

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E.185 of 1976

BETWEEN	STANFORD BENT	PLAINTIFF
A N D	LINCOLN LEWIS	DEFENDANT
A N D	LESLIE FEARON	THIRD PARTY

B. J. Scott Q.C. and H! Haughton Gayle for Plaintiff.

B. Macaulay Q.C. instructed by Mrs. M. Macaulay for Defendant.

Thomas Ramsay instructed by Silveria and Silveria for Third Party.

Heard on: April 9, 10, 11, 1980; February 2, 1981; and July 8, 1983.

JUDGMENT

ORR J:

In this matter both the plaintiff and the defendant sought judgment on the Pleadings.

The Pleadings disclose the following:

In 1953 one Uriah Reid, deceased, was the owner of a portion of land registered at Volume 482 Folio 15 of the Register Book of Titles.

On the 21st November, 1953, the said Uriah Reid conveyed a portion of the said land the subject of the action to the defendant.

On or about the 12th December, 1959, the plaintiff and the defendant entered into an Agreement partly oral and partly written for the sale of this portion of the land at a price of Three Hundred and Thirty Pounds (£330).

It was a term of the Agreement that the defendant should provide the plaintiff with a registered title to the land in the plaintiff's name.

It was also agreed that the cost of the title should be borne equally by the plaintiff and the defendant.

It was further agreed that the plaintiff should pay a deposit of Two Hundred Pounds (£200) in respect of the purchase price. The plaintiff paid this amount and was immediately let into possession of the said property.

The plaintiff subsequently paid the balance of the purchase money.

Uriah Reid died on or about the 24th day of January, 1961. Probate of his will was granted to his executors Leslie **Fearon**, the third party herein and Easton Allen, on the 13th day of June, 1962.

On the 15th day of September, 1964, the said executors were registered on transmission of Certificate of Title entered in the Register Book of Titles.

The executors transferred the land by a registered transfer to Leslie Fearon only, on the 9th March, 1965.

The defendant failed to provide the plaintiff with a registered title to the land despite requests by the plaintiff.

The plaintiff claimed:

- (1) Specific performance of the said agreement;
- (2) Further or in alternative an order directing the Registrar of Titles to issue a registered title with the plaintiff as registered proprietor in respect of the said property and to amend certificate of title entered at Volume 1004 Folio 407 accordingly;
- (3) Costs
- (4) Further or other relief.

The plaintiff was granted leave to amend the Statement of Claim as follows:

" (2A) Further or in the alternative an order that the defendant forthwith do all that is reasonably within his power to obtain from the Clarendon Parish Council sanction of a subdivision of the lands registered at Volume 1004 Folio 407 aforesaid with the plaintiff's said freehold property being one lot thereof and cause the said plan to be deposited in the Office of Titles for the purpose of a transfer of the said freehold property to the plaintiff" by:

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1. Demanding that the said registered proprietor of the said freehold property apply to the Clarendon Parish Council for sanction of the said sub-division;
2. Diligently prosecuting the said application;
3. Should the said Council unreasonably refuse the said application, filing suit against the said registered proprietor to compel him to bring appropriate mandamus proceedings against the said Council.

(2B) Alternatively damages for Breach of Contract.

The defendant in turn was granted leave to amend the Defence as follows:

9. The defendant states that it is not within his power to obtain from the Clarendon Parish Council sanction of a sub-division of the lands registered at Volume 1004 Folio 407 aforesaid with the plaintiff's said freehold property being one lot thereof and cause the said plan to be deposited in the Office of Titles for the purpose of a transfer of the said freehold property to the plaintiff, as it is not within the power of the Council to entertain any such application, in that according to the Local Improvements Act, the contract between himself and Uriah Reid is illegal and void, a fact unknown to him at the time.

The defendant further states that in the circumstances the contract between himself and the plaintiff was illegal and void.

It is clear from the amendments and admitted by both parties that there was a sub-division contract in existence in respect of the original portion of land owned by the deceased Uriah Reid and that up to the date of trial no approval for the sub-division had been obtained from the Clarendon Parish Council as required by the Local Improvements Act.

