

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 4/85

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

BETWEEN - STEPHEN THOMPSON - DEFENDANT/APPELLANT
AND - ALPHANSO LEWIS - PLAINTIFF/RESPONDENT

Norman Wright for the appellant

Trevor Levy for the respondent

March 17, 1987

ROWE, P.:

On the 4th December, 1984, Morgan J. gave judgment for the plaintiff/respondent in an action in which he claimed against the defendant/appellant, Thompson, that he execute a transfer to the plaintiff/respondent of certain lands referred to in an agreement dated the 15th March, 1978, and that Thompson make application to the Registrar of Titles to bring the land abovementioned under the provisions of the Registration of Titles Law. The learned trial judge ordered that the defendant/appellant make an application to the Registrar of Titles to bring the land, the subject of the suit, being 2 squares more or less situate at Commadore, Linstead, in the parish of St. Catherine, with a house thereon, under the provisions of the Registration of Titles Act

and that the defendant/appellant do execute a transfer and deliver to the plaintiff/respondent the said certificate of title with the transfer duly registered thereon within six months of the date thereof and there was an order for costs.

The defendant/appellant seeks to have that order set aside on two grounds:

- "1. That the learned trial judge erred in law in holding that the Attorney-at-Law acting for the Plaintiff and Defendant was not a stake-holder.
2. That the learned trial judge erred in her interpretation and/or construction of the agreement between the Plaintiff and the Defendant dated the 19th June, 1978. "

And prayed:

"That not only should the order of the trial judge be set aside, but that there should be judgment in favour of the defendant who had counter-claimed and in the counter-claim had asked for a declaration that the Plaintiff was in breach of the original agreement of the 15th March, 1978 as also of an agreement of the 19th June, 1978, for rescission of the contract and for recovery of possession of the property and claimed damages for breach of contract, and for wrongful possession of the said parcel of land. "

Mr. Wright has argued quite fully both grounds of appeal. The facts shortly stated are that the defendant/appellant owned land at Commadore in St. Catherine, and in 1978 he was having marital problems between his wife and himself which was leading to divorce and there was a claim under the Married Women's Property Act which was in the process of being settled, and consequently, the defendant/appellant needed some ready cash. He, and the respondent who lived quite near by, in St. Catherine, had a discussion about the

sale and purchase of this land and the evidence was that the defendant/appellant persuaded the respondent to offer to purchase this land, that the purchase price was fixed at \$2,700.00, the terms of payment being that \$2,000 would be paid upon the signing of an agreement and \$700 when title was available.

Both parties went along to see Gresford Jones and Company of 5 Duke Street, Kingston, and it appears that they dealt with Miss Sonia Jones, an Attorney-at-Law, in those Chambers. An agreement dated the 15th March, 1978, was filled up and signed and the important parts of this agreement for sale were the purchase price fixed at \$2,700.00, the deposit of \$2,000, the title should be registered title under the Registration of Titles Act, both parties to contribute to the cost of the survey and the registration. Completion date was fixed for the 15th March, 1979, possession was to be given to the purchaser on full payment by him of the deposit money. Gresford Jones should have the carriage of sale and the attorney for the purchaser was given as Gresford Jones. So that we here have a contract of sale in which Gresford Jones was acting for both parties to the sale.

It appears that on that same day a sum of \$2,000 was paid by the respondent to the cashier at Mr. Jones' office. The appellant said that he protested that this money should not have been paid to Mr. Jones' but that the money should have been paid directly into his hands. His protest did not result in the money being paid to him, and he said that Miss Jones told him that it was necessary for him to get an authority from Mr. Lewis, the respondent, for the money to be paid to him prior to the obtaining of title.

The next important date is the 19th June, 1978, when both the appellant and the respondent attended at the office of Gresford Jones and they were interviewed by Miss Jones and a document was drawn up which was put into evidence as exhibit 4 and its contents are important. It is a document in the handwriting of Miss Jones, addressed to Gresford and Sonia Jones, Attorneys-at-Law, and it reads:

"We, Stephen Thompson and Alphanso Lewis having agree that after our respective legal positions have been fully explained to us (which we acknowledge has been done) that Mr. Lewis will be granted immediate position of the land, the subject of this contract for sale, and he hereby authorizes payment of up to \$2,000.00 on account of the purchase money to Mr. Thompson and thereby released the above-named attorneys from any liability in relation thereto and in full realization that Mr. Thompson has signed no documents to put Mr. Lewis in a position to obtain a registered title.

"Further, and purely for the sake of peace, Mr. Lewis will allow Mrs. Thompson, Mr. Thompson's ex-wife to reap and take away any crops which she has planted and which currently are growing on the said land, the subject of the contract, limited to the crops planted before the contract was signed."

This document was signed by Mr. Stephen Thompson and Mr. Alphanso Lewis.

