



[2022] JMSC Civ.96

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015HCV03053

BETWEEN **CARMEN WILLIAMS** **CLAIMANT**
AND **MURIEL JOHNSON** **DEFENDANT**
(By her son and next friend Kevin Johnson)

IN CHAMBERS

Mrs. Denise Senior Smith instructed by Oswest Senior Smith & Co. for the Claimant

Ms. Denise Christie and Ms. Petal Brown instructed by Flojam Legal for the Defendant

Heard: April 20, 2022 and July 1, 2022

Whether a claimant can obtain a remedy in equity if not specifically pleaded – Oral agreement for sale of land – Whether there are sufficient acts of part performance – Whether the defendant has a defence of laches – Whether the claim is statute barred by virtue of Sections 3, 25 and 30 of the Registration of Titles Act

Carr, J

Introduction

[1] There is an old saying; a dead man tells no tales. Unfortunately, that is the difficulty with which the court is presented in this case. The claimant Carmen Williams, has sought to obtain a declaration from the court that she is wholly the owner of property registered at Volume 1101 Folio 590 of the register book of titles. Her

claim is based on an oral agreement for the sale of the property which she said was between herself, the defendant (Muriel Johnson), and the defendant's husband. Muriel Johnson is registered on the said title as joint tenants with her husband James Johnson by way of transfer dated the 5th of March 1982. At the time of the filing of this claim Mrs. Johnson suffered from dementia and was unable to file an affidavit in response. It is her son Kevin Johnson, her next friend, who filed an affidavit in response to the claim. Due to the dates on which Mrs. Williams indicates that the transactions for the sale of the property occurred Mr. Johnson was unable to offer much assistance as to the facts. At the commencement of the trial it was announced that Mrs. Johnson was deceased. Her husband predeceased her on the 25th of August 2005.

Background

- [2] Ms. Williams averred that she entered into an oral agreement with the Johnson's to purchase a portion of the property which is located at Daley's Grove in the parish of Manchester. The fixed date claim form did not specifically seek a remedy in equity. However, in her affidavit in support of her claim, she asked the court to hold that she was the owner of Lot 2 on the basis of the sale of the property which she said occurred sometime in 1981. There is no dispute that there was no written agreement for sale. Ms. Williams relied on two documents which she contends supports her assertion that the ownership of the property was acknowledged by Muriel's husband, James Johnson.
- [3] Essentially, she has asked this court to recognize and uphold the oral agreement between herself and the defendant and transfer the said property to her. Additionally, she seeks an order of accounting for rents collected from the property and compensation for loss of use of the property.

Issues

- [4] a) Whether the court can give a judgment in equity where the specific relief has not been pleaded.
- b) Whether Ms. Williams has demonstrated acts of part performance to enable her to obtain an equitable remedy of specific performance.
- c) Whether the defendant can rely on the defence of laches.
- d) Whether the claimant is barred by Sections 3, 25 and 30 of the Limitations of Actions Act (**LOAA**).

Analysis

Whether the court can give a judgment in equity where the specific relief has not been pleaded.

- [5] Rule 8.8 of the Civil Procedure Rules states:

“Where the Claimant uses form 2, the claim form must state –

- a) the question which the claimant wants the court to decide; or*
- b) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;”*

- [6] In this case the fixed date claim form has set out the question which the claimant wants the court to decide. There is however no mention of the fact that the claim is brought in equity. There is no specific reference in the fixed date claim form or in the affidavit filed in support to the doctrine of specific performance or part performance. The necessity for Ms. Williams to bring her claim in equity is based on the provisions of the Registration of Titles Act (**RTA**) specifically Sections 68 and 70 which outline the indefeasibility of a registered title and its effect in law.

- [7] Section 68 of the **RTA** states:

“No certificate of title registered and granted under this Act shall 'be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.”

[8] Section 70:

“Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:

Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the

patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenant of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument.”

