

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Numbers: **SLUHCV2015/0172 & SLUHCV2018/0366**

Between

Anthony Bodley

Claimant

and

**(1) Cathy Louis
(2) Keisha Joseph
(3) Olivia Joseph**

Defendants

Before: MASTER Ricardo Sandcroft [Ag]

Appearances

Ms. Vern Gill of Counsel for the Claimant
Ms. Petra Nelson of Counsel for the Defendants

**2020: January, 22nd
2020: February, 17th**

JUDGMENT

- [1] **R. SANDCROFT, M. [Ag.]**: This is an application for specific performance and breach of contract. The Claimant seeks to enforce what is purported to be an agreement between the Claimant and the father of the Defendants Reginald Bodley, now deceased. This document is dated the 16th day of March, 1979, wherein Reginald Bodley sold 1/5 interests in a parcel of family land at Union for the sum of \$4,000.00. Reginald Bodley died on the 12th day of May, 1999, twenty years after the purported receipt was signed by him. It is to be noted that the Deed of Partition and Vesting Deed under the Land Registration Act 1984 section 56 was executed by Helena Dolcie, Qua Executrix of the late Reginald Bodley therein and represented by Trevor Phillip of a parcel of land situated in the Quarter of Gros Islet as Block 1249B Parcel No.882 (Lot3), allotted to heirs of Reginald Bodley also known as CASSIDY. It is also to be noted, that the notarized signature on the said receipt of the late Reginald Bodley is not in dispute.

- [2] The Claimant submits inter alia, that the Defendant was one of the heirs at law of Reginald Bodley, the Deceased, and is recorded in the land Registry as one of the owners and Trustees for Sale of a parcel of land situate at Ti Morne, Union and known as Block 1249B parcel No. 882.
- [3] The Claimant further submits that by a Memorandum in writing dated the 16th day of March 1979, the Deceased agreed to and did sell all his rights, title and interest comprising a one fifth share in a portion of family land at 'Union' said to comprise five (5) acres more or less in extent, to the Claimant and acknowledged receipt of the agreed sum of Four Thousand Dollars (\$4,000.00) from the Claimant as consideration for the said sale.
- [4] The said sale was to be formalized by way of a proper Deed of Sale in favour of the Claimant as soon as the Deceased's succession documents were prepared and registered.
- [5] The Claimant further submits that the formal partitioning of the family land in favour of the Deceased was executed by Deed of Partition dated 21st June, 2013 before Edith Petra Jeffrey-Nelson, Notary Royal, and registered in the Land Registry on the 24th day of July, 2013 as evidenced by Instrument No. 3121/2013 which said deed also devolved the succession of the Deceased in favour of the Defendant and his siblings.
- [6] The Claimant also states that at all material times they have been ready, willing and able to conclude the transaction as outlined by the memorandum and communicated his interest to the Defendant by a Solicitor's letter dated 15th May, 2014, including his willingness to accept one (1) acre as being what he purchased out of the one point nine nine (1.99) acres which fall to the Estate of Reginald Bodley.
- [7] The Defendants submit inter alia that the Deceased at the time of the purported "Memorandum" was not the owner of the land and was an heir apparent and he could not validly enter into an agreement to alienate property which he did not own.
- [8] The Defendants also further submit that the Claimant never attempted to pursue registration of the purported agreement or claim an interest in the property during the Land Registration and Titling Project or at any other time prior to the death of the Deceased, Reginald Bodley.

[9] The Defendants further submit inter alia that the Claimant waited until the heirs of the Deceased had vested his property and partitioned same with all the family members including the Claimant, incurring significant expenses before he made the claim in 2015 some 36 years after the purported agreement for sale was entered into and sixteen (16) years after Reginald Bodley died.

[10] The Claimant and the Defendants seem to have unanimously concluded that the issue to be determined is whether the claim is prescribed and that the claim was prescribed by more than six (6) years, and that the time would run from the date of the agreement. However, the aspect of whether the March 16, 1979 document is to be properly classified as an agreement or contract for the purpose of the claim is the issue to be determined.

Discussion & Findings

[11] It is trite law that a contract is an agreement giving rise to obligations which are enforced or recognised by law. In common law, there are three basic essentials to the creation of a contract:

- (i) agreement;
- (ii) contractual intention; and
- (iii) consideration.

The first requisite of a contract is that the parties should have reached agreement. Generally speaking, an agreement is reached when one party makes an offer, which is accepted by another party. In deciding whether the parties have reached agreement, the courts will apply an objective test.

[12] There are several legal definitions for a contract but on the facts of this case, the definition that it is a promise or set of promises which the law will enforce, seems the most appropriate¹. Regardless of the definition relied on however, there are three main elements for the creation of a contract whether it is written or oral: an offer, acceptance, consideration and an intention to create legal relations.

[13] In **Garvey v Richards [2011] JMCA Civ 16**, Harris JA, in discussing when an agreement will be considered to have legal effect, stated at paragraph [10] that:

¹ Pollock Principles of Contract 13th Ed. 1

“It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement, is in existence.”

[14] The general rule is that contracts can be made informally; most contracts can be formed orally, and in some cases, no oral or written communication at all is needed. Thus, an informal exchange of promises can still be as binding and legally valid as a written contract. There are statutory exceptions to this rule. For example: (i) a lease for more than 3 years must be made by deed: Law of Property Act 1925, ss 52, 54(2); (ii) most contracts for the sale or disposition of an interest in land must be "made in writing": Law of Property (Miscellaneous Provisions) Act 1989, s 2; (iii) contracts of guarantee are required to be evidenced in writing: Statute of Frauds, s 4.

