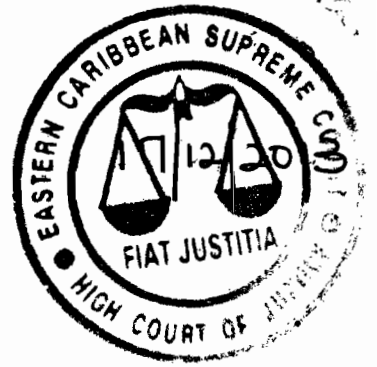


THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT AND THE GRENADINES  
HIGH COURT POSSESSORY TITLE CLAIM NO. 186 OF 2008  
BETWEEN:



KELSON LAYNE

Claimant

AND

ALLISON BALCOMBE  
STALK PLANTATION LTD.

Defendant

**Appearances:** Mr. Ronald Marks and Mrs. Patricia Marks for the Claimant.  
Mr. Duane Daniel for the Defendant.

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2013: June 10  
December 17

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**JUDGMENT**

- [1] **THOM, J:** In January 2005 the Claimant and the Defendant entered into an agreement by which the Claimant agreed to purchase five acres of land situated at Reeding, Grand Sable from the defendants at a price of (\$80,000.00) Eighty Thousand Dollars. The Claimant was permitted to go into possession of the land pending completion of the sale. In June 2008 the sale not having been completed the Defendant sought to

repossess the land. Consequently the claimant instituted these proceedings in which he sought the following reliefs:

- (1) Specific performance of the agreement.
- (2) Damages for breach of contract in lieu of or in addition to specific performance
- (3) Further or other relief.
- (4) Costs.

[2] The Defendants in their defence allege that the Claimant is in breach of the contract in that he has failed to pay the purchase price for the land.

[3] The Defendants also filed a counter-claim in which they allege that the Claimant is trespassing on their land and they seek among other reliefs the following:

- (a) Recovery of possession of the land
- (b) Damages for use and occupation of the land
- (c) Interests
- (d) Costs.

## EVIDENCE

[4] The evidence of Kelson Layne is that around January 2005 he entered into an agreement with Mr. Allison Balcombe who is the Managing Director of Stalk Plantation Ltd to purchase five acres of land at Reeding at the price of \$80,000.00. The land was valued at \$90,000.00 but Mr. Balcombe agreed to sell him at \$80,000.00. Himself and Mr. Balcombe are first cousins. He told Mr. Balcombe that he did not have the money at the time and Mr. Balcombe told him not to worry he would give him time to pay. Time was not of the essence. They agreed that he would go into possession and start to cultivate the land. He cleared the land and planted several thousand holes of banana.

[5] He applied to the First Caribbean International Bank for a loan to pay the purchase price. The bank agreed to process the loan when he started reaping his crop. He communicated this to Mr. Balcombe who made no objection.

- [6] In 2007 a tropical storm destroyed all of the bananas and his work shed. He had to clear the land, replant the bananas and rebuild the work shed. Mr. Balcombe recognized his difficulties and made no demand for payment. Mr. Balcombe and others had used the destroyed bananas as feed for their animals.
- [7] On June 13, 2008 Mr. Balcombe entered the land and took control of it without giving him any notice. On June 16, 2008 Mr. Balcombe visited his home and ordered him not to enter the land ever again.
- [8] Mr. Layne also testified that through his counsel he offered to pay the purchase price but Mr. Balcombe's counsel did not accept the offer since Mr. Balcombe was out of the jurisdiction.
- [9] Under cross-examination Mr. Layne agreed that he has been in possession of the land since 2005 and he is still in possession of the land. He also agreed that he has not paid Mr. Balcombe any part of the purchase price and he is not in a position to do so now. Mr. Layne maintained time was not of the essence. They had agreed that he would get a loan from the bank to pay the purchase price. He also agreed that at his request Mr. Balcombe wrote to the bank confirming that he had agreed to sell him the parcel of land.
- [10] Mr. Balcombe testified that he is the owner of five (acres) of the land at Reeding, Grand Sable. Around 2005 he agreed to sell the land to Mr. Layne for \$80,000.00. Mr. Layne told him that he had sold a parcel of land and he would get the balance of the purchase price by a loan from the bank. He expected to be paid within six months to one year. He gave Mr. Layne time to get the money since they are relatives. He also permitted him to commence cultivation of the land. He repeatedly asked Mr. Layne for the purchase price but Mr. Layne did not pay the purchase price. He gave Mr. Layne notice and in June 2008 he re-entered on the land. Mr. Layne has not paid him for use and occupation of the land.

