

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

SUIT NO 281 OF 1993

BETWEEN:

VIBERT PHILLIPS

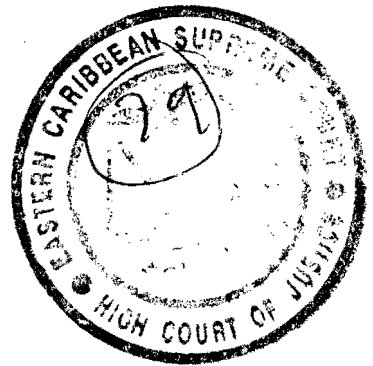
PLAINTIFF

AND

JOHN O. CATO
DOLLRITA JACK

1ST DEFENDANT
2ND DEFENDANT

RHC/Tia(b)



Appearances: Mr. O.R. Sylvester Q.C.,
10 Ms. N. Sylvester, and Ms. Mayers for the plaintiff

1st December, 1997, 12, 14 January, 1998
30th April, 1998

JUDGMENT

BAPTISTE J.

The plaintiff claims specific performance of an agreement for sale of a house and premises situated at Cane Garden made between the plaintiff and the defendants in June, 1991. The plaintiff also claims damages for breach of contract; special damage, an injunction, further or other relief and costs.

The matter came up for hearing on 1st December, 1997 and was adjourned to the 12th of 20 January, 1998, at the request of Mr. Cadette. The defendants were absent. Mr. Cadette advised the Court that he was holding for Dr. Browne who represented the defendants. Mr. Sylvester submitted that there is no entry of appearance by Dr. Browne. It is John Cato as agent for Dr. Browne, and Mr. Cato appeared in all interlocutory matters. Mr. Browne has never appeared in any of the proceedings in the matter.

When the matter came up for hearing on the 12th of January, the defendants were again absent. No counsel appeared on their behalves. The matter was further adjourned to the 14th of January, 1998.

On the 14th of January, 1998 learned Queen's Counsel Mr. Sylvester, made an application for an ex-parte hearing. The defendants as well as counsel on their behalves being absent. Mr. 30 Sylvester advised that all efforts were made to notify the defendants. After listening to the

submission of Mr. Sylvester Q.C. the court ordered that the matter be proceeded with. The court being satisfied that the defendants were aware of the fixture.

The plaintiff is the son in law of Robert O'Garro a retired commissioner of Police in Saint Vincent. The first defendant is a Barrister of Law and was at all material times practicing in Saint Vincent and the Grenadines. The second defendant was at all material times the friend of the first defendant.

The defendants own a property at Cane Garden in Saint Vincent. The purchase of the property was financed by a mortgage dated 7th February, 1991 from the Saint Vincent Building and Loan Association in the sum of \$134,300.00 and registered as Deed No. 468 of 1991.

10 The first defendant approached Robert O'Garro with whom he was on friendly terms and sought his assistance in selling the property. The first defendant was acting for himself as well as for the second defendant. Mr. O'Garro approached his daughter and son in law in the United States of America and by June 1991 an agreement for sale was arrived at. The purchase price agreed was \$160,000.00. Of that sum \$30,000.00 was to be paid to the defendants and the mortgage loan was to be taken over by the plaintiff.

The first defendant prepared the Power of Attorney (NO. 90 of 1991) to enable Mr. O'Garro to borrow on behalf of the plaintiff and to execute the mortgage in favour of the plaintiff. The plaintiff paid \$31,000.00 to the first defendant. This was paid in two instalments.

By letter dated 1st August, 1991 the first defendant notified the Building and Loan Association
20 that he was selling the property to the plaintiff who would assume the mortgage payments that were outstanding. The plaintiff also applied to the Building and Loan Association for a loan to purchase the property. By letter dated 23rd September, 1991 the Building and Loans Association informed the plaintiff that his loan was approved on 19th September, 1991 on the condition that all interest and fines owing by the first defendant on his loan for the said property are paid off before the loan was taken over and indicating that the total fee payable on the transaction was \$5,269.00. This sum was paid by the plaintiff on December 16th, 1991.

By letter dated 25th September, 1991 the Building and Loan Association notified the first defendant that his letter of 1st August 1991, was placed before the Board of Directors together with the plaintiff's application to purchase the property from him and informing him of the
30 conditions imposed and of the outstanding amount to be paid to finalise the transaction with the plaintiff.

By 23rd December, 1991 the outstanding arrears and fines had not been paid and another letter was written to the first defendant wherein he was advised, inter alia, that the Building and Loan

Association was in the process of instructing its solicitors to prepare the Deed of Mortgage for the purchase of the property to the plaintiff. The arrears of interest and fines were estimated at \$14,168.58 as of January 31, 1992.

Mr. O'Garro went to the Building and Loan in January, 1992 to make the first quarterly payment on the mortgage loan. The accountant indicated that the first defendant had not paid up what was owing to the Association, so the Association could not give him any money. Mr. O'Garro went to the first defendant and advised him of the situation. The first defendant went through the pretence of trying to call the accountant by telephone.

By letter dated 27th February, 1992 the Association wrote the first defendant on the matter. The first defendant still did not pay. A meeting was convened at the instance of Mr. O'Garro between Mr. Andrew Cummings the solicitor of the Building and Loan Association, the first defendant and Mr. O' Garro. Mr. O'Garro offered to pay half of the arrears the first defendant was owing. The first defendant said he does not intend to pay more than \$7,000.00. By letter dated 16th March, 1992 Mr. Cummings notified the Association of the agreement reached by the parties.

