

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 5. 139 OF 1981

BETWEEN	SOLEM SALE	PLAINTIFF
A N D	SONIA ALLEN	DEFENDANT

M.S. Millingen for the plaintiff

Dr. Lloyd Barnett & Miss Hilary Phillips for the defendant.

HEARD: February 29, 1988 &
June 30, 1989

DOWNER, J:

This case comes before the Supreme Court by reference from Their Lordships board (Lord Keith of Kinkel, Lord Brightman, Lord Templeman, Lord Griffiths and Lord Oliver of Aylmerton). The opinion of the Board was delivered by Lord Oliver and in it he directed that if there was no agreement as to the date of possession by Sonia Allen, the Defendant of 8 and 10 Gladstone Drive, then there should be an enquiry by this court so that interest on that unpaid balance of the purchase price can be ascertained. The unpaid balance was \$32,000.00, the purchase price being \$40,000.00.

Mr. Millingen, who moved the court on behalf of the plaintiff, did not present a motion as such, but relied on the unreported opinion embodied in Privy Council Appeal No. 15 of 1986 and since there was no objection to this mode of procedure, the matter was heard and determined. It is appropriate to cite certain passages from the opinion of the Board to establish the narrative of events as to what was decided in the various courts. It is against that background that the enquiry in this case must be determined.

At pp. 1-2 Lord Oliver said:

"On 10th August 1981 the appellant, the personal representative of Sana Veleta Laing

deceased, commenced proceedings in the High Court of Jamaica claiming against the respondent a sum of \$24,640 for rent or use and occupation of a property known as 8 and 10 Gladstone Drive, Kingston, possession of the property, a declaration that a Sale Agreement dated 9th April 1976 between himself and the respondent had been effectively rescinded on 5th May 1981 and forfeiture of the deposit of \$8,000 paid by the respondent under that agreement. In those proceedings the respondent counterclaimed for specific performance of the agreement with an abatement of the purchase price. On 18th June 1984 Campbell J. dismissed the appellant's claim and, on the respondent's counterclaim, ordered that the agreement be specifically performed but with an abatement in the purchase price of \$18,000, representing the value of a building which, as he held, required to be demolished and with a further abatement of \$3,000 if the appellant failed to demolish the building within one month. The appellant appealed to the Court of Appeal which, on 4th July 1985, set aside the Order of Campbell J. so far as it directed an abatement of the purchase price but otherwise affirmed the decree of specific performance. From that order the appellant now appeals, with the leave of the Court of Appeal, to Her Majesty in Council. The respondent on her part claims that the judge's order for an abatement in the purchase price should be restored."

As for the matter of interest on the unpaid balance, here is how Lord Oliver treated the matter on page 5 of the Board's opinion.

"Their Lordships have been told that the court also rejected an argument on behalf of the appellant that he should receive interest on the unpaid balance of the purchase money although this is not mentioned in the judgment. A claim for interest was, however, clearly intimated in the notice of appeal."

in disposing of the appeal, Lord Oliver said at page 5:

"The only respect in which the decision of the Court of Appeal is, in their Lordships' opinion, open to criticism is their rejection of the appellant's claim to interest on the unpaid balance of the purchase money. The evidence established and, indeed, it is not in dispute, that the respondent has been in possession of the property as purchaser under the sale agreement since July 1976.

It is true that in March 1979 she agreed to pay a nominal rent of \$10 per month - seemingly because of an apprehension on the part of the appellant that she might otherwise be able to establish a possessory title."

Further, on page 5, His Lordship said:

"Their Lordships are unable, however, to find in this arrangement anything which would displace the ordinary rule that even where delay in completion is due to the default of the vendor a purchaser in possession and in receipt of the rents and profits of the property sold is liable, on completion, to pay interest on the unpaid balance of the purchase money from the date when he takes possession."

Then comes the direction at the end of the same page which gave the plaintiff ^{a right} to invoke the jurisdiction of the Supreme Court.

"In their Lordships' opinion there should, in the working out of the decree of specific performance, be allowed to the appellant interest at such rate as may be fixed by the High Court of Jamaica on the unpaid balance of the purchase price but after taking into account the costs deductible under the order of the High Court from the date when the respondent took possession until actual completion. That date was never clearly established in the evidence before the judge. The respondent's testimony indicated a date in July 1976 but the last rent payment proved under the previously existing tenancy appears to have been that for the month of May 1976 and in default of agreement it will be necessary to establish the date of possession by inquiry."

Before this Court the plaintiff produced no additional evidence other than the evidence contained in the record and since the onus is on him to establish the date on the balance of probabilities it must be ascertained from the evidence or findings. The passage from the evidence of the defendant on which the opinion relies as regards possession at page 41 reads:

"In July 1976 there was a discussion in relation to the sales agreement which was not then concluded. I made certain requests to Miss Laing I asked that I be relieved of rent. I had already paid deposit."

It is true that Lord Oliver refers to last rental payment appears to have been in May, 1976 but the learned trial judge at page 64 of the record specifically found that the defendant was never a tenant after July 1976 and he found her to be a witness of truth. I therefore rule that interest at the rate of 16% on the unpaid balance be paid from the 30th July, 1976 to the date of hearing before me on the 29th day of February, 1988. That is the answer to the enquiry which Their Lordships directed to be made on "the ascertainment of the date the respondent took possession of the property sold as purchaser thereof."

As for "the ascertainment of the appropriate rate of interest on the unpaid balance of the purchase price" which is the second aspect of the inquiry, the plaintiff's counsel tendered a letter, Exhibit 1, from Mutual Life Assurance Society specifically relating to 8 - 10 Gladstone Drive. It reads so far as is relevant:

<u>"PERIOD"</u>	<u>ACTUAL RATE</u>	<u>EFFECTIVE RATE</u>
May, 1976 to July, 1980	14%	12½%
August, 1980 to February, 1984	15½%	13%
March, 1984 to September, 1985	15½%	14%
October, 1985 to August, 1986	21½%	20%
September, 1986 to November, 1987	21%	17% "

I would therefore award a rate of interest of 16% to the plaintiff from 30th July, 1976 to 29th February, 1988.

As for accounts to be taken, I direct the Registrar to take "an account of what is due from the respondent to the appellant up to completion of such unpaid balance (after deduction therefrom of the costs payable by the appellant under the order of High Court) after giving credit for the monthly payment of \$10 from March 1979 onwards so far as these have been paid.

There is no order as to costs.

May I say that I regret the delay in delivering this judgment.