## SUBMISSIONS

[11] Mr. Marks submitted that in determining the terms of the contract the Court should look at all of the circumstances to ascertain the intentions of the parties see Reerden Smith Line Ltd. v Yngvar Honsen-Tansen<sup>1</sup>.

[12] Mr. Marks also relied on the following statement of Earl Lereburn in F.A. Tamplin SS. Co Ltd v. Anglo Mexican<sup>2</sup>.

*"A Court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of thing would come to exist. And if they must have done so, then a term to that effect will be implied though it be not expressed in the contract. No Court has an absolving power but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted."*

[13] Mr. Marks next submitted that having regard to the circumstances time was not of the essence. Further having regard to the conduct of Mr. Balcombe, he was aware of the difficulties experienced by Mr. Layne and he did not make any demands for the payment, he is now estopped. Mr. Marks relied on the cases of Charles Richards Ltd v Oppenheim<sup>3</sup>; Bridaïsse v Sampath et al<sup>4</sup>; and the following statement of Lord Denning in Moorgate Mercantile Company Ltd v Twitchings<sup>5</sup> at paragraph 84:

*"Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and equity. It comes to this, when a man by his words or conduct had led another to believe in a particular state of*

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<sup>1</sup> (1976) 1 WRL 989

<sup>2</sup> (1916) 2 AC 403 at 404

<sup>3</sup> (1980) 1KB 616

<sup>4</sup> (1999) P.C. 1

<sup>5</sup> (1976) 3 WLR

*affairs, he will not be allowed to go back on it when it would be unjust and inequitable to do so."*

[14] Mr. Marks next submitted that even if the Court was of the view that there was inordinate delay in the payment of the purchase price, Mr. Balcombe was obligated to give Mr. Layne reasonable notice for Mr. Layne to fulfill his obligations prior to Mr. Balcombe re-entering the land. Mr. Marks relied on the following statement of Lord Parmoor in **Stickney v Keeble**:

*"Where time is not made of the essence of the contract itself although a day for performance is named of course neither party can strictly make it so after the contract, but if either party is guilty of delay a distinct written notice by the other, that he shall consider the contract at an end if it be not completed within a reasonable time to be named, would be treated in equity as binding on the party to whom it is given; but a reasonable time must be allowed."*

[15] Mr. Marks submitted the Court should make an order for specific performance of the contract within a reasonable time and damages should be awarded to Mr. Layne for breach of contract.

[16] Mr. Daniel submitted that the evidence shows that Mr. Balcombe granted a license to Mr. Layne to occupy the land. The license was conditional upon Mr. Layne paying the sum of \$80,000.00 and a deed of conveyance of the land be executed in his favor. Mr. Layne not having paid the \$80,000.00 after three and a half years, Mr. Balcombe was entitled to terminate the license and remove Mr. Layne from the land. Mr. Daniel relied on the case of **Briggs v Oates** [1991] 1WLR 407.

[17] Mr. Daniel further submitted that specific performance is an equitable remedy. Mr. Layne not having paid the purchase price nor paid for his occupation and use of the land the Court should not make an order for specific performances. Mr. Balcombe should be awarded damages for use and occupation such damages to be assessed.

## FINDINGS

[18] Both parties agreed that they had an oral arrangement that Mr. Balcombe would sell Mr. Layne five (5) acres of land at Grand Sable for a purchase price of \$80,000.00. No time was fixed for the payment of the purchase price. I believe the evidence of Mr. Balcombe that Mr. Layne told him that he had \$18,000.00 and he would get the rest by way of a loan from the bank to pay the purchase price. The evidence of both Mr. Layne and Mr. Balcombe is that Mr. Layne applied for the loan from a bank. Mr. Balcombe arranged and paid for the valuation of the land to be prepared for submission to the bank. Mr. Balcombe also wrote a letter to the bank confirming that he agreed to sell Mr. Layne five acres of land at the price of \$80,000.00. By June 2008 the loan to purchase the land was not approved. Mr. Balcombe was not paid any part of the purchase price.

