IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 294 of 1998

BETWEEN	ALFRED CHAMBERS	CLAIMANT
AND	SARAH BROWN	DEFENDANT

Ms. Audre Reynolds for Claimant instructed by Patrick Bailey and Company.

Ms. Saverna Chambers for Defendant.

Coram: D. O. McIntosh, J.

HEARD; 19TH to 20th MARCH, 2009

JUDGMENT

The Claimant by writ filed on the 31st August, 1998 seeks:

(1) A Declaration that an Agreement entered into between the parties on the 19th September, 1984 has been duly rescinded or alternately recession of the said agreement.

(2) A Declaration that the Defendant is a tenant of the Plaintiff.

(3) Recovery of premises located at 22 Cedar Valley Road in the parish of St. Andrew.

The basic and relevant facts in this case is not an issue, although the Claimant has admittedly tried to confuse the issue by making reference to "house spot" and the like.

There really is no issue that the claimant is seeking to recover land, part of 22 Cedar Valley Road. This property is divided by a dry gully and it is the section at the back, across the dry gully that claimant seeks to recover.

This section of land is depicted by Exhibit 15, a diagram and is occupied by the defendant and members of her family and they have substantial immovable, concrete houses on the land.

At the genesis, the claimant lived and worked in the United States and was a machine operator. The Defendant was a household helper who leased a piece of land to put a house on.

It is Claimant's evidence that he first knew the Defendant when he came to Jamaica for his father's funeral in April, 1984.

That it was his aunt Miriam Williams who told him she had leased the lands, (across the gully), to the Defendant. They met and spoke and he ratified the lease agreement.

Later he and Defendant negotiated for the purchase of the land. Neither of them had a lawyer. It was the Claimant who prepared the Sales Agreement as evidenced by Exhibit 2.

The Claimant who was already in possession, paid the full purchase price for the land.

The Defendant having paid the purchase price for land rebuilt her house, putting up permanent concrete structures and her daughter also did likewise.

She has remained on the land to this day and has been in possession whether by way of lease or otherwise up to the filing of this suit in 1998. On the other hand it may be thought that her possession, adverse or otherwise was up to the filing of the in the Resident Magistrate's Courts in 1997, see Exhibit 12.

The Defendant was therefore in undisturbed possession from 1984 to 1997, a period of 13 years.

- See -

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This should be a complete answer to the claim even though the Claimant tried to refund the defendant's money; which money's she did not accept and never negotiated the cheque. As a result the cheque which is in evidence – Exhibit 6, is now non-negotiable and the Claimant still has the money the defendant paid him for the property.

The possession and escalation of the property would be good against any claim by the wife of the claimant for the same reason.

- See -

Willis vs Wilis

At the time that the Claimant sold the property he knew that it was in the joint names of himself and his wife, yet he vehemently denied this to the defendant in letters as per Exhibits.

This could account for the reason he wrote letters telling claimant about what she should or should not do with the land that she had bought.

See Exhibits 5, 9, 10.

He maintained that his wife had nothing to do with the land and the crass manner in which he wrote about his wife speaks volumes about the man's character and credibility.

There was a trial at the Resident Magistrates Court in Kingston, initiated by the Claimant.

At that trial in 1997 the Court dismissed the claim and on Defendant's Counter Claim ordered Specific Performance of the Sales Agreement or damages for Breach of Contract being the value of the property at current market value together with dwellings thereon, interest and special damages.

One does not know if it was brought to the attention of the Resident Magistrate that the Claimant was not the sole owner of the property. It is also unlikely that the Court had in its contemplation the undisturbed possession of the property by defendant for over 12 years.

What is more important or significant is the fact that claimant never appealed the judgment. That judgment still stands and has not been set aside.

The court did advise Claimant [he says] to obtain subdivision approved so that the defendant could get her land.

Claimant in his evidence says he made an" Oral Application" to the Kingston and St. Andrew Corporation (KSAC). His lawyer wrote a letter of enquiry enclosing a Plan. As the evidence of Mr. Leonard Francis indicated, no one made an application for subdivision for the land at 22 Cedar Valley Road. There were two enquiries, which were years apart. These enquiries met with different responses.

It was the duty of Claimant to give Specific Performance or to implement the alternative, in respect of the judgment of the Court.

He has not done so. He has done nothing and is in ' contempt of court'.

Instead he has brought this new suit in this Court for the same remedies he had claimed in the Court below.

This time his wife is no longer on the title and in her place is his son and they are both adamant that they want the Defendant off the land. They are also adamant that they should not compensate her.

CONCLUSION

There is no real challenge to Defendant's claim that she has not been on these lands since 1974. It is highly improbable that the Claimant first met with the Defendant when he came to a funeral in April, 1984 and concluded the sale of the lands then and there.

It is more probable that claimant would have visited his parents during the years proceeding his father's death and would have met the Defendant.

The letters Exhibits 3 to 10, demonstrates a level of camaraderie, familiarity and confidence between the parties which seem to belie their having met for the first time at a funeral in April of 1984.

However the Defendant by virtue of her undisturbed possession, upon purchase of land between 1984 and 1997 should be entitled to Specific Performance.

If one considers the period that she has occupied land, in whatever capacity for 1974 to 2009, she should be entitled to Specific Performance.

There are however, two problems which would have to be over come before Defendant would get title to land.

(1) There would have to be a subdivision. Mr. Leanord Francis did give evidence of the possibility of subdivision approval based on an enquiry made on behalf of the Defendant.

He also indicated that this was not a certainty as conditions would have to be met and there are cases where approval has been given and later rescinded and vice versa.

(2) The property is jointly owned. It was so at the time of the sale and is so now. While joint ownership can be severed, the Claimant is adamant that his son does not wish to have severance of the land and he himself does not.

If Specific Performance is not practical, as inadequate as it may be Damages, will have to suffice.

The parties have agreed that the present value of houses on the land would be about Two and One Half (2.5) million dollars. Claimant's attorney has expressed the view that such a sum would be exorbitant. It is clear that she has not given consideration to the following facts:

(a) Defendant will be required to relocate after spending some 35 years on the land.

(b) She would have lost the opportunity to enjoy the land she purchased some 25 years ago.

(c) She would be entitled to loss of a bargain.

(d) The Claimant still has her money which at compound interest at present bank rates should be a part of any award of damages.

(e) The trauma which the dislocation must cause to the defendant and her family.

In all the circumstances, this Court will dismiss the claim with costs to the Defendant.

This Court will enter judgment for the Defendant on her counter claim with costs.

In Lieu of Specific Performance this Court will award:-

(1) Damages in the sum of Two and a Half (2.5) Million Dollars and order that the Defendants and all members of her family on that land, give vacant possession of the land six months after receiving the said sum of Two and one Half ($2.5) million Dollars.

(2) That if the Defendant should neglect or refuse to pay the said sum by the 16th April, 2010, then the sum will accrue interest at the rate of 12% per annum until such sum is paid.

(3) Defendants costs on claim and counter claim to be taxed if not agreed.