



[2016] JMSC Civ.161

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2007 HCV 00041**

<b>BETWEEN</b>	<b>WORREL GREEN</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>JULIA GREEN</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>THE ADMINISTRATOR GENERAL OF JAMAICA</b>	<b>DEFENDANT</b>

Debayo A. Adedipe for the claimants.

Geraldine Bradford for the defendant.

**Heard: 16<sup>th</sup> March & 22<sup>nd</sup> September, 2016.**

***Sale of land – Breach of contract- Remedies- Specific Performance***

**CRESENCIA BROWN BECKFORD, J**

**INTRODUCTION**

[1] The claim for breach of contract of sale of land is brought by Mr. Rudolph Green and his wife Mrs. Julia Green against Mr. Segree Hall with respect to a parcel of land situated in Green Park Clarendon which is part of land registered at volume 134 folio 120 of which Mr. Hall is the registered owner.

[2] Since this action commenced both Mr. Rudolph Green and Mr. Segree Hall have passed away. Mr. Worrell Green was substituted for the claimant Mr. Rudolph Green and the Administrator General of Jamaica for the defendant Mr. Segree Hall.

## **THE EVIDENCE**

**[3]** Mrs. Julia Green the 1<sup>st</sup> claimant was the sole witness to the fact of the transaction between the Greens and Mr. Hall. Her evidence is that on July 29, 1984 she and her husband entered into an agreement to purchase a piece of land, approximately one acre in size from Mr. Hall for four thousand dollars (\$4000.00). The purchase price was paid by an initial instalment of three thousand dollars (\$3000.00) for which a document signed by him and witnessed by his wife was given to the Greens. Before making the initial payment Mr and Mrs. Green were shown the boundaries of the land they were about to purchase which was indicated to them to be one acre more or less. These boundaries were stated in a document dated December 12, 1984 which acknowledged the agreement. On February 2, 1986, at his request, the balance of one thousand dollars (\$1000.00) was paid to Mr. Hall. He gave a receipt for this payment. None of these documents was presented at the trial. She however gave a credible explanation for the absent documentation referred to by her. I accept that they were misplaced after they were returned to her by her former lawyer.

**[4]** The Greens were put into possession on payment of the \$3000.00. The evidence of Mrs. Green is that they thereafter fenced the parcel of land based on dimensions pointed out to them by Mr. Hall. In her evidence-in-chief she said they also planted coconuts and citrus on it but in cross examination she limited her answer in relation to the land, to fencing.

**[5]** The land was surveyed in 1994 and their names entered on the tax roll as the persons in possession. They thereafter commenced the payment of property taxes for it. A copy of survey diagram bearing Survey Dept. Examination No. 242809 was admitted into evidence on behalf of the claimants. By the survey diagram the area of the land was measured to be 2780.80 square metres. Copies of Government of Jamaica Official receipts for payment of property taxes on land parcel size 2781 square metres for the years 1999-2000, 2000-2001, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2011-2012, 2012-2013 and 2013-2014 were also admitted into evidence after it

was explained that the originals had also been misplaced having been returned to her by her former lawyer.

**[6]** Several requests were made to Mr. Hall for title to this parcel to be transferred to the Greens but this was not forthcoming. In the meantime in 1988, Mr. Hall sought to cancel the agreement and refund the sums paid to him by the Greens. They were not amenable to this overture having been in possession of the land for some 14 years and the land now being worth significantly more than the purchase price.

**[7]** The requests to complete this sale of the land by giving the Greens title did not yield the required result and Mr. Green commenced action in the Resident Magistrate Court in 2003. The action was not successful. Perhaps emboldened by this decision, Mr Hall retook possession of the parcel of land from the Greens in June 2005.

**[8]** Further aggrieved by this action on the part of Mr. Hall, Mr. and Mrs. Green commenced this action in 2007 to compel Mr Hall to complete the contract of sale. Mr. Hall died the day he was served with the claim. An Amended Fixed Date Claim Form was subsequently filed naming the parties presently before the court for the following relief:

- 1) *A declaration that there is an Agreement between the claimants and the defendant for the sale (to) them of a parcel of land at Green Park, Clarendon more particularly delineated in the survey diagram bearing examination number 242809;*
- 2) *An order that the defendant do deliver up possession of the said land to the claimants forthwith;*
- 3) *An order decreeing specific performance of the agreement;*
- 4) *Damages in addition to or in lieu of specific performance;*
- 5) *An order that the defendant do all that he is required to do to furnish the claimants with title to the land sold to them;*
- 6) *Costs*

**[9]** The factual contentions as set out before, are largely undisputed as there were no witnesses for the defence. The claimants however still bear the burden of proving these facts on a balance of probabilities.