[19] It is a settled principle of law that where there is no stipulation that time is of the essence then the obligation must be performed within a reasonable time. In Chitty on Contracts the principle is explained in the following manner:

**"Where no precise time for performance is specified. Where a party to a contract undertakes to do an act, the performance of which depends entirely on himself, and the contract is silent to the time of performance (or merely uses indefinite words such as "with all dispatch") this implies an obligation to perform the act within a reasonable time having regard to all the circumstances of the case.**

***But where the act to be done is one in which both parties to the contract are to concur, the implied engagement is not that the act shall be done within either a fixed or a reasonable time, or within the time usually taken, but that each shall use reasonable diligence in performing his part."***

[20] Applying the principle to this case the question that arises is what is a reasonable time having regard to all of the circumstances of the case.

[21] The circumstances of this case are that Mr. Layne went into possession around January 2005 and commenced cultivation of the land. Mr. Layne agreed under cross-examination that he told Mr. Balcombe he had \$18,000.00 in the bank and he would get a loan to pay the purchase price. Mr. Layne also agreed that Mr. Balcombe provided all of the documentation the bank requested. The bank had the documentation in June, 2006. The bank having received the documentation gave him a loan of \$4,000.00 to pay off the loan he had with the Banana Association which he did. In 2007 there was a storm which destroyed his banana crop. The bank has not approved the loan. There is no evidence from the bank, documentation or otherwise to show that the bank approved a loan to Mr. Layne in the sum of the purchase price or intends to do so. Mr. Layne continued to cultivate the land, no purchase price was paid to Mr. Balcombe. Mr. Balcombe was at all times ready and willing to complete the sale. Having regard to the circumstances outlined I am of the opinion that a period of two years was a reasonable period.

[22] A careful reading of Stickney v Keeble referred to by Mr. Marks shows that the case does not establish a principle that where time is not made an essence of the contract then the party who is not in default is under an obligation to the party in default to give him reasonable notice to comply. Rather the court stated as follows:

*"Where in a contract for the sale of land the time fixed for completion is not made of the essence of the contract, but the vendor has been guilty of unnecessary delay, the purchaser may give upon the vendor a notice limiting a time at the expiration of which he will treat the contract at an end in determining the reasonableness of the time so limited the court will consider not merely what remains to be done at the date of the notice, but all the circumstances of the case, including the previous delay of the vendor the attitude of the purchase in relation thereto."*

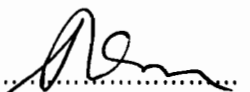
[23] In this case Mr. Balcombe waited three and a half years before she sought to repossess the land. While Mr. Layne seeks an order for specific performance at the trial Mr. Layne admitted that he did not have the purchase price to pay to Mr. Balcombe and would need a reasonable time to pay the purchase price. He did not give any details as to how he

would raise the sum of \$80,000.00 to pay Mr. Balcombe. In view of the above I find that Mr. Layne is not entitled to any of the reliefs sought.

[24] Mr. Layne having failed to pay the agreed upon purchase price, I find that Mr. Balcombe succeeds on the counterclaim Mr. Balcombe is entitled to possession of the land. Mr. Layne having been in possession the land and cultivating it from January 2005 except with a brief interruption of a few days in June 2008 when Mr. Balcombe sought to repossess the land. Mr. Balcombe is entitled to the damages for use and occupation of the property. The general principle is that damages is compensatory i.e. the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed. In a contract for the sale of land it would be from the date of breach. Mr. Balcombe is entitled to damages for use and occupation from the date when the contract of sale should have been completed. As stated earlier I find that time to be a period of two years being the end of December 2007. Mr. Balcombe is therefore entitled to damages for use and occupation from January 1, 2008 until the delivery of possession.

[25] It Is Ordered:

- (a) The claim is hereby dismissed.
- (b) Judgment is granted to the Defendants on the counterclaim.
- (c) The Claimant shall deliver up possession of the land to the First Defendant on or before December 31, 2013.
- (d) The Claimant shall pay the Defendants damages from January 2007 to the date of delivery of possession. Such damages to be assessed on the application of the Defendants, the application is to be made within three months.
- (e) The claimant shall pay the Defendants prescribed costs.

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Justice Gertel Thorn  
High Court Judge