sure that the taxes have been paid.

I have to find money to pay insurance on the premises so must have money from you.

Please let me know if you are going to purchase the property at the end of August. I must know now as I want to start advertising it for sale. I cannot afford to wait to the last minute to start advertising and I am in contact with a gentleman up here with contacts in Jamaica who is willing to try and sell it for me..

Yours truly  
(Sgd.) Sylvia Passailaigue."

He had been in communication with Mrs. Passailaigue by telephone and this letter was a result of one such communication.

On 15th June 1976 he wrote the letter Exhibit 11:-

"15th June 1976.

Mrs. S. Passailaigue  
20 Aurora Ct.,  
Agincourt,  
Ontario,  
Canada.

Dear Madam,

Owing to the economic situation existing in the country at the present time I am unable to obtain the required amount of mortgage for purchase of the premises 2a Orchard Road, Kingston 5.

The price of \$75,000.00 is frightening off all prospective lenders. It is suggested that a decrease in the selling price to a figure of around \$80,000.00 would be more likely to attract a favourable response on the money market.

Alternatively, the lease could be renewed for another two years and the option to purchase extended until the earliest time that the money situation becomes less tight.

The best possible solution, however, would be for you to hold the mortgage yourself with the premises as collateral after the payment of a deposit. If such a course is adopted a deposit of \$25,000.00 would be offered if acceptable to you, and if not, you could state what you consider a reasonable deposit.

Your kind co-operation in this matter is solicited.

I am,  
Yours faithfully,  
(Sgd.) L.V. Anderson."

On that day he received a telephone call from Mrs. Passailaigue. He told her that he had sent her a letter with regard to the purchase of the premises. She asked him to read the contents of the letter and he did so from a copy which he had. She said "It can't work, I have to have some money now." He replied "O.K.. You will hear from me in a couple of days."

Later that day he telephoned her and advised that she would receive some money within a few days. He requested his uncle Gladstone Tibby who resides in Detroit, Michigan, U.S.A. to take the money to her. On the 18th June 1976 she telephoned him and stated that she had received the sum of U.S.\$8,500.00 for which she had given his uncle a receipt. He defendant obtained the receipt from his uncle, who was unable to give evidence because he was 85 years of age and suffering from a terminal illness.

He made a copy of the receipt and gave the original to his then Attorney Mr. Carl Von Cork deceased. Some weeks later he visited the office of Mr. Cork and observed that it was ransacked. He assisted in the search for missing documents but the original receipt could not be located. The copy was produced - Exhibit 22.

It was agreed between Mrs. Passailaigue and himself that the amount of U.S.\$8,500.00 stated in the receipt was the equivalent of J.\$15,000.00 and that he would not mention the payment in U.S.dollars. The conversion to Jamaican dollars was done at the current Bank rate at that time. He gave no evidence of the rate. This amount of \$15,000.00 represented payment of \$7,500.00 in respect of the option, being 10% of \$75,000.00 and a deposit of \$7,500.00 bearing a balance of \$60,000.00 due on the purchase price. In cross-examination he admitted that this payment was not reflected in any of the correspondence or documents in evidence. He explained that the disclosure of payment in United States dollars would render him liable to prosecution under the Foreign Exchange Regulations then in force with resultant incarceration.

He said that Mrs. Passailaigue told him that her Attorneys would send the agreement for Sale to his Attorneys but this had never been done.

She had given him permission before and after 1976 to make improvements to the premises. In June 1976 she gave him permission to deal with the premises as owner. Pursuant to this, he had effected repairs and improvements to the premises. Damage had been done to the premises by hurricane Gilbert in 1988 and he effected the necessary repairs. He obtained payment for some of these from an Insurance Company with which he had insured the premises. He had not advised the executors of his actions as he did not consider that it was necessary to do so. He paid taxes for the premises and produced a Notice of Assessment for the years 1974/75 to 1979/80 which indicated an increase in 1974/75 from \$10,12.50 to \$1417.50 in 1976/77 and remained at that figure until 1979/80. The total assessment was \$7815.00. He also produced receipts for payment for the years 92/93, 93/94 and 93/94 (sic). Total \$10,349.25 see Exhibit 25.

