

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)
A.D. 1998



Suit No.447 of 1995

Between:

(1) ROSEMARY CHARLES
(2) GEORGE JOSEPH

Plaintiffs

VS

(1) WOLF GANG K KLAUS
(2) SIGRID KLOWS

Defendants

Mrs C Hinkson Ouhla for Plaintiffs

Defendants unrepresented

1998: January 21
February 04

JUDGMENT

d'Auvergne, v.

By a Writ of Summons indorsed with a statement of claim filed on the 26th January, 1995 the Plaintiffs claimed against the Defendants specific performance of an agreement in writing dated 2nd day of April, 1982 made between the Defendants and themselves and damages for breach of contract.

The Plaintiffs pleaded that the Defendants agreed to sell to them a property, a dismemberment of the Rodney Bay Lands registered as Lot B of Block B situate in the quarter of Gros-Islet and shown as Lot No.4 of the sub-division of the said Lot B of Block "B" on plan of survey by Mr G St A Guard Licensed Land Surveyor dated 21st March, 1975 and lodged

with the Commissioner of Crown Lands on 24th March, 1975 as Plan No.G 1822 Record No.93/75 for the sum of one hundred and forty thousand dollars (\$140,000).

They further pleaded that the Defendants agreed to execute a Deed of Sale in favour of the Plaintiffs after twelve (12) monthly installments of \$1,800.00 and interest following an initial deposit of fifty thousand dollars; that the Defendants not only paid the twelve monthly installments but the whole of the purchase price and that notwithstanding requests for the due execution of the Deed of Sale the Defendants have failed and refused to execute the said Deed of Sale.

The Defendants failed to enter an appearance and on the 1st day of November, 1995 the plaintiffs applied by summons filed in the registry for substituted service on the Defendants in the form of advertisements in the official Gazette and in a newspaper circulating in the island.

On the 3rd November, 1995 the summons was heard and an order was granted which reads as follows:

"That leave be and is hereby granted to the applicants to serve the writ by means of substituted service upon the Defendants by publication in two weekend issues of a local newspaper circulating in Saint Lucia and two issues of the official Gazette Time limited for appearance be 28 days after last publication."

The abovementioned order was entered on the 23rd of November, 1995 and in compliance with the order notice of the writ was duly advertised in the Gazette on the 20th and 27th January, 1996 and in the weekend issues of the Voice Newspaper dated 30th January, 1996 and 6th February, 1996.

Once more the Defendants failed to enter an appearance and

consequently the Plaintiffs applied for **Judgment in Default**. On the 11th September, 1996 the Plaintiffs filed by summons for an order for specific performance against the Defendants and exhibited on file the above mentioned agreement for sale dated 2nd April, 1982 and the register of land in the registration quarter of Gros-Islet registered as Parcel 1255 B 140 Lot No.4 G 1822 measuring approximately 0.04 hectares in the name of the second Defendant. That register also shows that on the 3rd November, 1995 the Plaintiffs placed a caution against that property.

The summons was heard on the 27th day of November, 1996 and the order given by the court on that day reads as follows:

"That the Defendants be served by advertisement in two consecutive issues of the official Gazette and two consecutive issues of a local newspaper circulating in the state informing them that the summons will be heard on 14th February, 1997. Defendants are to enter appearance within 28 days of the last publication."

That order was entered on the 9th January, 1997.

On the 3rd June, 1997 the Plaintiffs applied for an order that the Defendants be granted further time to enter an appearance, notwithstanding that the time limited by appearance had expired. The reason given on behalf of the Plaintiffs was that the order remained an undue length of time at the Registry.

On the 4th of June, 1997 the Plaintiffs were granted an order which reads as follows:

That the Plaintiffs do issue another advertisement in two consecutive issues of a weekend newspaper circulating in the island

stating that the Defendants were granted extension of time until 18th July, 1997 within which to enter an appearance to the order granted on the 27th day of November, 1996.

On the the 15th July, 1997 an Affidavit of Service of notice of summons by substituted service by advertisement was filed.

On the 6th November, 1997 another summons for specific performance and supporting affidavit was filed against the Defendants; that affidavit gave the history of the action.

The matter was heard on the 21st day of January, 1998 in chambers. The Plaintiffs were represented by Counsel whereas the Defendants were absent and unrepresented.

Counsel for the Plaintiffs read out the supporting affidavit which outlined the history of the case which I have noted earlier.

CONCLUSION

The facts in this case show clearly that the plaintiffs have done all in their power to adhere to the terms of the agreement mentioned earlier, and to bring their efforts to the attention of the Defendants, who on the other hand have failed to adhere to their side of the agreement.

Paragraph 4 of the said agreement reads as follows:

"The Vendors will execute in favour of the Purchasers a Deed of Sale after the payment by the Purchasers of TWELVE instalments and interest. Suchn Deed of Sale it is agreed will reflect the sale for ONE HUNDRED THOUSAND DOLLARS of which THIRTY THOUSAND DOLLARS will be included for furniture with the

Privilege of Vendor included therein."

And paragraph 5 states:

"As soon as the deposit is made the Purchasers shall be allowed to enter into possession of the property and shall only be removed in accordance with the due process of the law in the event of their failure to pay the outstanding balance."

It appears that the plaintiffs are in possession but this aspect was not stated in any of the affidavits filed to the various summonses.

The Plaintiffs are seeking specific performance but to order the Defendants to execute the Deed of Sale would be an order in vain and the court does not act in vain so I now order the Registrar of the High court to execute a Deed of Sale in favour of the Plaintiffs within thirty days of delivery of this judgment.

That there will be no order as to costs.



SUZIE d'AUVERGNE
HIGH COURT JUDGE