[15] The burden of proof is on the Claimant to prove that a contract existed as alleged on a balance of probabilities.

[16] Section 4 of the **Statute of Frauds** states-

“No action against Executors...upon a special promise, or upon any Agreement, or Contract for Sale of Lands, unless Agreement ... be in Writing and signed. No Action shall be brought [...] whereby to charge the Defendant upon any special promises to answer for the debt, default or miscarriages of another person [...] unless the Agreement upon which such Action shall be brought or some Memorandum or Note thereof shall be in writing and signed by the parties to be charged therewith or some other person there unto by him lawfully authorized.”

[17] In relation to the **Statute of Frauds**, Sykes J as he then was in **Nation Hardware Ltd. v. Norduth Development Co. Ltd et al HCV2314 of 2005**, at paragraphs 26- 28 enunciated -

26. Before the passing of the Act oral contracts for the sale of land were sufficient. Apparently, there was no shortage of convincing mendacious witnesses. A method of cutting down on the many fraudulent practices which [were] commonly endeavoured to be upheld by Perjury and Subordination of Perjury would be to require writing as a prerequisite for enforceability. Therefore, any act of performance has to be very cogent because one was now starting from a position of non-enforceability...

27. I should point out that shortly after the Statute of Frauds was passed some judges thought, no doubt because of the purpose of the Act which I have set out above, that where there was no risk of perjury or fraud then an oral contract for the sale of land could be enforced even if there was no writing. This led some to think that sale of land by auctioneers and brokers were outside the statute. This view was eventually rejected (see Lord Blackburn in Maddison at page 488) All this reinforces the demand for an unequivocal act which payment of money alone could not provide.

28. The Lord Chancellor went back to 1701 and traced the decisions of the courts in order to make the point that in balancing these two principles identified in paragraph 24 the issue was what type of evidence had the cogency to pull the contract away from section 4 of the Act. It necessarily follows from this that the type of evidence required would have to be quite cogent and difficult to explain on any other reasonable and rational basis other than a prior oral agreement. Consequently, acts such as taking possession and expenditure of money, unsurprisingly, became the quintessential acts of part performance. These acts by their nature tended to be unequivocal. In fact, these acts but for the contract would have been trespasses. It does not require a great deal of imagination to appreciate that in this context payment of money, simpliciter, paled in comparison to taking possession and expenditure of money on the property by the

purchaser. The conclusion would be even stronger if the purchaser who did these acts was a stranger to the vendor. (emphasis added).

[18] My understanding of the Claimant's case in summary is that:

- (a) There was an agreement for the purchase of 1/5 by the Claimant, of the aforesaid land at Union which would only be devolved once the condition of the Succession documents was executed.

[19] However, the Claimant faces a daunting hurdle in relying on the document of the late Reginald Bodley, in that the late Reginald Bodley alludes to the document as a receipt and he is also the only person to have signed the document in the presence of a Notary Royal. Even though the document gives a description of the said property, and that he received the amount of Four Thousand (\$4,000.00) from the Claimant; Anthony Bodley, in full settlement of the purchase price of all his rights, title and interest (being an UNDIVIDED ONE-FIFTH share which devolved upon the Deceased's late father the said George Bodley) in All that piece or parcel of land known as Lot No. 38 and said to comprise FIVE ACRES more or less in extent and forming part of the "Union" Estate situate in the Quarter of Gros-Islet in the said State of Saint Lucia.

[20] The said document also states that Mr. Reginald Bodley, the Deceased, was hereby acknowledging the receipt of the aforesaid sum of money from Anthony Bodley, which use of the word confirms that the document was a receipt.

[21] The pivotal question being whether the Claimant and the Deceased had a valid Agreement for Sale of the said property? How should a court approach the issue of considering whether there is a valid contract in existence? Firstly, if it is in writing, then it is normally not necessary to look beyond the four corners of the document to find the terms of the contract. In the absence of any written document, where the contract is alleged to be oral, the court must look for the intention of the parties in the words said at the time the contract was alleged to have been made, the conduct of the parties to the contract and any evidence of the negotiations at the time of the contract.

[22] A review of the law makes it pellucid that the payment of the \$4,000 would be insufficient to sustain an action for specific performance. This act is equivocal but in the absence of a contract signed by both parties, I find that the claim of the claimant is untenable. What the court cannot do is create a contract where none existed.

[23] Having regards to the foregoing, it is my considered view, and I so hold, that the Claimant has not satisfied me on a preponderance of probabilities that the defendant has breached any contract of sale. Furthermore, I also find that no agreement or contract for sale ever existed between the Claimant and Reginald Bodley.

Conclusion

[24] In conclusion, I find that the document being relied on by the Claimant for specific performance is not a contract and hence no specific performance can be sought by the Claimant and hence applications for both specific performance and breach of contract in lieu of or in addition to specific performance are refused.

[25] I also find that the Four Thousand Dollars [\$4,000.00] was paid by the Claimant which is evidenced by the receipt signed by the Deceased, Reginald Bodley.

[26] I therefore order that the \$4,000.00 which was paid over to the Deceased by the Claimant be paid back forthwith, by the Estate of the Deceased, Reginald Bodley.

[27] Interest at 6% per annum from March 4, 2015 until the date of the payment of the said sum.

Ricardo Sandcroft
Master [Ag]

By the Court

Registrar