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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C.142/1987

BETWEEN	PETIUS CHANG	PLAINTIFF
A N D	LUTHER FREEMAN	DEFENDANT

Dennis Morrison, Q.C., for plaintiff

Crafton Miller and Nancy Anderson for defendant

Heard: November 13, 14, 15 and 22, 1995

PANTON, J.

This judgment was delivered on the 22nd November, 1995, at which time the reasons were orally stated with a promise to put them in writing.

The following facts are agreed between the parties -

1. the plaintiff and the defendant signed a document dated 27th March, 1986, and headed "Memorandum of sale";
2. the plaintiff and the defendant were introduced to each other by one Lloyd Murray, a real estate agent;
3. the defendant, at the time of this introduction, was experiencing serious financial difficulties - so serious that two houses that he owned were under the threat of being auctioned;
4. the plaintiff lent monies to the defendant prior to the signing of the agreement;
5. an attorney-at-law, Mr. L.M. Kandekore, featured as a witness at the signing of the agreement; and
6. the defendant purported to cancel the agreement in August, 1986.

The main point in issue is the effect of the document that the defendant has admittedly signed. Does it mean what it says? Is it a guarantee

for the loans that the defendant received? Did the defendant really believe that it was a guarantee that he was signing? Was there improper or undue influence operating on the defendant from the plaintiff or from the attorney-at-law Kandekore?

In determining the point in issue, the Court has considered the evidence of all the witnesses generally. Their demeanour has been carefully noted. As a result, I find the following facts -

1. the parites signed the document in the presence of each other, and of Lloyd Murray, the plaintiff's witness Cleveland Stewart, and the attorney-at-law Kandekore in Kandekore's office;

2. there was a celebratory drink on the signing, which drink came from the credenza in Kandekore's office

3. Murray was not pleased that he had not benefitted by way of a commission;

4. prior to the signing, the defendant had relentlessly pursued the plaintiff to -

   (a) obtain loans for domestic purposes; and

   (b) effect the sale.

5. the defendant expressed confidence in Mr. Kandekore as an attorney-at-law in the circumstances that existed; and

6. the price agreed on ($230,000.00) was fair and reasonable in keeping with the then existing property values.

In my judgment, the defendant was fully aware of what he was doing when he signed the agreement, and the letter to the Jamaica National Building Society directing that the duplicate certificate of title be sent to Kandekore and Co. The memorandum of sale contains every feature that is expected in a document of that nature, including a description of the property at Swain Spring Road, Saint Andrew, the parties, the price, the deposit along with special conditions which included an obligation on the part of the purchaser's attorney-at-law to pay all arrears in respect of the other property which was

about to be auctioned. I do not accept that the defendant signed this document without reading it, or without being aware of its true import.

The defendant also signed a handwritten letter dated 14th July, 1986. He affirmed his signature, but was puzzled as to who had written the words above his signature. He would wish the Court to believe that he had signed a blank sheet and over his signature the words were subsequently written by someone who clearly meant him no good.

The letter, firstly, refers to the need for loans to deal with a telephone bill, and a bill for the repairs done to a car. These bills, the defendant has admitted were owed by him. Then these words follow -

"I will close the sale if you are ready"

Clearly, it is the sale embodied in the agreement that is being referred to in this letter. So, in July, 1986 the defendant was willing to complete the sale.

The defendant's assertion before me that he was in need of independent legal advice which was denied him is untrue and most unworthy of him, especially when one considers his age.

I find that the role played by Mr. Kandekore was merely as a facilitator. It was the wish of both parties that he should handle the matter. Although it is desireable that two attorneys-at-law be involved, one for each side, in a transaction of this nature, it is clear to me that the situation here did not warrant it as it was the wish of both parties for Mr. Kandekore to deal with the matter in the manner in which it was dealt with. The parties had come to their agreement on the terms of the contract without any undue or improper influence on the part of Mr. Kandekore.

The defendant's position in denying knowledge of what he signed is far from being genuine. It is a ruse. Someone of his age and with his experience as a driver who has travelled to the United States of America on farm work, and who was wise enough to acquire two substantial properties, clearly knows the importance of documents as well as the difference between a promissory note and a memorandum of sale. It is unbelievable that the defendant signed the memorandum of sale thinking it was a promissory note.

In my judgment, the defendant is not a fool; neither was he fooled. I reject the idea or the suggestion that he was under undue influence.

The defendant clearly signed the agreement with his eyes wide open, fully well aware that it was an agreement for sale.

It is obvious that the defendant suddenly came into possession of a substantial sum of money. He was then able to stave off the auctioneer. The defendant wished to be put back in full ownership of that which he had consciously and deliberately sold. The receipt of this substantial sum of money caused the defendant to regret his decision to sell his property. He is in effect seeking a way out of the consequences of his deliberate action.

It is not the duty of the Court to rectify regrets. That is impermissible in the circumstances.

Before parting with this matter, it is necessary to point to just one area of the evidence which indicates how untruthful the defendant has been. On the 14th November he testified that one Vernon Williams his friend, brought over $100,000.00 to him from the United States of America and that he issued a receipt. This answer was to a suggestion that he had agreed to sell the said property at Swain Spring Road to Vernon Williams. He denied the existence of such a transaction. On the following day, under further cross-examination, he said that this money was received from someone to send to Williams' brother who would send it to Williams who was in prison in Miami.

This contradiction has been unexplained. It was not explained because, in my opinion, it cannot be as the defendant is untruthful.

Judgment is hereby entered for the plaintiff. Specific performance is ordered of the agreement dated March 27, 1986. If the defendant fails to comply within a reasonable time, the Registrar of the Supreme Court is hereby empowered to execute all relevant documents in order to facilitate the transfer of the title from the defendant to the plaintiff. The costs of these proceedings are awarded to the plaintiff, such costs to be agreed or taxed.