

3) Survey of land ✓

1) Land: ownership ✓

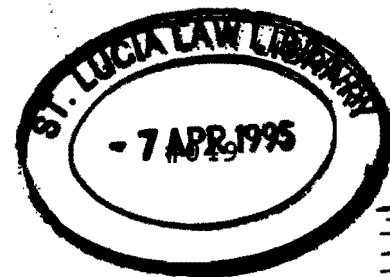
2) title to property ✓

2) contract ✓

3) Breach of contract ✓

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994



Suit No. 389 of 1992

BETWEEN:

GILES MATHURIN

Plaintiff

and

IGNATIUS JOSEPH

Defendant

APPEARANCES:

Mr. P. Foster for the Plaintiff

Miss P. Mendes for the Defendant

1994: December 5 and 12.

JUDGMENT

MATTHEW J.

On August 6, 1992 the Plaintiff filed a writ of summons indorsed with statement of claim asking for the following relief:

- "1. An order that the said lands be surveyed and the said survey be lodged with the Chief Surveyor;

MATHURIN, GILES

IGNATIUS

JOSEPH

2. That title to the said parcel of land be conveyed to the Plaintiff;
3. Any further and other relief;
4. Costs hereof."

In the statement of claim the Plaintiff alleged that the Defendant was owner of a portion of land situated at Plateau, Dauphin, in the Quarter of Gros Islet registered as **Block No. 1450B Parcel No. 198** and that by an agreement evidenced in writing on September 7, 1987 the Defendant agreed to sell to the Plaintiff a portion of that land measuring 100 feet x 100 feet for the sum of \$7,200.00.

The Plaintiff alleged that having paid to the Defendant the aforesaid sum of \$7,200 he became entitled to be conveyed the said lot or parcel of land measuring 100 feet x 100 feet.

The Plaintiff alleged that in breach of the agreement the Defendant has failed and or refused to cause the said parcel of land to be fully surveyed and the said survey plan to be lodged, and to convey the title to the Plaintiff.

The Defendant entered appearance on March 1, 1993 and he filed a defence on March 9, 1993. In his defence the Defendant denied the Plaintiff's allegation that the Plaintiff had paid him the sum of

\$7,200 and that he was entitled to have a portion of land measuring 100 feet x 100 feet. The Defendant further denied that he was in breach of the agreement and he alleged that the Plaintiff had refused to pay the balance of the purchase price.

A request for hearing was filed on June 3, 1993.

At the trial only the Plaintiff gave evidence. He tendered in evidence a copy of the Defendant's land certificate as well as a copy of a receipt purportedly signed by the Defendant to the effect that he received \$3,640.00 from the Plaintiff leaving a balance of \$3,560.00.

The Plaintiff stated that he was paying the balance by instalments and was recording on the receipt the amounts that he was paying. He said the Defendant had sent him to survey the land and he had that done by Ravinus Jn Baptiste, a Surveyor.

At the conclusion of his testimony the Plaintiff stated:

I am asking the Court to get my deed. I want the property surveyed to be registered. I want my title conveyed to me. I will also pay the balance of the purchase price. I am asking for my costs."

When he was asked by the Court what is the balance of the purchase

price he first said it was \$700 and later said the amount should be \$500.00.

Ignatius Joseph was called three times but did not appear. Miss Mendes who was on the record for the Defendant entered the Court during the proceedings but did not take any part.

In paragraph 3 of the statement of claim the Plaintiff alleged that he had paid the full purchase price and therefore became entitled to the land. In paragraph 3 of the defence the Defendant denied that this was the case but when in paragraph 4 the Defendant stated that the Plaintiff had not paid the full purchase price it became evident that the denial was not that the Plaintiff had not paid any money at all but that he had not paid the full purchase price.

So on the pleadings and from the evidence of the Plaintiff it does not appear that the Plaintiff has established that there was a breach of the agreement. And if there is no breach of an agreement the Plaintiff is not entitled to any remedy including the remedy of specific performance.

At paragraph 401 of Vol 44 of Halsbury's Laws of England, Fourth edition, the learned authors state :-

"THE REMEDY OF SPECIFIC PERFORMANCE. Specific performance is equitable relief, given by the Court to enforce against a Defendant the duty of doing what he agreed by the contract to

do."

In paragraph 2 of his statement of claim the Plaintiff alleged that the agreement was evidenced in writing and dated 7th September, 1987. The document which was tendered in evidence is as follows;-

"I, IGNATIUS JOSEPH JOHN BAPTISTE also called IGNATIUS JOSEPH of Paix Bouche in the Quarter of Gros-Islet hereby received from GILES MATHURIN the sum of THREE THOUSAND SIX HUNDRED AND FORTY DOLLARS (\$3,640.00) on account of SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00) for a lot of land measuring 100 ft. x 100 ft. situate at Plateau in the Quarter of Gros Islet. The balance of THREE THOUSAND FIVE HUNDRED AND SIXTY DOLLARS (\$3,560.00) TO BE PAID WITHIN eighteen months from the date hereof.

Dated at Castries this 7th. day of September, 1987.

IGNATIUS JOSEPH J.B."

I do not see from the above that the Defendant had agreed to transfer any land to the Plaintiff before the payment of the purchase price.

The evidence of the Plaintiff left much to be desired. He was inarticulate and was unsure of himself. He constantly had to look at the receipt to remember what he had paid to the Defendant. Of

course the Defendant has only acknowledged one payment of \$3,640 which left a balance of \$3,560.00. The Plaintiff has amounts on the receipt which he said he paid to the Defendant. These are untidy with figures written over other figures. When they are added up they amount to \$2,240 so that there would still be a balance of \$1,320 on the most favourable interpretation for the Plaintiff. But in evidence he says the balance is \$500.00.

But there is also a term in the agreement to the effect that the balance of the purchase price of \$3,560 was to be paid within eighteen months from September 7, 1987. That period would of necessity end on March 6, 1989.

If the Plaintiff is at all still entitled to any remedy why should I specifically enforce a contract in favour of a Party who has been delinquent for over five years? And to date he still has not fully complied with his part of the agreement for he is asking to enforce the contract in his favour and he will at some time in the future pay the balance of the purchase price.

At paragraph 502 of the same volume of Halsbury's Laws of England referred to above the learned authors state that :-

"Delay by a party in performing his part of the contract, or in commencing or prosecuting the enforcement of his rights, may constitute such laches or acquiescence as will debar him

from obtaining specific performance."

In paragraph 4 of his statement of claim the Plaintiff alleged :-

"In breach of the said aforesaid agreement, the Defendant has failed and or refused to cause the said parcel of land to be fully surveyed and the said survey plan to be lodged, and to convey title to the Plaintiff, whereby the Plaintiff has suffered loss and damage."

I have not been shown any agreement whereby the Defendant was obligated to cause the parcel of land to be fully surveyed and the said survey plan to be lodged.

The Plaintiff's claim is dismissed. Neither the Defendant nor his Counsel took part in the trial so there shall be no order as to costs.

A.N.J. MATTHEW
Puisne Judge