- [9] The aforementioned provisions of the **RTA** were discussed in the Privy Council decision of **Gardener and Others v. Edward Lewis** ¹. The judgment was delivered by Lord Browne-Wilkinson who opined:

“From these provisions it is clear that as to the legal estate the Certificate of Registration gives to the appellants an absolute title incapable of being challenged on the grounds that someone else has a title paramount to their registered title. The appellants’ legal title can only be challenged on the grounds of fraud or prior registered title or, in certain circumstances, on the grounds that land has been included in the title because of a ‘wrong description of parcels or boundaries.’”

- [10] Ms. Williams has not asserted that she was a victim of a fraudulent transaction nor has she indicated any of the causes of action required to challenge the legal title. The Johnson’s title in law is therefore absolute. Her entitlement to a declaration must be brought on a claim in equity. Although the legal title can only be challenged on the grounds as set out in **Gardener and Lewis** there is provision in law for an equitable remedy.

¹ Privy Council Appeal No. 25 of 1997 para. 7

[11] Lord Browne-Wilkinson went on to discuss this legal principle at paragraph 8 of the judgment:

“...The land certificate is conclusive as to the legal interests in the land. But that does not mean that the personal claims (e.g. for breach of contract to sell or to enforce trusts affecting the registered land against the trustee) cannot be enforced against the registered proprietor.”

[12] In this case Ms. Williams has asserted that she is entitled to the declaration based on an oral agreement for sale which she is now asking the court to enforce, because the Defendant has failed to transfer the ½ acre lot to her in accordance with that agreement. It is for this reason that I am of the view that although not specifically pleaded I have the jurisdiction to determine whether Ms. Williams is entitled to equitable relief.

[13] I am fortified in this position by the dicta of Phillips J.A. in the Court of Appeal decision of **Medical and Immunodiagnostic Laboratory Ltd. v. O’Meally Johnson**² where it was stated:

*“Once the facts establishing the cause of action have been pleaded, it is not fatal that the claimant has not identified the cause of action. In **Karsales Ltd v Wallis** [1956] 2 All ER 866, Lord Denning said:*

“I have always understood in modern times that it is sufficient for a pleader to plead the material facts. He need not plead the legal consequences which flow from them. Even although he has stated the legal consequences inaccurately or incompletely, that does not shut him out from arguing points of law which arise on the facts pleaded.”

² [2010] JMCA Civ. 42 para. 53

[14] The judgment of the Court of Appeal accords with the provisions of **Section 48 (g) of the Judicature (Supreme Court) Act** which vests the court with the jurisdiction to determine matters and to grant remedies to a party once it appears to arise on their cause or matter. The section is set out below:

*“The Supreme Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it shall grant either absolutely or on such reasonable terms and conditions as it seems just, all such remedies as any of the parties thereto **appear to be entitled** (my emphasis) to in respect of any legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and multiplicity of proceedings avoided.”*

In summary, I am satisfied that I have the jurisdiction to determine whether Ms. Williams is entitled to relief in equity despite the fact that she failed to make such a claim in her fixed date claim form.

Whether Ms. Williams has demonstrated acts of part performance to enable her to obtain an equitable remedy of specific performance.

Was there an oral agreement for sale?

[15] The **Statute of Frauds** at **Section 4** requires that before an action can be brought for damages for breach of an agreement for sale of land, such agreement should be in a memorandum or note in writing, signed by the party to be charged or some other person lawfully authorized by him.

[16] Mrs. Senior Smith submitted that there was documentary evidence that was sufficient to satisfy the requirement of a note or memorandum in writing evidencing the sale. The two documents referred to by counsel are a letter and a will which were exhibited as **CW 3** and **CW 4**. Mrs. Senior Smith accepted that in order for

the court to rely on the written memorandum or note the following must be present on the document:

- a) a proper description of the property,
- b) a proper description of the parties,
- c) the signature of the parties, and
- d) the purchase price.

She conceded in her submissions that the purchase price was not stated on any of the exhibits. The absence of any of the requirements is fatal and as such the court cannot rely on the two documents as written evidence of an agreement for sale.

