

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2011/0115

BETWEEN:

GEDDES MEYER

Claimant

and

KEHVIN DICKINSON

Defendant

Appearances:

George Lake for the Claimant

Tracey Benn-Roberts for the Defendant

2013: October 22; 28; 29
2014: January 24

Judgment

- [1] **Cottle, J.:** The defendant was the registered proprietor of a parcel of land located on All Saints Road admeasuring 13,068 sq. ft. The claimant was the lessee of the land and operated a business on it. In April 2010, the defendant decided to sell the parcel. The claimant agreed to buy the parcel. A price was agreed.
- [2] In order for the claimant to raise the purchase price he needed to approach his bankers for a loan. To assist him in this regard, the defendant wrote to the claimant's bankers in the following terms on 29th April, 2010:-

"Re: Sale of property to Geddes Myer

Dear Sir/Madam,

I, Kehvin Dickinson agree to sell Geddes Myer a parcel or land located on All Saints Road (Parcel #31, Block #513189F).

The total size of the area is thirteen thousand, and sixty-eight square feet. (13,068 sq/ft), and will be sold at a cost of \$261,360.

The above amount represents what will be paid after all applicable government taxes required for the sale has been fulfilled by Mr. Myer.

Should you require any additional information, please feel free to contact me at the telephone number provided above.

Thank you.

Sincerely,
Kehvin K. Dickinson"

- [3] Around 10th or 12th May, 2010, the claimant indicated to the defendant that the loan had been approved and that he would be in a position to complete the sale within a further two weeks. On 3rd June, 2010, the defendant sold the land to other buyers for \$352,836.00. On 1st June, 2010, the claimant, through his legal practitioner, applied for a caution to be placed on the Land Registrar forbidding the registration of dealings with the land without the consent of the claimant.
- [4] The result is that despite having paid the purchase price in full the new buyers have not been able to secure registration as proprietors. The claimant brings the instant claim seeking specific performance of the agreement to sell the parcel to him.
- [5] It is common ground that there was an oral agreement to buy and sell the parcel at a price of \$261,360.00. Both parties were aware that there would be government taxes which would be imposed on the sale and the claimant would be responsible for the payment of those taxes. The taxes are calculated as a percentage of the assessed value of the land. The defendant was not able to pay the taxes because the relevant government department was slow to value the land and calculate the applicable taxes. In fact it was not until November, 2010, that the Chief Surveyor

issued his certificate to permit the valuation of the parcel and the calculation of the applicable taxes.

- [6] The position of the defendant is that the claimant failed to complete the sale within a reasonable time. He considered the agreement discharged and was therefore free to sell to third parties. The claimant accepts that there was delay in completing the sale but says there was no agreement for the payment of a deposit and no fixed time for completion was stipulated.

The Agreement

- [7] The terms of the agreement for sale are encapsulated in the letter written by the defendant to the claimant's bankers. In his closing submissions counsel for the defendant suggested that the 'agreement' did not constitute a contract because it was not supported by consideration. This submission has no merit as the mutual promises of the parties to an agreement can amount to consideration. The defendant promised to sell and the claimant promised to pay. This is well known in law as executory consideration. (See for example Casey Patents **Stewart v Casey** [C.A. 1891] referred to in Chitty on Contracts 28th Edition at page 115).
- [8] Counsel also submitted that the document incorporating the contractual terms must be signed by both parties to be effective. This submission is also rejected. The defendant, when cross-examined, admitted that there was an oral agreement and that its terms were memorialized in his letter to the bank.
- [9] In my view there is only one issue which falls for determination in this case. Was the defendant entitled to treat himself as discharged from the contract when the claimant failed to perform by the end of May, 2010? The contract did not specify a time for completion. In such cases the law implies an obligation to perform within a reasonable time, having regard to all the circumstances of the case. The defendant says that at the middle of May, he was content to allow a further two weeks for the claimant to complete the purchase as the claimant indicated that he would have the funds from the bank at that time. When he contacted the claimant around 26th May, 2010, the claimant did not indicate that he was in a position to conclude the purchase. Given this state of

affairs the defendant says he concluded that the agreement was at an end. He did not express this to the claimant.

[10] In the circumstances of this case, I find that the defendant was justified in treating the agreement as at an end. The defendant and the claimant had no control over the government department which is tasked with surveying and valuing the land and the department which would then calculate the applicable taxes. I think that one month should be more than enough for that purpose. This was a commercial transaction. Business persons are not to be expected to wait indefinitely for their dealings to be completed. I find that the failure of the relevant government departments to assess and calculate the taxes to be paid within a reasonable time sufficed to end the contact through frustration. I therefore dismiss the claim for specific performance. One consequence of this is that the claimant now has no grounds to retain possession of the lands in issue.

[11] The defendant counterclaimed for the cost of the claimant's occupation of the land. The claimant is still in possession. The claimant's lease expired in 2010 in December and has paid rent to that date. It is unclear to me how the defendant would be entitled to rental for property he has sold since June, 2010. At the trial the counterclaim was not pursued with any vigor. I dismiss the counterclaim as well.

[12] As the claimant has failed to establish the claim and the defendant failed on the counterclaim, I order each party to bear his own costs.

Brian Cottle
High Court Judge