

THE EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: GDAHCV2018/0460

BETWEEN:

Anthony Chasteau

CLAIMANT

AND

Clive Mahon

DEFENDANT

Appearances:

Ms. Debra St. Bernard for the Claimant/Applicant

Mr. George Prime for the Defendant/Respondent

2019: November 12

2020: November 23

JUDGMENT

- [1] Burnett, M (Ag.): This is an application filed by the claimant for summary judgment pursuant to part 15.2 (b) of the Civil Procedure Rules 2000.
- [2] The grounds of the application are that the defence had no merit in that it was contradictory and unsustainable, the defendant having admitted the fact of the existence of an agreement to sell the subject property to the claimant.

INTRODUCTION

- [3] By an agreement made between the claimant and the defendant, the defendant agreed to sell the claimant the freehold interest in a portion of property admeasuring two thousand three hundred and twenty five square feet (2,325 sq.ft.) of land.
- [4] The claimant engaged the services of a Licensed Land Surveyor to conduct a survey for the preparation of a plan of the land. A survey plan dated 11th July, 2017 was prepared.
- [5] After the preparation of the survey plan the claimant sought financing for the purchase of land. The defendant provided the claimant with a written memorandum dated 8th August, 2017.
- [6] Upon being provided with the memorandum, the claimant sought and obtained financing from Grenada Co-operative Bank.
- [7] The claimant's solicitor, by letter dated the 19th July, 2017 wrote the defendant informing him that the claimant had secured the financing for the purchase and he was now in a position to complete the sale transaction.
- [8] Differences arose between the parties and the defendant subsequently refused to sell the lot to the claimant.

THE CLAIMANT'S CASE

- [9] The claimant contended that there was an agreement between the claimant and the defendant made during the month of May 2017. This agreement was evidenced in writing on the 8th August, 2017.
- [10] The claimant contended that the defendant certified that he was in the process of selling the land to the claimant at a price of \$10.00 per square foot. The location of the lot was also identified.
- [11] The claimant further contended that the written memorandum provided to the claimant by the defendant which followed the oral agreement to sell contained all the essential terms sufficient for an enforceable contract for the sale of the land. The claimant relied on section 4 of the Real and

Personal Property (Special Provisions) Act Cap 273.

- [12] The memorandum was in writing, it confirmed the location, size and cost per square foot and identified the claimant as the person to whom the lot was being sold.
- [13] The claimant proffered that there was nothing in the memorandum which suggested that the contract for the sale of the lot was incomplete.

THE DEFENDANT'S CASE

- [14] The defendant submitted that on the 27th February, 2019 he filed a defence to the claim which stated that the claimant failed to pay the 10% deposit as agreed upon between the parties.
- [15] The defendant further contended that no deposit having been paid, the defendant was of the view that the claimant was no longer interested in purchasing the property since no contract came into being.

LEGAL POSITION OF THE CLAIMANT

- [16] The claimant denies that the defendant ever requested of him a 10% deposit; neither was there a requirement in law that a 10% or any deposit be paid with respect to contracts for the sale of land.
- [17] The claimant relied on section 4 of the Real and Personal Property (Special Provisions) Act Cap 273.
- [18] Section 4 of the Act states "No action shall be brought whereby to change any person upon any contract for sale of land or any interest in or concerning them, unless the agreement upon which the action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be changed therewith, or some other person there unto by him or her lawfully authorized.

LEGAL POSITION OF THE DEFENDANT

- [19] The defendant submitted that there are two kinds of contracts for the sale of land, the open and the formal. The open contract is a basic agreement which provides for nothing beyond:

- (a) the names of the parties
- (b) the purchase price
- (c) description of property

- [20] The defendant contended that rights and obligations of the parties under the open contract are regulated by case law, property statute within the region and the practice of conveyance.
- [21] The defendant contended that the contextual narrative of this transaction, there was no binding contract between the parties.
- [22] The defendant relied on the case of **Sorrell and another v Finch**¹.
- [23] The defendant proffered that the claimant's failure to pay the deposit specified by the contractual terms whether oral or written, will be a fundamental breach of the contract by the defaulting buyer, the claimant.
- [24] The defendant relied on the case of **Millichamp v Jones**² **Damon Compania Naviera SA v Hapage-Lloyd International SA, the Blankenstein**³
- [25] **Should the claimant be granted Summary Judgment?**
- [26] According to Rule 15.2 of the Civil Procedure Rules 2000. The court is empowered to enter summary judgment where it considers that the relevant party has no real prospects of succeeding or defending the claim or issue.
- [27] In **Swain v Hillman**⁴ Lord Woolf M.R: enunciated the legal principles. In determining such applications the court is required to consider whether the defendant has a realistic chance of succeeding. The court carries out this evaluation by assessing the parties' respective statements

¹ [1976] 2 All ER 371

² [1982] 1 WLR 1422 [1983] 1 All ER 267

³ [1985] 1 All ER 1985

⁴ [2001] 1 All ER 91

of case but refrains from conducting a mini-trial.