- [17] Perhaps in recognition of this deficiency in the documents she argued in the alternative that the court should accept the evidence of part performance by the claimant and find that there was an oral agreement between the parties.
- [18] The courts in equity recognizing that the provisions of the Statute of Frauds could cause undue hardship, developed the doctrine of part performance, so that a litigant would be able to obtain an order for specific performance in certain circumstances.
- [19] Mrs. Senior Smith argued that the claim is based on an oral agreement which was entered into between Ms. Williams and the Johnson's for the sale of a ¼ acre of land at first, and then a further ¼ acre sometime later.
- [20] Ms. Christie on behalf of the Defendant, pleaded the **Statute of Frauds**. As I have already determined that **Exhibits CW 3** and **CW 4** are insufficient to establish a written agreement I will focus on her submissions on part performance. It was submitted that the evidence of part performance was woefully inadequate. She contended that the acts relied on by the Claimant could be summarized as monetary acts, which the courts have consistently declared as insufficient to prove

that there was an oral contract. She relied on the case of **Nation Hardware Ltd. v. Norduth Development Company Ltd and Adrian Norton**³.

[21] Sykes, J, as he then was, examined the development of the doctrine of part performance and stated at paragraph 29:

“The Lord Chancellor in Maddison was not saying that payment of money could not, from the standpoint of pure logic, suffice as evidence of part payment. What he was demonstrating was that the long practical experience of equity judges determined, with good reason, payment of money alone, does not have the evidential cogency of other acts of part performance. The reason why payment of money alone was not accepted is that such an act is equivocal. It is simply not cogent enough to point to a contract much less a contract for the sale of land. The equity judges had to be mindful that in developing the doctrine of part performance they did not achieve judicial repeal of the Statute of Frauds...”

It was argued that the acts of part performance were usually accompanied by possession and that in this case there is no evidence that Ms. Williams entered into possession of the property.

[22] A Claimant who seeks to rely on the doctrine of part performance must establish this fact on a balance of probabilities and the court in making a determination as to this issue must consider the following:

- a) the acts done must refer to a contract for sale of land,
- b) those acts must be such as to render it a fraud for the defendant to take advantage of the fact that it is not in writing,
- c) the contract to which they refer must be such as in its own nature is enforceable by the court

³ Unrep. Claim No. HCV 2314 of 2005 delivered October 3, 2005

d) there must be proper parol evidence of the contract which is let in by the acts of part performance.⁴

Do the acts refer to a contract for the sale of land?

[23] Ms. Williams' evidence consisted of three affidavits which were accepted as her evidence in chief, she was also cross-examined. She asserted that the Johnson's were her relatives. James Johnson was her uncle and Muriel his wife. Sometime in 1981 she purchased a $\frac{1}{4}$ acre of land from them for the sum of US\$2,100 in cash. In 1986 she commenced construction of a three-bedroom house on the said $\frac{1}{4}$ acre. Subsequently she agreed to purchase another $\frac{1}{4}$ acre from the couple and money was sent via cheques to Patrick Johnson as payment towards the purchase price.

[24] She exhibited cheques totalling US\$4,500. She acknowledges that not all the cheques were made out to James Johnson, and she accepted that there were no cheques made out to Muriel Johnson. There is also no indication on any of these cheques as to the reason for the payments.

[25] The acts of part performance are encapsulated below:

- a) the sum of US\$2,100 was paid to James Johnson for a $\frac{1}{4}$ acre,
- b) a house was constructed on the property, and
- c) an undetermined sum of money was paid to Patrick Johnson for a further $\frac{1}{4}$ acre

[26] To bolster her claim Ms. Williams exhibited to her affidavit two documents. The first was a letter dated June 24, 1989 (**Exhibit CW3**) and the second was the Last Will and Testament of James Johnson (**Exhibit CW4**) dated the 18th of March 1996.

⁴ Fry on Specific Performance 6th ed.