## **ISSUES**

**[10]** The issues therefore arising for the court's determination are as follows:

- (1) was there a valid and enforceable contract for the sale of land;
- (2) was there a breach of contract;
- (3) what are the remedies available to the claimants.

## **THE APPLICABLE LAW**

**[11]** The Statute of Frauds provides that a contract for the sale of land must be in writing or evidenced by a sufficient note or memorandum. Signed by the party against whom it is being used. It must also contain all the terms of agreement to include a description of the parties, a description of the property, the price and any other terms agreed to by the parties.

**[12]** In the absence of these requirements the contract will be unenforceable unless there is a sufficient act of part performance. This would enable the party not in breach to bring an action for specific performance. The rationale for the principle of the doctrine of part performance is that a person who stands by and allows another to act to his detriment should not be allowed to benefit from his inaction and claim the agreement is unenforceable.

**[13]** This is the position as set out in *Maddison v Alderson* (1883) 8 AC 467 where it was said that the Statute of Frauds "does not avoid parol contracts, but only bars the legal remedies by which they might otherwise be enforced".

**[14]** Earl of Selbourn L.C. went on to say:

*“In a suit founded on such part performance, the defendant is really charged” upon the equities resulting from the acts done in execution of the contract, and not (within the meaning of the statute) upon the contract itself”.*

**[15]** The act of part performance must unmistakably point to and be only referable to the existence of some contract such as that which is sought to be enforced. In the past acts such as payment of the purchase price coupled with possession have held to be sufficient acts of part performance. Extrinsic evidence has also been allowed in proof of specific terms of the contract.

**[16]** In the instant case the evidence of Mrs. Green is that the purchase price was paid in full. She and her husband were put in possession and the land fenced by them in accordance with the boundaries pointed out by Mr. Hall. This has not been refuted. Apart from her general demeanour, her credibility was bolstered by the evidence of the survey carried out at the instance of her husband. There is no evidence that Mr. Hall objected to the survey.

**[17]** The pre checked diagram which is exhibit 2 does not show that there was any objection to the survey. It also shows that all the land bounding that claimed by the Greens is also owned by Mr. Hall although otherwise occupied.

**[18]** In that regard I find that there was an oral agreement for the sale of land part of land registered at Volume 1134 Folio 120 in the name of Segree Hall between Mr. and Mrs. Green and Mr. Hall. I find the boundaries were pointed out and are depicted on the survey diagram. I find too, that the Greens were put into possession of the land by Mr. Hall. I find that the fencing of the land was evidence of possession and together with the payment of the purchase price constitutes a sufficient act of part performance and that these were sufficient to satisfy the Statute of Frauds.

**[19]** I find too that Mr. Hall’s repudiation of the contract was not accepted by the Greens and the contract remained in effect. I find that Mr. Hall later retook possession of the land.

[20] The act of retaking possession by Mr. Hall constituted a breach of contract. In Chitty On Contracts 26<sup>th</sup> Edition at p.310 the authors underlined that the court would not allow the defendant to escape from his contract but may order specific performance of the contract. In Riverton City Ltd. v Haddad 1986 23 JLR 45 it was held that

*“prior to the date of completion of a contract for the sale of land, the purchaser had an equitable estate in the property and the vendor holds the estate in trust for the purchaser...”*

## REMEDY

[21] These facts without more would presage a breach of contract entitling the claimants to a remedy. The defendant however contends that the claimants are barred from any remedy by virtue of the Limitation of Actions Act, laches and delay.

### (i) Limitation of Actions Act

[22] Section 3 of the Limitation of Actions Act bars an action to recover land not commenced within twelve years from time the right accrued. It provides that:

*“No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.”*

Section 4 provides that the right to make an entry or bring a suit shall be deemed to have first accrued when the person has been in possession and is dispossessed while so entitled.

[23] Should the limitation period be expired then section 30 applies which provides:

*“At the determination of the period limited by this Part to any person for making an entry, or bringing an action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.”*

**[24]** With respect then to an action limited to recovery of possession of land then a mere two years would have elapsed after the claimants were dispossessed. However this claim is for breach of contract and for the equitable remedy of specific performance. In that event Section 25 of the Limitation of Actions Act applies. It provides as follows:

*“No person claiming any land or rent in equity shall bring any suit to recover the same, but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry, or brought an action to recover the same respectively, if he had been entitled at law to such estate, interest or right in or to the same as he shall claim therein in equity”.*

**[25]** For the purpose of determining the period of limitation one has to determine when this cause of action arose. It is clear, as admitted by the defendant, that time did not begin to run at the time the balance purchase price was paid but sometime after. Where time is not made of the essence of the contract, the time for completion would be within a reasonable time.

