

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

Claim No. CV 2017-02974

Between

Laura Leigh-Jo Raghunanansingh

Tarran Ramkissoon

Claimants

And

Prakash Peter Jagroopsingh

Defendant

Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Delivered on November 4, 2019

Appearances:

Sasha Paula Singh and Lauren Stacy Ramtahal, Attorneys-at-Law for the Claimants.

Richard H. Sirjoo and Renuka Ramdass, Attorneys-at-Law for the Defendants.

JUDGEMENT

A. Introduction

1. A March 14, 2015 agreement for sale of land and building that has not been fulfilled to date is the subject of this decision. The Claimants are the intended purchasers who claim that the Defendant, the vendor, has breached the agreement by failing to obtain a Completion Certificate in order to complete the sale. The Defendant counterclaims for

the balance of the purchase price plus interest, averring that it is the Claimants who are in breach of the agreement.

B. Factual Background

2. In March 2015, the Claimants entered into an Agreement with the Defendant to purchase a property located at Southern Main Road, Cunupia, known as Lot 86 (“the property”) at a price of \$1,250,000.00. This Agreement took the form of a written agreement for sale.

The written terms included:

- a. At clause 1- The Vendor’s obligation to construct a dwelling house on the land in accordance with plans agreed to by the Purchasers.
 - b. At clause 2 – The Purchasers’ agreement to buy the property and incomplete dwelling house for the price mentioned above.
 - c. At clauses 3 and 8 – The Purchaser’s obligation to pay a deposit on signing and the balance of the purchase price on the Completion Date which is defined in the Written Agreement as “not later than sixty days after the Completion Certificate”. The Written Agreement omitted to specify who would be responsible for obtaining the Completion Certificate. In my view, however, had the provision that the Vendor would complete the construction been adhered to it would have been practical for the Vendor to obtain it. The Claimants’ case is premised on their view that there was an unfulfilled obligation of the Vendor to obtain the Completion Certificate.
 - d. At clause 9 – The Vendor is to be entitled to interest at 12% on any amounts left unpaid by the Claimant after the due date for payment of same.
 - e. At clause 10 – Provision for the rescission of the Agreement if the balance of the Purchase price is not paid by the Completion Date.
3. Importantly, in addition to the foregoing written terms, it is admitted on both sides that there were some oral terms of the Agreement agreed to on the date of signing that were not incorporated into that written document. These oral terms clearly varied the

mechanism/responsibility for completion of the construction and, as a consequence, also modified the terms as to the sale completion and final payment date. There is no dispute as to two of these oral terms, namely:

- a. That the Claimants were allowed to take immediate possession on signing of the Agreement for Sale;
 - b. That the building was incomplete, and the Claimants would be the ones to complete the relevant construction instead of the Defendant (this was in fact contrary to the written contract which stated that the Defendant was obliged to complete the building).
4. The Defendant contends that there were two other oral obligations based on discussions at that time, namely:
- a. That the Claimants were to complete the building within 60 days of March 14, 2015. The Defendant's pleading is that he informed the Claimants when he allowed them to enter into possession and complete the construction works that this was to be completed within 60 days;
 - b. That the Claimants were responsible on completion to inform the Defendant that construction works had been completed and allow for an inspection to facilitate him obtaining the completion certificate. The Defendant's Defence and Counterclaim are premised on his view that the Claimants breached these oral terms by delaying completion of the works for years and by failing to inform him of completion.

The Claimants deny that these latter terms were agreed. Instead they contend there was no date agreed for completion of the works.

5. In accordance with the written agreement, the Claimants paid to the Defendant the sum of \$125,000 as a deposit of 10% of the purchase price in two installments (\$40,000 on 17 February, 2015, and \$85,000 on 14 March, 2015). The Claimants gained access to the property in order to complete final works to it pursuant to the oral agreement.