[27] The relevant section of the letter is set out below:

“To Miss Carmen Williams

of 7390 North West 35th St. Miami

This letter is to certify that I James Augustus Johnson + Muriel Louise Johnson of the above address who jointly own Lot # (1) one on the Dayles Grove Housing Scheme has subdivide the same Lot and sold to Miss Carmen Williams one half acre Lot on which a house consists of 3 bedrooms 2 bathroom one Kitchen Living Verandah Garage and Tank under is now standing. This portion of Land is but and join to parochial Road leading to Burry Hill. Surveying to cut off this portion is on the way.”

The letter was signed J. Johnson and Muriel Johnson and was witnessed by Ceta Campbell who is now deceased.

[28] In the document described as the Last Will and Testament of James Johnson, was the following statement:

“I must also point out that just under half acre of the same Estate which is on the Title is belonging to Mrs. Carmen Williams which I have sold to her. This portion of land is butt and bound by the parochial road leading to Burry Hill and driveway leading to my House above. This portion of land now has a three-bedroom house on it.”

[29] Ms. Christie at the commencement of the trial sought to have this evidence excluded. The objection was overruled as I found that the defendant had ample time to file a notice of objection to tender, and the delay in doing so would result in an injustice to the Claimant who would not have had an opportunity to call witnesses to have the documents tendered otherwise. Such an objection, if upheld, would cause the trial to be delayed in circumstances where the matter was filed from as far back as 2015.

- [30]** It is also noted by this court that no challenge was raised in respect of the authenticity of these documents in the Affidavit in response filed by Kevin Johnson.
- [31]** What is the effect of these documents in relation to the case for the Claimant? The documents cannot be used to establish that there was a contract for sale of land. On the face of it, the documents only point to the fact that the property was sold to Ms. Williams. There is no mention of the purchase price and no indication as to how the house came to be on the ½ acre lot.
- [32]** Based on the dates of the cheques made out to James Johnson I accept that they coincide with the dates suggested by Ms. Williams. It is also noted that the transfer to the Johnson's was registered on the 5th of March 1982. Ms. Christie has submitted that the title would not have been issued in the name of the Johnson's if at that time Ms. Williams had an agreement for sale. The issuance of the title raises an issue that has been partially explained by the Claimant. It is her evidence that James Johnson was trying to convince her to enter into this agreement for sale for some time. She finally agreed in or about 1981. The original proposal she said was for another piece of land for which she invested significant sums, however that deal fell through. The understanding was that the land was to be purchased by the Johnson's for their use and that she was to purchase a part of it. I do not find that there is an inconsistency in the fact that the transfer was registered in the names of James and Muriel Johnson since the land was to have been theirs and Ms. Williams was to get a portion of it.
- [33]** In view of the above I find and accept that payments made by Ms. Williams to James Johnson was for the purpose of the purchase of the ¼ acre lot.
- [34]** The evidence of the construction of the house is not as convincing. Money was sent to Ms. Lorna Walton to be paid to James Johnson to aid in the construction of the house. There are cheques made out to Lorna Walton however there is no explanation as to their purpose. Ms. Williams also asserted that there was an agreement between the parties that the house would be rented and that the rental

income would be sent to her overseas. There is no documentary evidence in support of this. Ms. Williams exhibited a bank statement (**Exhibit CW 7**) but once again there was no detail as to who the money was coming from. Kevin Johnson stated that he knew money was sent to Ms. Williams however he was not aware of the reason for this. Ms. Williams agreed that she never took physical possession of the property. It was her evidence that she visited from time to time. Kevin Johnson stated that the house was tenanted and that it was his parents who collected the rent and dealt with the tenants.

[35] I am not satisfied on a balance of probabilities that there was any agreement for the rental of the premises between the Johnson's and Ms. Williams.

