

In the Supreme Court of Judicature of Jamaica

In Equity

Suit No. E. 230 of 1975

Between	Norma Haddad	Plaintiff
And	Riverton City Limited	Defendants
And	The Registrar of Titles	

In Chambers

July 7, 1976

David Murray for plaintiff

Dr. L. G. Barnett and Peter Millingen for defendants

Registrar of Titles not represented.

Orr, J. (Ag):

This is an application by Norma Pearl Haddad for an Order directing the Registrar of Titles to delay registering any dealing with certain lands particularised in the summons.

History

The applicant is the defendant in Suit No. C.L. 1562 of 1964, filed on the 8th October, 1964 - Riverton City Limited vs. Norma P. Haddad in which the plaintiff claimed the sum of \$4,840 for money due and owing under a contract in writing made between the parties on the 7th January, 1955, whereby the plaintiff agreed to purchase certain lands consisting of 50 lots from the defendant. Subsequent to the contract the defendant had sold six of the lots for which the plaintiff had delivered titles.

One of the Conditions of Sale is as follows:

" Condition Precedent: This sale is subject to the approval of the Kingston and Saint Andrew Corporation and the Water Commission to the subdivision and is also subject to any terms and conditions attached to such approval. The Vendors agree to apply for such approval with reasonable promptitude. In the event of the subdivision plan not being approved by both the K.S.A.C. and the Water Commission the contract shall be void and of no effect and the Vendors will on refusal of the sub-division by either the K.S.A.C. or the Water Commission repay the deposit of the purchaser without any interest therein and shall be under no other liability or obligation to the purchaser. "

On the 30th January, 1964, the applicant lodged a caveat against the lands.

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Defence and counter claim were filed on the 1st October, 1966.

The defence contended that the plaintiff was not entitled to any relief by reason of the failure of the plaintiff as vendor to obtain approval from the K.S.A.C. as stipulated in the Condition Precedent.

The counter claim was for repayment of the deposit on the remaining lots and damages.

The plaintiff in reply alleged that the failure to obtain approval from the K.S.A.C. was occasioned by the making of an Order by the Government under the Flood Water Control Law by which Order a portion of the land might be required for a Water Control Scheme.

Plaintiff also stated that the contract had not been discharged.

Summons for Directions were heard on 11th March, 1966. On the 18th July, 1975, plaintiff filed Notice of Discontinuance.

On the 20th November, 1975, the defendant received a notice dated 17th November, 1975 from the Registrar of Titles indicating that Riverton City Limited had applied for registration of Transfer of Titles to the Minister of Housing in respect of the lots and would proceed to register the transfer unless precluded by an Order of a judge.

On the 11th December, 1975, this summons was filed and applicant obtained an Interim Order.

On the 25th July, 1976, defendant filed a Notice of Intention to Proceed.

At the hearing of the summons Mr. Murray for the applicant submitted that Riverton City Limited had no interest to convey to the Ministry of Housing but only an interest in the purchase money, hence the application should be granted. He based his submissions on Hillingdon Estates Co. vs. Stonefield Estates 1952 1 A.E.R. 853.

He further submitted that there was pending an application by the plaintiff to amend the pleadings and that as a result the whole issue of the state of the parties was "in a state of flux."

Dr. Barnett's submissions may be summarised as follows:

Applicant had no interest in the land as required by the Registration of Titles Act because:

(a) applicant had repudiated the agreement;

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- (b) had affirmed the repudiation by seeking monetary compensation and a refusal of the deposit on the purchase money;
- (c) applicant could only establish an interest in land by advancing a claim for Specific Performance and that she was now estopped from making such a claim.

He submitted further that the Order sought was in the nature of an injunction and the principles governing the grant of an injunction were applicable thereto. In the circumstances an injunction ought not to be granted. He cited a number of authorities in support of his submissions.

It is clear that the contract between the parties resulted in the transfer of an equitable interest to the purchaser Riverton City Limited.

The question to be resolved is whether or not that interest is extant having regard to the conduct of the parties and the transactions subsequent to the contract.

Questions as to whether or not the contract was frustrated as a result of the Order under the Flood Control Law, whether or not it was repudiated, whether or not the plaintiff can now maintain an action for Specific Performance are all matters to be decided by the Court of trial.

As Lord Diplock said in *American Cyanamid v. Ethicon* 1975 1 A.E.R. 504 at 510 dealing with an injunction:

"It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages on the grant of an interlocutory injunction was that: "

" it aided the Court in doing that which was its great object, viz abstaining from expressing any opinion upon the merits of the case until the hearing. "

(*Wakefield v. Duke of Buccleuch*)

These observations are apposite to the present application.

In view of the history of this matter and the various issues which arise for determination in connection with the lands the subject matter of the action, I hold that the interests of the parties will best be served by the continuance of the caveat pending the trial of the action.

Order in terms of the summons accordingly.

Costs to be costs in the cause.