In June 1976 when he paid the sum of U.S. \$8,500.00 he made an Agreement with Mrs. Passailaigue to pay \$650.00 monthly for use and occupation of the premises. Before this he had paid this amount for rent.

The following correspondence was tendered:-

"November 9, 1983.

Messrs Myers, Fletcher & Gordon  
Manton & Hart  
Attorneys-at-Law  
21 East Street  
Kingston

ATTENTION: MR. JOHN GRAHAM

Dear Sirs,

Re: Premises 2A Orchard Road, Kingston 5.

We act on behalf of Mr. Laddy Vernon Anderson who has handed to us your Notice to Quit dated the 18th October 1983 in respect of the above premises.

Please be advised that our client is in possession by virtue of a contract of sale and purchase, from Mrs. Sylvia Passailaigue. The \$30,000.00 for five (5) years at twelve percent (12%) per annum from Mrs. Passailaigue.

Our client is ready, willing and able to complete the transaction and calls upon your clients to take the necessary steps to finalize the matter.

We await your prompt reply.

Yours faithfully,  
KARL VON CORK & CO.  
Per: (Sgd.) Norma Von Cork ."

"May 4, 1984.

ATTENTION: MR. JOHN GRAHAM

Messrs. Myers, Fletcher & Gordon  
Manton & Hart  
Attorneys-at-Law  
21 East Street  
Kingston

Dear Sirs,

Re: Suit No. C.L. P184/83  
Kenneth & Donald Passailaigue vs.  
Laddy Vernon Anderson

We refer to the above suit and to our letter dated the 9th November 1983 to which we have had no reply.

The term of the Agreement of Sale and Purchase were, inter-alia:-

(a) Price \$60,000.00

- (b) Deposit \$7,000.00
- (c) A mortgage loan of \$30,000.00 to be granted by Mrs. Passailaigue.

As a result of Mrs. Passailaigue's death no further progress was made in the matter. Our client remains ready and willing to complete the transaction and we again ask that your client takes the necessary steps to complete the matter.

Our client has receipts for payment of property tax on the premises totalling \$5,136.25 covering the period 1975/76 - 1983/84. He is - prepared to pay for the use and occupation of the premises less the amount of \$5,136.25 but is unable to pay the sum claimed in the above Writ at once. He has requested that you seek your client's approval to his paying by monthly installments of \$1,000.00 commencing the 30th April 1984 and as an indication of his good faith has asked us to forward his two (2) enclosed cheques in the sum of \$1,000.00 each drawn in your favour.

Please let us hear from you early.

Yours faithfully,  
KARL VON CORK & CO.  
Per: Norman Von Cork."

"5th December 1984.

Karl Von Cork & Co.  
Attorneys-at-Law  
66-68 Barry Street  
Kingston.

ATTENTION: MRS. NORMA VON CORK

Dear Sirs:

Re: Suits No. C.L. P 181/83 and C.L. P 151/84  
Kenneth C. Passailaigue & Donald G.  
Passailaigue vs Laddy Vernon Anderson

Thanks for yours dated the 29th ultimo with enclosure. Our clients are anxious that your client immediately liquidate all sums owing in relation to both suits and they are not minded to grant any further indulgences in the light of the history of non-payment which your client had. We are therefore requesting that you make immediate steps to liquidate the sum owing, as we are very doubtful that further indulgences will be granted to the Defendant. Our clients have always maintained that no agreement for sale has ever been signed by Sylvia Passailaigue and consequently there is no agreement which is capable of being completed.

We look forward to receiving your cheque in settlement.

Yours faithfully,  
Myers, Fletcher & Gordon,  
Manton & Hart  
Per: (Sgd.) John Graham."

"27th June, 1985.

Karl Von Cork  
Attorneys-at-Law  
66-68 Barry Street  
Kingston

ATTENTION: MRS. NORMA VON CORK

Dear Sirs:

Re: Vernon Anderson/Sylvia Passailaigue

Thanks for yours of the 20th June.

Are you alleging that the letters of the 30th August and 10th September, 1976 constitute an Agreement for Sale? If so, please indicate when the arrears of rent were paid.