[36] The final payment of undetermined sums of money to Patrick Johnson for another ¼ acre has been categorically denied by him. He was never cross examined, and as such that evidence stands unchallenged. Ms. Williams in her first affidavit did not mention the cost of this second ¼ acre lot and in her supplemental affidavit she indicated it was somewhere in the region of USD\$2750.00. I reject the evidence as to further payments made by Ms. Williams, since she herself has been unable to quantify the sum which was agreed and the sum which was in fact paid.

[37] As there is no evidence to indicate that Ms. Williams ever took physical possession of the property, the only act of part performance was the money which was paid to James Johnson. I find that this is not enough. The courts have consistently declared that the evidence as to the payment of money is insufficient to prove acts of part performance in respect of an oral agreement for sale. In the circumstances therefore I find that Ms. Williams has failed to establish specific acts of part performance to prove the existence of a contract for the sale of land.

Would it be a fraud if the defendant was to take advantage of the fact that the agreement was not in writing.

[38] I do not find that the defendant's estate is trying to take advantage of the fact that the agreement was not in writing. Mr. Johnson has merely indicated that he has

no knowledge of any sale and that he has not seen any documentary proof of any agreement for the sale of the property.

Is the oral agreement enforceable by the court?

[39] This is the second hurdle which Ms. Williams faces. The oral agreement which she speaks of has not identified any specific terms upon which a court could enforce the agreement. There was no defined purchase price, no time given for completion, no indication as to how the purchase price was to be paid, and no terms as to how possession was to be given. Further, because the property was one lot, provision would have to be made for subdivision in order to enable Ms. Williams to have individual title to the ½ acre lot. No such provision was made in any oral agreement between the parties as outlined by Ms. Williams. By her own evidence Ms. Williams has indicated that there was no agreement which was capable of being enforced. A court cannot enforce an agreement where the terms are not properly particularized especially in circumstances where the party seeking to enforce the agreement has never been in physical possession of the property.

Is there parol evidence of the contract?

[40] Ms. Williams evidence does not speak to the contract. The exhibits only acknowledge that the lot was sold to her. Her witness statement does not assist her case as it does not refer to the terms of the contract either.

[41] In summary the only evidence of part performance is the evidence of the payment of money. The payment of money without more would not be enough to satisfy a court that there was a contract for the sale of land. Additionally, the claimant has not established the terms of the contract which she is seeking to enforce. In the circumstances she has not met the burden of proving that there were sufficient acts of part performance in order to enable her to obtain a remedy of specific performance.

Whether the defendant can rely on the defence of laches

“Equity aids the vigilant not the negligent”

[42] Having concluded on the issue of part performance that would ordinarily be the end of the matter. However, counsel Ms. Christie also raised the defence of laches. It was submitted that the court ought not to give equitable relief in circumstances where the Claimant has sat on her rights for in excess of thirty years. To aid her in this claim after such a long time would be an injustice.

[43] Ms. Christie urged the court to pay close attention to the fact that this claim was brought after the death of James Johnson and at a time when Ms. Williams was aware that Muriel Johnson was incapacitated. The delay of over thirty years in bringing the claim was prejudicial and ought to be considered as such, as the parties who were best able to speak to the transaction are no longer alive to do so. It was submitted that equity ought not to award a litigant who has sat on their rights and not sought to enforce them in a timely manner. She relied on the case of **Amrit et al v. Duncan Bay Development Company Limited**⁵.

[44] At page 22 of the judgment of R. Anderson, J it was said:

“Even when time is not of the essence of the contract, the plaintiff may have been guilty of such delay as to evidence an abandonment of the contract on his part, thereby, precluding him from obtaining specific performance. For a plaintiff to obtain specific performance, he must have shown himself “ready, desirous, prompt and eager. Where, however the plaintiff has been let into possession under the contract and has obtained an equitable interest, so that all he requires is a mere conveyance of the legal estate, even many year’s delay in enforcing his claim will not prejudice him.”