By letter dated 9th April, Mr. O'Garro was requested to pay the plaintiff's portion of the arrears of \$17,022.42. A deadline of 20th May, 1992 was given to make the payment. Mr. O'Garro went to the first defendant on 20th May, 1992. Mr. O'Garro paid \$7,672.42, on 20th May, 1992 and \$1,287.02 on 25th May, 1992, more than half of the amount, yet the first defendant failed to pay his share.

The plaintiff got possession of the premises in November, 1991. He repaired and refurnished the property at a total cost of \$8,027.00. In February, 1992 the house was rented at the monthly rental of \$700.00.

The first defendant not paying his arrears, the Building and Loan Association put the property up for sale. The defendant then made a payment on the arrears. He also questioned the authority of the Association to receive money from Mr. O'Garro and 12th January, 1993 the Association wrote the first defendant a letter.

By December, 1992 the first defendant began harassing the tenant living in the property and instructed her that from January, 1993 she must pay the rent at his office. On 27th February, 1993 the tenant, one Dr. Tan, received a letter from the first defendant to the effect that she must pay all future rent at his office. On the 30th of April, 1993 Dr. Tan left the house.

On May 1st, 1993 Mr. O' Garro collected the keys at the house from another doctor who was in the house. That was about 5:50 a.m. At about that time the first defendant saw Mr. O'Garro and

asked him what was he doing there. Mr. O'Garro replied "I would like to know what are you doing here." The first defendant replied, "alright I know what I will do" and he drove away.

At about 7:15 a.m. the first defendant crashed his car into the front door of the house, cracked it and blocked the driveway with the car and walked away. Mr. O'Garro got Eustace Auto Services to remove the car the said day. He also caused photographs to be take of the scene. Within a few days electricity and water were cut off from the premises.

Mr. O'Garro got an inspector to inspect the premises and everything was in order. He paid the inspector to inspect the premises. He paid \$20.00. A certificate was issued showing that the premises was in order.

10 Some days after the initial blocking of the door way with the car the first defendant returned and blocked the doorway again. Mr. O'Garro again had the car removed by Eustace Auto Supplies. He paid \$50.00 each time the car was removed.

Mr. O'Garro lived in the house from the first of May for about one month. Sometime apparently during that month, he entered the house and observed that the tiles were ripped off the living room. The furniture was removed from the living room. Several of the locks in the house were changed. He peeped in a bedroom and saw that bedroom was full with his things. He could not remain in the house.

In 1994 the first defendant moved into the house and remained there for several months. In October 1996 Mr. O'Garro went to the house and observed that one Chesty Jeffers and a young
20 boy were there. He inquired from Jeffers what was he doing there. He took a solicitor's letter to Jeffers but Jeffers refused to accept it. As far as Mr. O'Garro knows, Jeffers is still in the house.

The damage done to the living room was estimated at \$1,425.00. The damage done to the door and driveway was estimated at \$200.00. The photographer was paid \$100.00.

In May, 1993 the first defendant back-dated a letter dated 28th November, 1992 which he wrote to the plaintiff purporting to come from Mr. O'Garro. The letter contained a cheque back-dated 30th November, 1992. The cheque was a local cheque which could not be cashed internationally. The cheque was returned to the first defendant.

The total owing on the mortgage is \$222,943.84. This is made up of the principal balance of \$136,861.70, interest arrears of \$72,498.21, and fines of \$13,583.73.

30 On the application of Mr. O.R. Sylvester Q.C. for the plaintiff, special damage was added to the relief claimed. Learned counsel also advised that he would not be pursuing the items in

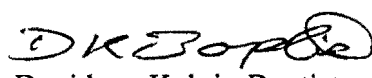
paragraph 27 (a) (b) and (c) of the pleadings. Further, special damage as of the day of the trial was \$41,045.00. Counsel requested that under further and order relief an order be made for immediate possession of the premises and a further order that the defendants pay such further damages as incurred to the property to be assessed after entry and possession thereof. With respect to the first relief claimed, specific performance, counsel stated, "subject to payment of mortgage Loan to Building and Loan Association the property be conveyed to the plaintiff."

In my judgment the defendants were clearly in breach of the agreement for sale and I so hold. The plaintiff has proven his case against the defendants and is entitled to the reliefs claimed.

Judgment is entered for the plaintiff and it is ordered that:

- 10 1. There be specific performance of the agreement made between the plaintiff and defendants in June 1991 for the sale by the defendants of the freehold property at Cane Garden in Saint Vincent. Subject to payment of mortgage loan to the Building and Loan Association, the property is to be conveyed to the plaintiff.
2. The defendants pay the plaintiff the sum of \$42,890.00 in special damage and \$88,643.00 in general damages making a total of \$131,533.00 in damages.
3. The plaintiff be given immediate possession of the premises.
4. The defendants are to pay such further damages as incurred by the
20 property to be assessed after entry and possession thereof.
5. An injunction is granted restraining the defends whether by himself and or herself and or themselves or howsoever otherwise from interfering and or disturbing and or interrupting the plaintiff's possession of the property.
6. It is also declared that the defendants are not entitled to interfere and or disturb and or interrupt the possession of the plaintiff.

The plaintiff is to have his costs taxed if not agreed.


Davidson Kelvin Baptiste
High Court Judge (Ag.)