

and loss of profit. However, the principle of refusal of specific performance on the grounds of hardship is in relation to the hardship of the defendant and not that of the plaintiff (*See Chitty on Contract 29th Edition Vol. 1 at para. 27-030*). And in this case it would appear that damages would not be an adequate remedy because of the difficulty likely to be encountered in quantifying the damages.

[88] Nonetheless, in view of my earlier finding that there was a material unilateral variation in the agreement by System Sales which rendered the agreement fundamentally different from that executed by the parties, I am of the view that it would not be fair or just to order specific performance of the agreement in terms of the SSL Plan as the Suttles certainly would not be getting what they had bargained for under the contract while System Sales would be getting more than it bargained for.

[89] Nor would it be fair or just to order specific performance of the agreement in terms of Exhibit "GS3" given the uncertainty as to whether or not the Chief Town Planner would approve that plan as the subdivision plan of the development. Mr. Gollop cites the case of **Australian Hardwoods Pty Ltd. [1961] WLR 425** in support of his submission that an applicant for specific performance must show that he is ready and willing to perform the contract before specific performance can be