

CA. L.M.D. - Sale Contract - Claim for specific performance dismissed
by R.M. - note or memorandum in writing - Statute of Frauds -
whether documents produced when, together, a sufficient note or
memorandum in writing - whether essential terms contained in
document - whether enforceable contract - whether acts of part performance
HELD - No enforceable contract - claim dismissed
IN THE COURT OF APPEAL
R.M.C.A. NO. 1/88
JAMAICA
Madison v. Alderson
27th September 1988
comp ✓

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN PATRICK GRANT PLAINTIFF/APPELLANT
AND LAUREL MALONEY DEFENDANT/RESPONDENT

Norman Davis for appellant

Respondent not represented and not present

20th April & 20th June, 1989

CAREY, J.A.:

This is an appeal from a Judgment of His Honour
Mr. Lennox Campbell, Resident Magistrate for the parish of
Portland given on the 4th February, 1987 in which he
dismissed the appellant's claim for specific performance
with respect to a parcel of land situate at Birnamwood in
that parish, which he averred he had agreed to purchase
from the respondent. The particulars of claim are somewhat
oddly pleaded, and are worth setting out -

"WHEREAS THE DEFENDANT agreed to sell
all that parcel of land situate at
Birnamwood o/c Cumbolook in the parish of
Portland and comprising approximately 6
acres and butting and bounding northerly
and easterly by the Malmo Spring southerly
by lands of George Lowe and westerly by
land of Estate Charles Lowe and reached by

"a reserved road reaching the lands on the southern boundary for the consideration of \$200.00 per acre and whereas the defendants received a deposit of \$350.00 per acre and whereas the defendants received a deposit of \$350.00 on account and put the plaintiff in possession as owner and whereas the Defendant has failed to honour the said agreement."

The evidence in the case as given by the plaintiff was quite exiguous and amounted to this. There was a conversation between both man and it was agreed that the purchase price would be \$300.00 per acre. No payment was made at that discussion but he received a letter from the defendant which I set out hereunder:

"96C Molynes Road
W. D. O.
Kingston

Dear Patrick

Further to our conversation a few days ago I have decided to let you have the land. I have started to execute the documents so that it may be ready at the termination of your tenancy.

The amount of \$350. three hundred & fifty Dollars should be forwarded to me by the 20th inst so that I may be able to offset some of the attendant expenses. If you can come to Town it would be very go. (sic) but failing that the money can reach me by Registered mail.

Best of luck

Yours faithfully

L.M. Maloney."

He subsequently went to see the defendant and paid him \$350.00 for which he was given a receipt. That represented a down-payment in respect of the purchase of the land. I set out the terms of the receipt -

"96C Molyne's Road

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Received from Mr. Patrick Grant the
Sum of Three Hundred and fifty Dollars -
as deposit on 8 acres of land at \$350.00
Birnawood

L.M. Maloney

Temporarily

to be Stamped"

Since that deposit in 1978, he made no further payments nor has he made any attempt to contact this defendant nor was there any arrangement when the next payment was to be made. It would seem that the plaintiff had been in occupation or possession of the land as a tenant presumably of one Samuel Maloney, brother of the plaintiff, who predeceased him in 1977.

It should be said by way of explanation, that although there was a counter-claim filed on behalf of the defendant for recovery of possession, it was heard by consent of the parties first, as if it were the claim while the action for specific performance proceeded as if it were the counter-claim. In the result, this pseudo counter-claim was also dismissed, on the grounds that the notice given was invalid to determine an agricultural tenancy.

The evidence of the defendant, who is a Justice of the Peace, was to the effect that after his brother Samuel died, he spoke to the plaintiff requesting that future rental be paid to him. The rental agreed was \$25 per month. In 1979 he received \$350 as part payment of arrears of rental, but he has received no further amounts from the plaintiff. He was not the owner of the land nor did he promise to sell

any land to the plaintiff.

The defendant's viva voce evidence is plainly at variance with the documents tendered in evidence. However equivocal the letter (Ex. 2) might be, and I do not accept that it is, the receipt makes it abundantly clear that both documents when read together, show an agreement for the sale by Mr. Maloney and the purchase by Mr. Grant of the 8 acres of land. In Exhibit 2 the phrase "let you have the land" is consistent with a sale and "to execute documents" can only refer to an agreement for sale or some other document of conveyance. It was, in my view, wholly inconsistent with rental or arrears of rent. But even if it could be held that the parties had entered into an agreement for the sale of land, the question which then arises is whether the writing produced is a sufficient note or memorandum of the agreement.

I think we are plunged at once into a thicket of difficulties. It is trite law that the essential terms of the contract must be contained in the memorandum. The most important term plainly is the purchase price. Nowhere does that appear in either document tendered as evidence of the memorandum in writing. The property, it is true, has been described. In Exhibit 2 the property is referred to as "the land" but in Exhibit 3 it is described as "8 acres of land at Birnamwood". The term dealing with completion is included but it is possible to infer that completion will be within a reasonable time. The parties are also identifiable. The conclusion is inevitable that there was no sufficient note or memorandum to satisfy the Statute of Frauds.

The learned Resident Magistrate held -

"The Court finds as a matter of fact that there was no valid and enforceable contract. There was no clear evidence of contract certain and definite in its terms.

The size of the area about 6-2 acres on one hand and over seven on the other, was not sufficient

Even where its neighbours are stated, the boundaries are not definite. No date was set for completion of the sale, or manner and rate of future payments. I find as a matter of fact that no sale price was agreed upon."

The conclusion is correct although I differ from some of his reasons. In the circumstances, there really was no evidence whatever of any acts of part performance on the part of the plaintiff. As to this, the learned Resident Magistrate found as follows:

"The plaintiff relies on his possession as being a sufficient act of part performance. The Court finds that the mere fact of possession is insufficient and equivocal. In Madison vs Alderson,

Selborne L.P. P. 429 All the authorities show that the act relied upon as part performance must be unequivocal and in their own nature referable to some sale agreement as that alleged. The plaintiff's possession is consistent with a tenancy or a purchaser put into possession."

I think that to be right. The evidence such as was adduced pointed rather to the fact that the plaintiff had been in possession of the land long before any discussion about sale.

In the result, there was no basis for the grant of specific performance and the judgment of the Court below must be affirmed. I would dismiss the appeal and make no order as to costs.

DOWNER, J.A.:

I agree.

MORGAN, J.A.:

I agree.