⁵ Unrep. Suit No. E 356 of 1998 delivered August 13, 2001

- [45]** The case also referenced the principle that if an argument against equitable relief is based solely on delay in circumstances where there is no statutory bar, the court should make a determination after taking into consideration the length of the delay and the nature of the acts done during the interval.
- [46]** In applying these principles to this case, I find that there was significant delay on the part of Ms. Williams in this matter. The agreement, by her evidence, was concluded sometime in 1988 or 1989. Although she indicated in her affidavit that she made several efforts to get Muriel Johnson to subdivide the property she did not say when this was done. It is not until 2013 that she seeks the assistance of a relative to find a buyer for the land. It is also in that year that she tried to obtain sub-division approval. In furtherance of this she sought the assistance of an attorney to facilitate the transfer of the property. A draft agreement for sale was prepared and dated 2014.
- [47]** James Johnson died in 2005, up to the time of his death there was no dispute as to the property. Based on all indications Ms. Williams was content in the knowledge that her Uncle knew that she was the owner of the ½ acre lot. She therefore did nothing to enforce the agreement during that time. It cannot be said that Ms. Williams acted promptly to protect her rights in this matter.
- [48]** The question is whether her failure to act constituted a waiver of her right to relief or that her conduct of neglect has put the Defendant in a position which would be unreasonable if the remedy was asserted.
- [49]** The doctrine of laches is an equitable defence. For the Defendant to succeed it must be established that the delay was significant and inexcusable and that it was unreasonable and resulted in prejudice to the detriment of the other party.
- [50]** I do not accept that Ms. Williams intended to waive her rights to relief, she thought the defendant was family and therefore would honour their obligations. I am of the view however, that her neglect has placed the Defendant in an unreasonable position. There is no one available to speak to the circumstances of the agreement

between the parties. The delay in bringing the claim has resulted in the inability of the Defendant to mount a proper defence to the claim due to the unavailability of witnesses who are now deceased. The Claimant is therefore given an unfair advantage that is prejudicial to the Defendant. I find therefore that the Claimant is barred from obtaining relief in equity due to the delay in bringing her claim before the court.

Whether the claimant is barred by Sections 3, 25 and 30 of the Limitations of Actions Act (LOAA).

[51] Before concluding on this matter I am compelled to address a point raised by Ms. Christie in her submissions. Although it is no longer relevant to the determination of this case I believe it is worth mentioning. Ms. Christie submitted that consideration ought to be given to the statutory defence of limitation under the **LOAA**. It is useful to set out the relevant sections of the **LOAA** at this time.

Section 3:

“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 30:

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

Section 25:

“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.”

[52] The combined effect of the three sections results in a Claimant being estopped from bringing a claim in equity for the recovery of land after twelve years from the date the right first accrued.

[53] The operative question would then be when did the right first accrue to the Claimant? Ms. Christie submits that nothing has been done within the last twelve years to oust the Defendant from the property and as such the claim is statute barred. The Claimant, she argues, has failed to prove that she took possession of the property within the twelve years.

[54] The claim however is based on specific performance which is an equitable remedy based on a breach of contract. The starting point for the reckoning of time must therefore be at the date of the breach. It is clear from the evidence of the Claimant that she did nothing to invoke the terms of the contract until she made attempts in 2013 to have the land subdivided. It is at this point that she engaged the services of an attorney to commence a claim. The breach of the purported agreement for sale was therefore in or around 2013 when Ms. Williams said she made overtures to Mrs. Johnson which went unanswered. It is plain from the date of the filing of the claim that the limitation period would not yet have expired. The claim for specific performance would not in these circumstances, had it been successful, been statute barred.

Conclusion

[55] The Claimant has failed to prove on a balance of probabilities that there was an oral agreement for sale for land located at Daley’s Grove Manchester. In any event the Defendant’s estate is entitled to rely on the defence of laches as the delay in

filing the claim is prejudicial and ought not to be permitted. Given the reasons as set out, judgment is entered on behalf of the Defendant.

Order

1. Judgment for the Defendant.
2. Costs to the Defendant to be agreed or taxed.