

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007-03010

BETWEEN

**JOVETTE VIDAL
GILLIAN HERNANDEZ**

CLAIMANTS

AND

DIAN ANGINI ROBERTS

DEFENDANT

BEFORE THE HON. MADAME JUSTICE J. CHARLES

Appearances:

For the Claimant: Ms. Debra James

For the Defendant: Mr. Shastri Roberts,
Instructed by Mr. Stanley Marcus

Date of Delivery: 27th May 2011

JUDGMENT

BACKGROUND

[1] The Claimants entered into an agreement, on the 8th February, 2007, with the Defendant for the sale of a parcel of land in Petit Valley. The purchase price of the land was \$775,000.00, with a deposit of \$77,500.00 being paid

on the same day to Dwight Blackman, a real estate agent acting on behalf of the Defendant.

[2] The Agreement provided for completion to be on or before one hundred and twenty (120) days from the 8th February, 2007 and further, that the vendor and purchasers each have the right to request thirty (30) days extension for completion.

[3] On the 5th June, 2007, the Claimants requested the thirty (30) days extension from the Defendant, which was orally granted; thereby extending the date of completion to the 8th July, 2007. However, before this date of completion, the Defendant informed the Claimants that she was no longer interested in selling the parcel of land.

[4] The Claimants' Attorney, by a letter dated the 13th July, 2007, requested a refund of the deposit and losses sustained in making arrangements to complete the transaction. The Defendant never responded and as a result, these proceedings were filed on the 17th August, 2007 seeking:

- i. A Declaration that the repudiation by the Defendant of the agreement for sale was wrongful and unlawful;
- ii. A Declaration that the Claimants are entitled to the refund of the deposit of \$77,500. which was paid to the Defendant;
- iii. A Declaration that the Claimants are entitled to be paid the sum of \$7,600. being the expenses incurred by them in order to facilitate the completion of the sale;
- iv. An Order for the payment by the Defendant to the Claimants in the sum of \$85,000.;
- v. Interest on the sum; and,

- vi. An Order that the Defendant may be made to pay the costs of and incidental to this application.

THE EVIDENCE

- [5] There is disagreement between the parties regarding the date when the Defendant informed the Claimants that she was no longer willing to sell the parcel of land. The Claimants contend that it was on the 1st July, 2007, while the Defendant states it was sometime after the date of completion had expired.
- [6] In cross examination, the First-named Claimant and Judy Listhrop, the aunt of the Second-named Claimant who was present at the conversation, were not shaken and were both clear in their recollection of the date and the events that transpired between them and the Defendant.
- [7] Andrew Listrop, the uncle of the Second-named Claimant and who was also present at the conversation, conceded that he did not remember the date of the meeting. However, he was clear and unshaken in his recollection of what occurred when the Defendant announced that she was no longer interested in selling the land.
- [8] The Defendant did not recall the date of the meeting but merely denied that it occurred on the date given by the Claimants.
- [9] The defence is based on the fact that the Defendant did not believe that the Claimants had the necessary funds to complete the transaction. However, she conceded in cross examination that the Claimants, from at least February to June 2007, were making efforts to complete the sale; including

accompanying the First-named Claimant to a WASA Office to get a Clearance Certificate.

[10] The Defendant again could not recall the precise date when this happened but admitted that it “most likely” occurred in June. In addition, the Defendant admitted that the First-named Claimant drove her to a WASA Office and paid for the Clearance. The WASA bill exhibited by the First-named Claimant has the date of payment as 5th June, 2007.

[11] George Johnson was engaged by the Defendant to conduct a survey of the land as part of the process of obtaining a cadastral sheet, to aid the Claimants in securing funds from the Trinidad and Tobago Mortgage Finance Company. He stated in cross examination that the Claimants called him twice, on the 25th June, 2007 and 30th June, 2007, to enquire whether the cadastral sheet was ready. These dates were supported by telephone records which he provided to the Court.

[12] He stated that on the first occasion he informed the Second-named Claimant that the cadastral sheet was not ready and he would need to obtain further instructions from the Defendant. On the second occasion, the First-named Claimant enquired again about the cadastral sheet and was informed that the Defendant instructed Johnson to “hold his hands”, which meant, according to Johnson, that he could not proceed any further with the survey.

[13] In cross examination, George Johnson was adamant that he received these instructions from the Defendant before the end of June 2007, and that the telephone records of his conversations with the Claimants are further proof of this.

[14] The Court accepts the evidence of the Claimants and their witnesses to that of the Defendant. The evidence of George Johnson, as neutral party who has no interest in this matter, is also accepted; it establishes that the Defendant had decided prior to the meeting on the 1st July, 2007 that she was no longer going to sell the property to the Claimants.

ANALYSIS

[15] The issue for the Court to decide is whether the Claimants failed to complete the agreement for sale, or whether the Defendant repudiated the agreement.

[16] The Defendant submitted that an adverse inference should be drawn against the Claimants as they have not sought specific performance of the agreement for sale rather reimbursement; citing this as evidence of their inability to pay the purchase price. The Court will not draw such an inference, as it up to parties to any contract to decide whether they would continue to pursue the contract, *via* specific performance, or simply obtain a reimbursement of their funds.

[17] It is clear to the Court that the Defendant had decided, for whatever reason, that she was no longer interested in completing the sale with the Claimants. This, the Court accepts, amounts to her repudiating the agreement for sale in breach of the terms and conditions.

[18] The Court finds that the source of the Claimants' funding to purchase the house, in these circumstances, is immaterial; as at all times the Claimants were trying their best to complete the sale on the agreed date. This is, in

fact, the reason behind the First-named Claimant and the aunt and uncle of the Second-named Claimant driving to the home of the Defendant to enquire of the status and thereafter, being informed of her position as it regarded the parcel of land.

- [19] The Court accepts the Claimants' and their witnesses' version of events and finds that the Defendant wrongfully repudiated the contract.

DAMAGES

- [20] The Claimants submitted that the Defendant is liable for the full deposit of \$77,500.00 and \$7,600.00 in expenses they incurred in order to facilitate the completion of the sale – totaling \$85,100.00. The Defendant contends that if monies are recoverable by the Claimant it can only be the \$15,338.00 that she received from her real estate agent. However, in **Ellis v Goulton**¹ it was held that where a deposit has been paid to a third person as agent, it can be recovered only from the vendor and not the third person personally.

- [21] The purchaser's right to recover his deposit is a legal right which springs out of a breach of contract by the vendor: **Howe v Smith**², and where the vendor is in default of performing part of the contract, the purchaser can not only recover his deposit with interest but can also receive damages: **Johnson v Agnew**³. The damages awarded can include the expenses incurred by the purchaser: **Gosbell v Archer**⁴.

¹ [1983] 2 QB 350

² [1884] 27 Ch. D. 89

³ [1979] 1 All E.R. 883

⁴ (1835) 110 E.R. 193

[22] Based on the foregoing, the Court will award the Claimants the full deposit of \$77,500.00 and the \$7,600.00 in expenses they incurred trying to complete the sale of the land, totaling \$85,100.00.

CONCLUSION

[23] The Court therefore makes the following orders:

- i. The Defendant to pay to the Claimants the sum of \$85,100.00;
- ii. Interest on the sum of \$85,100.00 at the rate of 6% from the date of the breach to the date of judgment;
- iii. The Defendant to pay the Claimants' costs in this action.

JOAN CHARLES

JUDGE