

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW  
SUIT NO. C.L 1997/J064

BETWEEN	BENJAMIN JACKSON	PLAINTIFF
AND	MAFFESSANTI BROS. LTD	1 <sup>ST</sup> DEFENDANT
AND	THE REGISTRAR OF TITLES	2 <sup>ND</sup> DEFENDANT

Mr. Norman Davis instructed by Miss Carol Sewell for Plaintiff.

Mr. D. Scharsmidt Q.C instructed by Robinson Phillips and Whitehorn for first Defendant.

Second Defendant not appearing and not represented.

Summons for Interlocutory Injunction - Heard March 3, July 13, 1998

Judgment delivered July 16, 1998

IN CHAMBERS

HARRISON J.

The cause of action in this matter sounds in contract and it arises out of a transaction between the plaintiff and first defendant concerning the sale of Lot 5, land at Huddersfield, St. Mary and registered at Vol.1208 Folio 769 of the Register Book of Titles. The records indicate that this lot is now registered at Volume 1240 Folio 15 of the Register Book of Titles.

The Plaintiff claims inter alia, against the first defendant:

“1. A declaration that the exchange of correspondence between the parties and/or the act of part performance by the Plaintiff in paying a deposit and/or the written agreement signed by the plaintiff but not the defendant are sufficient memoranda of

a contract for the sale of the land.....to satisfy the provisions of the Statute of Frauds...”

The summons for interlocutory injunction seeks an Order that the Defendants by their servants, and/or agents or otherwise, be and are hereby restrained from taking any further step to register Transfer No. 968198 of all the land registered at Volume 1240 Folio 15 of the Register Book of Titles or any other document in respect of the said title, until the final determination of this action. The application is supported by an affidavit from Mr. Clayton Morgan, Attorney at Law, who has deposed that he is duly authorised to depone to this affidavit on behalf of the Plaintiff as the matters in issue are to his personal knowledge and at all times he acted for and on behalf of the plaintiff.

The affidavit evidence states inter alia:

“3. That in or about April 1991, the Plaintiff and one Mr. Ernest Maffessanti on behalf of the first defendant entered into a parol contract whereby the 1<sup>st</sup> defendant agreed to sell and the Plaintiff agreed to purchase a parcel of land in the Parish of St. Mary.....for the sum of \$1,800,000.00...

4. That under cover of letter dated the 18<sup>th</sup> day of June, 1991, the 1<sup>st</sup> defendant’s Attorneys at Law sent me an agreement for sale in respect of the said parcel of land; that a survey of the said parcel of land indicated that the area of the said parcel of land was not accurately set out in the said agreement of sale and that eventually a new agreement for sale was sent to me. That it was a special condition of the said new agreement that:

“It is a condition precedent to the coming into force of this Agreement that it is to be signed by both parties and the deposit paid by the purchaser.”

5. That under cover of letter dated the 26<sup>th</sup> day of September, 1991 I sent to the Attorneys at Law for the 1<sup>st</sup> defendant the said new agreement duly signed by the Plaintiff together with the deposit of \$270,000.00.....

6. That by letter dated the 6<sup>th</sup> day of March 1992, the Attorney's at Law for the 1<sup>st</sup> defendant returned the said deposit and stated inter alia that the 1<sup>st</sup> defendant did not sign the said new agreement, thereby cancelling the said sale.....”

Copies of the correspondence passing between the Attorneys at Law for the respective parties have been exhibited.

A caveat was lodged against the said title and the second defendant, The Registrar of Titles, has warned this caveat.

Mr. Davis contended that if special condition at 4 above, did not apply to the case, then the exchange of correspondence exhibited, satisfied the Statute of Frauds and the Court could find in these circumstances, that there was evidence of an enforceable Agreement. Furthermore, he submitted that although the first defendant had not signed the sale agreement, there was a binding agreement as the Attorneys at Law who were Agents for the first defendant had stated in a letter to the Plaintiff's Attorney at Law that, “we will have our client sign the agreement.”

Mr. Davis also submitted that there was part performance by the Plaintiff in relation to an oral contract between the parties. He submitted that the first defendant having retained the deposit for some six (6) months before the purported cancellation of the agreement would have caused the plaintiff to act to his detriment. Mr. Scharsmidth, on the other hand, submitted that the mere payment of money as a deposit was not a sufficient act of part performance. In response to this submission, Mr Davis said that this deposit was not merely a payment of money but it was made in response to two letters written on behalf of the first defendant.

Mr. Davis also contended that the plaintiff could not be guilty laches. He argued that it was some one year and three months after the cancellation of the agreement that a caveat was lodged. The Registrar of Titles had warned the caveat in April 1997 and suit was filed on the 9<sup>th</sup> May, 1997. He further argued that neither could the action be statute barred as the purported cancellation of the agreement was in March 1992. He submitted that time would therefore have to run from that date. He finally submitted that there were several serious issues to be tried in the case and that the injunction should be granted.

Mr. Scharsmidt on the other hand, submitted that there was no enforceable agreement in the case. He contended that in order to have an enforceable agreement, it must be evidenced in writing and signed by the party to be charged. He contended that the documents referred to by Mr. Davis clearly demonstrated to the contrary that there was no agreement which could be legally enforced. He finally submitted that there was no issue to be tried and the summons should be dismissed.

The issue for consideration in this matter will be whether there is an enforceable contract. Whether it is an oral contract or one based on the documents exhibited, is a matter really for a trial judge to decide. The question I pose is this, "Are there serious issues for determination?"

Let me deal firstly with the issue of the oral contract. I do agree that the mere payment of money as a deposit for the sale of land is not sufficient to amount to part performance where an oral agreement is alleged. In the instant case, I do believe however, that a court will have to consider the letters referred to by Mr. Davis to see whether or not the first defendant in requesting this payment and having kept the deposit for some six months had caused the plaintiff to act to his detriment. Secondly, is there in existence some memorandum or note signed by the parties referable to the Sale Agreement to satisfy the relevant provisions of section 4 of the Statute of Frauds? The answer to this question will not be found in the sale agreement as only one of the parties had signed. The case of *Colley v Colley* SCCA 79/91 delivered on the 28<sup>th</sup> April 1993 could therefore be of some assistance. I agree with Mr. Davis that a Court could possibly find answers to this question in the documents which passed between the Attorneys representing the parties. For example, how would the Court

construe the statement in the letter from the first defendant's Attorneys at Law, "we will have our client sign the agreement." What is meant by reference to the statement in one letter that "the transaction is being cancelled...?" What is this "transaction" that the first defendant's Attorneys at Law are referring to? It is my considered view that these are not trivial matters, but they are serious issues which the trial judge has to determine.

In the circumstances, I think it is proper on the balance of convenience, to grant the injunction prayed. It is hereby ordered that the Defendants by their servants, and/or agents or otherwise, be and are hereby restrained from taking any further step to register Transfer No. 968198 of all the land registered at Volume 1240 Folio 15 of the Register Book of Titles or any other document in respect of the said title, until the final determination of this action. The Plaintiff shall have his costs taxed if not agreed.