Mr. Thompson, the appellant, said that on that occasion he sought to get the \$2,000 in his hand, that Mr. Lewis went and spoke to somebody in Mr. Jones' office, but came back did not bring the money. Mr. Lewis by that time had the signed agreement in his hands, waved it at him, and said he, Mr. Lewis, had got what he wanted and he went off leaving the appellant empty handed. The respondent went into possession.

There was some dispute between the appellant and the respondent in relation to the land, which continued for some time and into the resident magistrate's court of St. Catherine but of this we need not trouble ourselves.

The learned trial judge having heard evidence in the case found quite shortly that the attorney-at-law, in this case Miss Jones, was agent for the vendor, that the vendor took the purchaser to his attorney, that the monies paid to the attorney as agent for the vendor was the amount stipulated in the contract for sale, and that the vendor had put the purchaser into possession and consequently she found that the purchaser was entitled to judgment, and she entered judgment accordingly.

Mr. Wright has argued that the learned trial judge was in error when she found that Miss Jones was an agent for the vendor, the defendant/appellant, that what the learned trial judge ought to have found was that she was a stake-holder both for the appellant and the respondent, and if the judge had so found this would have the consequence in law that the stake-holder would be a special kind of agent whose powers were circumscribed, and who ought to act upon the instructions of the party whose stake she was holding. In this case, he said, she was holding the stake money of \$2,000, on behalf of Mr. Lewis, that not having carried out the respondent's instructions, the respondent remained primarily liable to the appellant for the \$2,000 which the appellant wanted to be paid into his own hands having regard to his financial circumstances at the time. He said that the failure of Miss Jones to pay was the failure of Mr. Lewis and that Mr. Thompson could, therefore, treat Mr. Lewis as not having performed his part of the bargain as is required under the contract of

both the 15th March and the subsequent agreement of the 19th June.

His second ground, which I have already referred to, is very much tied up with the first and that was as to the true construction to be placed upon the agreement of the 19th June, 1978. He said that the clear, and the only clear, construction to be placed upon that agreement is that the money was authorized to be handed directly to Mr. Thompson, the appellant, and this Mr. Lewis had taken no adequate steps to do. His instructions to Miss Jones in that behalf, he said, was not sufficient in the circumstances.

Miss Jones gave evidence at the trial, and her evidence, as Mr. Wright in our view correctly commented, had grave contradictions. At one time, Miss Jones was saying that she had appropriated the money which had been paid to her by the respondent, to the account of Mr. Thompson and had given a series of accounts which would show exactly how the money had been appropriated. She gave a history of her dealings with Mr. Thompson showing that they were lawyers generally for Mr. Thompson and had a number of matters, some four or five files, dealing with at one and the same time in relation to Mr. Thompson's affairs. However, in cross-examination, near the very end of the trial, she admitted that it appeared that the file dealing with Mr. Thompson and the \$2,000 had not been accounted for in the accounts which had been supplied to Mr. Thompson and that that money was still in her office standing to his credit. This was used by Mr. Wright to submit to the court that even today Miss Jones has not carried out the instructions given by Mr. Lewis, notwithstanding, that the appellant has terminated her

retainer, which she admitted, some five years ago.

We think that this might be relevant in relation to any action which Mr. Thompson might wish to bring in relation to how Miss Jones handles his own affairs, but we do not believe that this has any real bearing upon the construction to be given to the document of the 19th June, 1978. This was a clear instruction to Miss Jones to appropriate the \$2,000 to Mr. Thompson, notwithstanding, the fact that the title had not been obtained and the steps to obtain the title were in their infancy at that time. We think that Miss Jones in inserting in that agreement the fact that she was to be considered not liable for the money which she was being given instructions to pass on to Mr. Thompson, in the event that Mr. Thompson was unable to make title, shows clearly that she understood that Mr. Lewis was instructing her to use money which was standing to his credit in Miss Jones' office for Mr. Thompson's account, and it can in our view have no other meaning.

We, therefore, go back to the question as to whether or not the learned trial judge was correct in holding that Mr. Jones and Miss Jones were acting as agents for Mr. Thompson, the appellant, when she received instructions from Mr. Lewis to take the money out of Mr. Lewis' account and pay it to Mr. Thompson. We think that she clearly was agent for Mr. Thompson. Mr. Thompson had used her before. Mr. Thompson had taken Mr. Lewis to "his lawyer" to have the sale agreement prepared. When there was a problem Mr. Thompson took Mr. Lewis to "his lawyer" again in order to have the matter straightened out. We think that she received the money, as the learned trial judge found, as agent for Mr. Thompson

and that that was a sufficient payment by Mr. Lewis to Mr. Thompson in furtherance of the agreement of the 15th March, 1978.

We, therefore, hold that the learned trial judge was not in error on any of the points complained of by Mr. Wright and that the appeal ought to be dismissed, and that there should be costs to the respondent to be agreed or taxed.