

NMCS

IN THE SUPREME COURT OF ADJUDICATION OF JAMAICA  
IN COMMON LAW

CLAIM NO. HCV 1735/2006

BETWEEN	TREFINA VERONICA NUNES-ASIEDU	CLAIMANT
AND	ADMINISTRATOR GENERAL	DEFENDANT

CLAIM NO. HCV 01861/2006

BETWEEN	ADMINISTRATOR GENERAL FOR JAMAICA (administrator of the Estate of HERMAN LAWRENCE ANDERSON)	CLAIMANT
AND	TREFINA VERONICA NUNES-ASIEDU	DEFENDANT

Ms. Carol Davis for Nunes-Asiedu.

Ms Hillary Phillips Q.C. and Mr. Kevin Williams instructed by Mrs. Sonja Anderson-Byfield, and Ms. Maria Gayle instructed by Administrator General for the Administrator General.

CORAM: D. O. MCINTOSH J.

HEARD: 23 July, 2007, 24<sup>th</sup> July, 2007

CAV 17<sup>th</sup> September, 2007

Herman Lawrence Anderson on the 9<sup>th</sup> day of January 1981. On the 2<sup>nd</sup> day of December, 1983 the Administrator General was granted Letters of Administration with Will annexed. On the 5<sup>th</sup> day of May 2005, the Court granted the Administrator General permission to value and sell properties of the deceased. Among the properties forming part of Anderson's estate was property at:

13 Seaview Avenue, Kingston 6, St. Andrew, registered at Volume 468 Folio 74 of the Registrar Book of Titles.

The Administrator General advertised this property and Asiedu made an offer to purchase for Eighteen Million Dollars (\$18,000,000). This offer was accepted by the Administrator General and the parties executed a Sales Agreement dated the 14<sup>th</sup> day of December, 2005. Completion was fixed for 120 days. Time was expressed as an essence of the contract which should have been completed by the 14<sup>th</sup> day of April, 2005.

On the 7<sup>th</sup> day of February, 2006, the vendor sent the purchaser a statement of account which the purchaser said was received on the 9<sup>th</sup> day of February, 2006.

On the 21<sup>st</sup> April, 2006 a notice requiring completion and making time of the essence was served on the purchaser. That document required the purchaser to complete the transaction within seven (7) working days after service of notice.

On the 4<sup>th</sup> day of May, 2006, the vendor formally advised the purchaser that the agreement for sale had been cancelled.

On the 8<sup>th</sup> day of May, 2006 the purchaser sent the vendor a letter of undertaking from Mayberry Investments Limited which indicated their willingness to pay \$15,300,000.00 to the vendor subject to their interest being registered on the title. This amount would be less than the \$15,854, 495.00 required for completion.

There are claims by both party. Those claims have been consolidated in one action. It is agreed that the real issue for the court is "whether at the time that the Administrator General purported to rescind the sales contract with Nunes-Asiedu, she was entitled to do so".

Three experts in the field of conveyancing were called for cross examination as well as Nunes-Asiedu.

It is argued on behalf of the purchaser that at the time that the Administrator General gave notice to complete; the Administrator General was not a registered proprietor of the said land and that a caveat No. 95648 had been lodged at the Office of Titles in respect of the said property and the Administrator General was therefore not in a position to complete.

The Experts all agree that upon filing of the necessary documents with the Registrar of Titles, one should normally obtain title within three weeks.

The Administrator General had all the necessary documents to obtain title in her name. If she filed the documents for transmission of title to the purchaser at the same time as she filed the documents to obtain title in her name the purchaser should also be able to have title in her name, in the same time frame (i.e. 3 weeks).

The caveat was discovered by the purchaser upon 'Discovery', and not at the time of the purported cancellation of the contract.

By then the caveator had died. In any event it would be the vendor's duty to warn the caveator and this could be accomplished within the same three weeks window.

Before the Administrator General proceeds to obtain title in the name of the purchaser it would be prudent to ascertain whether the purchaser is ready to complete the transaction. An undertaking provided by a reputable agent or attorney would have sufficed.

On the other hand, the purchaser was never in a position to complete and to this day has not shown that she is in a position to do so.

This court finds that at the time that the vendor rescinded the contract she was in a position to complete and was entitled to rescind the contract as the purchaser failed to respond during the period of the notice.

On a balance of probabilities, the Purchaser's claim is dismissed with costs to the vendor to be agreed or taxed.

This Court declares that:

1. The Purchaser Trefina Veronica Nunes – Asiedu was in breach of an essential condition pertaining to the payment of the balance of the purchase money under agreement for sale dated the 14<sup>th</sup> day of December, 2005.
2. The agreement for sale between the parties dated the 14<sup>th</sup> day of December, 2005 was validly rescinded by the Administrator

General, who is discharged from further performances of the said contract.

3. The Legal Fees attendant to forfeiture to be retained by the vendor.
4. That costs of this action be the Administrator General's, to be agreed or taxed.