- [28] In **Bank of Bermuda Ltd v Pentium**⁵ Saunders C.J. (Ag) stated that: A Judge should not allow a matter to proceed to trial where the defendant has produced nothing to persuade the court that there is a real prospect that the defendant will succeed in defeating the claim brought by the claimant. In response to an application for summary judgment, a defendant is not entitled, without more merely to say that in the course of time something might turn up that would render the claimant's case untenable. To proceed in that vein is to invite speculation and does not demonstrate a real prospect of successfully defending the claim.
- [29] In the case of **Western Credit Union Co-operative Society Limited v Corrine Ammon**⁶, Kangaloo JA said that in reaching its conclusion, the court must not conduct a mini-trial. This he said does not mean that the court must take at face value and without analysis everything that a defendant says in his statement before the court.
- [30] In some cases, it may be clear that there is no real substance in factual assertions made particularly, if contradicted by contemporaneous documents.
- [31] However, in reaching its conclusions the court must take into account not only the evidence actually placed before it on the application for summary judgment but also the evidence which can reasonably be expedited to be available at trial.

ANALYSIS AND CONCLUSION

- [32] Part 15.2 of the Civil Procedure Rules (CPR 2000) outline the grounds by which the court may grant an application for summary judgment. It is clear that Part 15.2 gives the court discretion to dispose of a matter summarily if either the claim or defence has no real prospect of success. However, as enunciated by Lord Woolf, in the case of *Swain v Hillman & another* (Supra) where there are issues that should be investigated at a trial, then applying summary judgment procedure would not be appropriate to dispose of matters like these.

⁵ BVI Civil Appeal No 14 of 2003 (delivered 20th September 2004).

⁶ Trinidad and Tobago Civil Appeal 103/2006

- [33] The claimant contends that specific performance is a discretionary equitable remedy, given by the Court to enforce against a defendant, the duty of what he agreed by contract to do⁷.
- [34] In **SGL Holdings Inc v Aiham Shammass**⁸, the Court considered an appeal where the order of the learned Master entering summary judgment on the Respondent's claim in breach of contract. In allowing the appeal and setting aside the Master's order, the Court considered that the learned Master was not entitled to draw the conclusion that she did in relation to supposed admission at paragraph 41 of the Witness Statement before her. Instead, the case amounted to one where facts were in issue and importantly, the construction of the Agreement between the Appellant and the Respondent was also an issue. That was therefore, not a proper case for the grant of summary judgment.
- [35] The aforesaid discretionary remedy is one which the court may grant or refuse on the basis of application of certain fixed rules and principles⁹. One of this circumstances in which the court can, and should in this case grant the remedy, is the conduct of the claimant, and in this case the claimant has demonstrated that his conduct has been above board from the outset.
- [36] It would seem to me that seem to me that several issues arise for the determination of the Court:
- (i) Was there a concluded contract for the sale to and purchase by the claimant of the lot of land in question?
 - (ii) Is that contract enforceable?
 - (iii) Does the written memorandum of 8th August, 2017 satisfy the requirement of **Section 4 of the Real and Personal Property (Specific Provision) Act Cap 273 of the 2010 Revised Laws of Grenada** in respect of the agreement for the sale of the subject property.
- [37] Did the agreement outline in the written memorandum, require the payment of a 10% deposit and if so whether the claimant's non-payment entitled the defendant to treat the agreement as at an end.

⁷ Halsbury's Law of England Volume 44 (1) Paragraph 801 at page 460.

⁸ HCVAP2010/0002

⁹ Chitty on Contracts, 29th Edition, 27-029 on page [1531] of Volume 1

[38] Issues of whether there is a binding contract between the parties or not are better left and preserved for consideration at trial in connection with this aspect of the case. I am also fortified by applying the legal principle outlined in the **SGL Holding Inc case (Supra)**.

[39] The defence as filed by the defendant raises issues of fact which have to be decided at a trial and this makes this matter not suitable for summary judgment since in my respectful view, a summary hearing at this stage will result in mini trial.

[40] In the circumstances, I dismiss the application for summary judgment.

ORDER

1. The application for summary judgment is dismissed with costs to the defendant in the sum of \$1,500.00.
2. Accordingly the matter is remitted to the Master for further Case Management.

[41] I do apologise to Counsel and the parties for the late delivery of this decision.



Rickie Burnett
MASTER (Ag.)

By the Court


Registrar
Deputy Registrar
Supreme court
Grenada West Indies