In any event, we cannot imagine that you would dispute that the best possible position your client could be in was that there was an arrangement "subject to contract". For our part, we do not consider that there was any binding agreement. We look forward to hearing from your.

Yours faithfully,  
Myers, Fletcher & Gordon,  
Manton & Hart  
Per (Sgd.) Derek N. Jones."

"August 4, 1992.

Levy Hanna & Co.,  
Attorney-at-Law  
9-10 Duke Street  
Kingston

Dear Sirs,

Re: Premises 2a Orchard Road, Kingston 5 Laddy  
Vernon Anderson & Estate Sylvia Passailaigue

Enclosed herewith is my cheque in your favour in the sum of \$650.00

This represents payment for the month of August 1992 for use and occupation of the above premises.

Kindly acknowledge receipt.

Yours faithfully,  
(Sgd.) Laddy Vernon Anderson."

**THE EXERCISE OF THE OPTION**

The defendant contends that the option was exercised by the payment of U.S. \$8,500.00. I do not accept the defendant as a witness of truth. The signature of Mrs. Passailaigue on the receipt Exhibit 22 for U.S.\$8,500.00 appears to be a replica of her signature on the Lease, Exhibit 1. In addition there are indications which suggest that the receipt was typed on the defendant's typewriter on which by his own admission, he typed the letters Exhibit 11 and 27. I do not accept that Mrs. Passailaigue fortuitously obtained the use of a typewriter on this occasion in contrast to the fact that all other correspondence produced from her is handwritten. I am also influenced by the total absence of any mention of this payment in the correspondence and documents subsequent to the alleged payment. The omission from the Caveat is noteworthy. The defendant attributes this to the negligence of his Attorney. I reject this contention entirely.

I attach no credence to the excuse proffered by the defendant that the failure to mention the payment was due to the fact that the disclosure would render him liable to prosecution under the Foreign Exchange Control Regulations. He was then according to him paying rental in Jamaican dollars, this amount could have been so expressed. I find that the defendant has taken advantage of the demise of both Mrs. Passailaigue and Mr. Cork his then Attorney to perpetrate a deception. I find that the receipt Exhibit 22 was fabricated for purposes of this case. I find that the option was never exercised.

The correspondence reveals that Mrs. Passilaigue was willing to sell at a reduced price of \$60,000.00 subject to certain conditions which had to be fulfilled by the defendant, see Exhibit 4 dated 10th September 1976. These conditions were never fulfilled. There was no concluded Agreement for the sale and no Contract for which Specific Performance can be ordered.

**Re: Expenditure by defendant on the premises.**

Mr. Muirhead submitted that the defendant was entitled to a refund of money expended by him on the premises.

He cited inter alia the following passage by the Learned authors of **Halsburys**

**Laws of England Volume 4 at 1475.**

“The court will also protect a person who takes possession of land or exercises an easement over it under an expectation, created or encouraged by the owner that he is to have an interest in it, and, with the owner’s knowledge and without objection by him, expends money on the land. The protection may take the form of requiring repayments of the money, or the refusal to the true owner of an order for possession.”

However I reject the evidence of the defendant that prior to and after June 1976, Mrs. Passailaigue had given him permission to treat the premises as if he were the owner thereof. At this date there was no concluded agreement for the sale. There is no evidence that the Executors had knowledge of or encouraged the expenditure by the defendant. I accept the evidence of her son, Donald Passailaigue that he visited the premises but did not enter because his valuator had previously been denied access thereto. He further stated that his only interest was in having the premises vacated by the defendant.

**Re Taxes**

Under the provisions of Clause 2(b) of the Lease, the defendant was liable to pay on demand any increase in taxes. He produced receipts for payment of taxes totalling \$10,349.25 but from the uncertain state of the evidence it is impossible to arrive at a true position in respect of the arrears.

**Re Laches**

The defendant alleged laches by the plaintiff. The evidence however indicates otherwise. Notice to quit was given dated 10th September 1984 and action filed on 4th October 1985. This allegation has not been proved.

There will therefore be judgment for the plaintiffs on the Claim and Counter Claim with costs to be taxed if not agreed.

Let me express my profound apologies for the delay in delivery of this judgment.