**[26]** How then does one compute time in these circumstances? Several requests were made to Mr. Hall to complete the contract and deliver title to the Greens. The land was surveyed and the Greens entered on the tax roll as the persons in possession. No application for subdivision approval was made which was a precursor to the transfer of title. In the circumstance of rural life and the purchasers being in possession, no urgency seemed to be attached to the delivery of title.

**[27]** However the tide turned when Mr. Hall evinced an intention not to complete the contract. This then was the time for the purchasers to take action to complete the contract

**[28]** In the instant case the evidence which has been accepted is that Mr. Hall indicated to the Greens in 1998 that he no longer wanted to sell the land to them and he retook possession in 2005. I find therefore that time began to run against the Greens in 1998. This action was commenced in 2007. The claimants would not therefore be barred by virtue of the Limitation of Actions Act from bringing this action.

(ii) **Laches**

[29] There is admittedly delay on the part of the Greens in enforcing the completion of the contract for sale. As stated in Snell's Principles of Equity 29<sup>th</sup> Edition at p. 33 quoting the words of Lord Camden L.C.

*"a court of equity "has always refused its aid to stale demands, where a party has slept on his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive and does nothing"*

While "delay defeats equities", the purchaser in possession is in a different position. As stated in Snell's Principles of Equity 28<sup>th</sup> Edition at p.594:

*"Where however the plaintiff has been let into possession under the contract and has obtained the equitable interest, so that all he requires is a mere conveyance of the legal estate, even many years delay in enforcing his claim will not prejudice him."*

In Williams v Greatnax [1956] 3 ALL ER 705 it was held that the plaintiff was entitled to specific performance notwithstanding the delay as there was no specified time fixed for completion and he was not barred by laches as he had an equitable title by virtue of possession and there had not been abandonment of the contract by him. Per Denning L.J.

*"Neither side gave reasonable notice requiring completion and therefore time is not by itself a bar to the actions: as long as he was in possession of the land he did not lose his rights simply by not proceeding at once for specific performance."*

I should note that this supports the finding that time did not begin to run against the Greens until Mr. Hall indicated his intention not to complete the contract.

(iii) **Specific Performance**

[30] In the circumstances the remedy of specific performance is available to the claimants. The issue then becomes should specific performance be granted.



**[31]** The land sold is part of registered land and thus subject to The Local Improvements Act. This provides that before any subdivision of lands not being agricultural land between one half of an acre to ten acres, an application must be submitted to the Parish Council for approval. A contract for the sale of a part of land is deemed to be a subdivision of the land.

**[32]** Failure to obtain subdivision approval by virtue of the Local Improvements Act is not fatal to a claim for specific performance. Section 13 (1) reads:

*“The validity of any sub-division contract shall not be affected by reason only of failure, prior to the making of such contract to comply with any requirement of subsections (1), (2), and (3) of section 5 or to obtain any sanction of the Council under section 8 or section 9, as the case may be, but such contract shall not be executed by the transfer or conveyance of the land concerned unless and until the sanction of the Council hereinbefore referred to, has been obtained.”*

There is also no limitation on the time to make an application for approval of the subdivision. There is no indication that an application for subdivision approval was made to the relevant Parish Council.

**[33]** The courts have held that where specific performance was available, damages could be given in lieu. (See *Lavey v Purcell* [1588] 39 CH .D . 508). There is no evidence that the Estate of Mr. Hall could pay damages if awarded. In these circumstances the completion of the contract is indicated.

## **CONCLUSION**

**[34]** In the premises the claimants are entitled to the following orders sought:

- 1) A declaration that there is an Agreement between Mr. Rudolph Green and Mrs. Julia Green as purchasers and Mr. Segree Hall as vendor for the sale of a parcel of land at Green Park, Clarendon more particularly delineated and described in the survey diagram bearing examination number 242809;
- 2) An order that the defendant do deliver up possession of the said land to the claimants forthwith;

- 3) An order decreeing specific performance of the agreement.

## **ORDER**

**[35] It is hereby declared that** there is an Agreement between Mr. Rudolph Green and Mrs. Julia Green as purchasers and Mr. Segree Hall as vendor for the sale of a parcel of land at Green Park, Clarendon, being part of the land registered at Volume 134 Folio 120 and more particularly delineated and described in the survey diagram bearing examination number 242809 (the said land)

**[36] It is also ordered that:**

- 1) the defendant deliver up possession of the said land to the claimants forthwith;
- 2) there be specific performance of the agreement;
- 3) costs to the claimant to be taxed if not agreed.