Mr. Macaulay submitted that the failure to obtain permission for the sub-division rendered the original contract between the deceased Reid and the defendant illegal and void and of no effect and that as a consequence the defendant had nothing, neither a legal or equitable interest to transfer to the plaintiff.

Mr. Scott submitted that the contract was rendered valid by virtue of the provisions of section 13(1) of the Local Improvements Act.

Mr. Ramsay for the third party adopted Mr. Macaulay's submissions.

It was common ground that contracts for the sale of land for which sub-division approval had not been obtained were made in breach of the Local Improvements Act.

In 1968 the Local Improvements (Amendment) Act, (Act No. 36 of 1968) was passed with retroactive effect to validate the contracts so negotiated in breach of the law, and to protect the rights of property which had accrued to purchasers between January 1, 1954, and the date of enactment of the Amending Act August 22, 1968. The relevant provisions are as follows:

" 9A. (1) 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 4 or to obtain any sanction of the Board under section 6 or section 6A, 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 Board hereinbefore referred to, has been obtained".

(2) This section shall be deemed to have come into operation on the 1st day of January, 1954, hereinafter referred to as the "operative day" so, however, that as respects transactions which took place between the operative day and the date of enactment of the Act, the amendment effected in the principal Law by virtue of this section of this Act shall not operate so as to nulify or affect any transfer or conveyance of land effected pursuant to any contract of sale made prior to the date of enactment of this Act.

In Rose Hall, Limited v. Elisabeth Lovejoy Reeves [1975]

13. J.L.R. 30, Lord Wilberforce in delivering the opinion of the

Board said at page 34:

" The general objective of this provision is clear enough. Section 9A(1) had changed the then existing legal position by providing that sub-division contracts theretofore invalid under the Land Improvements Law (Cap. 227) were not to be treated as invalid, and, provided that sanction of the Board was obtained - even though subsequently to the contract - might be executed by transfer or conveyance. Section 3(2) gave retroactive effect to this provision, so that it was necessary to deal with transactions which might have taken place between the retroactive date (January 1, 1954) and the date of enactment (August 22, 1968). In general terms the objective was, as might be expected, to protect rights in property which had accrued in this period".

The contract between the plaintiff and the defendant was entered into in 1959 during the transitional period and is therefore not invalid.

I now deal with the reliefs requested by the plaintiff.

(1) Specific Performance

The contract between the plaintiff and defendant cannot be executed by transfer or conveyance until the sanction of the Clarendon Parish Council has been obtained. As a consequence the plaintiff cannot obtain an order for Specific Performance;

(2) Order directing the Registrar of Titles to issue a registered title to the plaintiff and to amend the original Certificate of Title.

Mr. Gayle stated that he was not convinced that this relief was tenable and that he was not relying on it. However, Mr. Scott in his reply sought to support it.

It is unnecessary to discuss the merits of this application. The plaintiff has no legal estate for which he can demand to be registered as the proprietor.

(2A) An order that the defendant do all that is within his power to obtain from the Clarendon Parish Council sanction of a sub-division and the means by which the defendant should effectuate the order.

This application is misconceived. The defendant is not the owner of the portion of land to be sub-divided. In addition the relief sought is vague and incapable of enforcement.

(2B) Damages for Breach of Contract.

The plaintiff is entitled to this relief. It was a term of the contract that the defendant would provide the plaintiff with a registered title to the land. The defendant has failed so to do.

There is insufficient evidence on the pleadings to determine this issue. I direct that the damages be assessed.

There will therefore be judgment for the plaintiff against the defendant with damages to be assessed with costs to be agreed or taxed.

Judgment for the defendant against the third party with damages to be assessed.

Costs to defendant including all costs that the defendant may be ordered to pay to the plaintiff, and the defendants' costs of his defence and his costs of the third party proceedings.

I desire to record my regret at the delay in delivering this judgment. This was due in part to the fact that the note book was unfortunately mislaid.

C. F. B. ORR
Judge.