6. The Claimants claim that unexpected works to the ceiling had to be done due to a failure of the Defendant to provide the property in a state that was sanitary and/or fit for use. The Defendant claims he has no knowledge of this as the ceiling would have had to have been removed in order to be aware of any unsanitary conditions.
7. In their pleadings and witness Statements, the Claimants outlined the works done on the property and aver that all works were done in accordance with the agreed plans prepared by the Defendant. The total value of the works they claim, without evidence in support such as a valuation report, is \$293,324.30. They claim that the property is now valued at \$2,000,000.00. The Defendant states that valuations should be done to determine the current value as the Defendant alleges that the works done by the Claimants were not done in accordance with the plans.
8. At the outset, it is my finding that the Claimants' contention as to deception by the Defendant in concealing the extent of the work required to complete the building, thereby causing delays, must be ruled out as having any bearing on the obligations of the Defendant. It is not in dispute that the Claimants were allowed to inspect the premises before the sale agreement was signed. They knew the building was incomplete and voluntarily agreed to take over the vendor's responsibility to complete the works. Any failure to observe the extent of the work required must be for their own account. It cannot be that the extent of the work required can now be relied upon as a basis for relieving the Claimants of their accepted duty to complete it or for placing blame on the vendor for completion delays.
9. As aforementioned, the written agreement stipulated that the balance of the purchase price would be paid by the Claimants to the Defendant no later than sixty days from the date of the Completion Certificate. The relevant conveyance document was to be executed at that point.

10. The Claimants' claim that in October 2016 the Defendant approached them requesting that they close the transaction and pay off the balance of the purchase price. This was almost a year and a half after they had entered into possession and commenced their construction works. The Claimants' have pleaded, without support of documentary evidence, that at that time they asked the Defendant about the Completion Certificate.
11. A relevant contemporary document dated at the same time this alleged conversation took place was omitted from the Claimants' Statement of Case. This document was the Claimants' own letter dated October 18, 2016 seeking more time to complete the works by December 31, 2016. No mention was made therein about asking the Defendant for a Completion Certificate.
12. The Defence pleading denies that any such discussion, as pleaded by the Claimants, took place in October 2016. Instead the Defence discloses the Claimants' said October 18, 2016 letter which responded to the Defendant's repeated monthly requests that they complete the works on the property.
13. Another document disclosed in the Claimants' Reply further supports that it was the Claimants who caused the time for completion of the sale to be extended by their delays in finishing the works. At paragraph 13 of the Reply, the Claimants indicated that after they failed to complete the works at the extended date of December 31, 2016, the Defendant tried to get them to sign an Agreement as to the terms for the extended completion period. They refused to sign it. The said Agreement dated January 27, 2017 sought to add to the original agreement the terms that the extended date for completion would be February 28, 2017 and the Claimants would be responsible for the Completion Certificate.
14. The Claimants plead that they were making repeated requests of the Defendant in February 2017 to complete the sale. This is not borne out by the correspondence

disclosed by the Defendant. It is clear from a letter dated February 15, 2017 that it was the Defendant who by letter to the Claimants from his Attorney, was demanding their completion of the sale by payment of the balance of the purchase price plus interest. The Defendant's financier sent details of the amount to be paid, including interest, from the date of signing the agreement to the Claimants' bank by letter dated March 17, 2017.

15. In fact, it was not until May 11, 2017, more than two years after the Claimants took possession that they had their then Attorney write the Defendant. The letter accused the Defendant of failing to provide the Completion Certificate and of having told the Claimants that the sale could be completed without one. The Claimants' Attorney further accused the Defendant of refusing to complete the sale without the payment of interest. The letter demanded close of the sale within 28 days. It was this pre-action protocol letter that preceded commencement of this claim. Before the Defendant's Attorney was able to provide a substantive response, the Claim was filed on August 14, 2017.

16. The Claimants' contention, based on their pleaded version of events, is that the Defendant breached the written part of the Agreement by failing to take steps to fulfill obligations under the contract. They further cite what they see as "the unlawful implementation of interest" as a breach of contract.

17. As it relates to the alleged failure to take steps to completion, it is not in dispute that the Completion Certificate (the date for which would have set the time running for completion based on the written Agreement) has not been obtained to date. This, the Defendant claims, was due to the unfinished construction by the Claimants and the unapproved alterations made by them to the building that made it impossible to obtain a Completion Certificate.

18. The Defendant's case is that the Claimants failed to complete the construction in a timely manner in accordance with building plans and they therefore breached the oral part of

the Agreement. The Claimants' answer, raised for the first time in their Reply, is that they never received the building plans from the Defendant and that many other residents of the Defendant's housing development had made alterations to the plans such as tool sheds similar to the one they constructed. My view on this contention of the Claimants is the same as mentioned above regarding the reliance on their own failure to fully inspect the building prior to agreeing to purchase it. Just as they cannot rely on that omission, they cannot rely on their failure to ask for the building plans specifically referred to in the written agreement as a basis for excusing the construction delays and for resisting the payment of interest.

19. As it relates to the Claimant's allegation that the interest claim is a breach of the Agreement, the Defendant's case is that his February 15, 2017 demand for the balance of the purchase price plus interest at the rate of 12% was provided for in the Agreement for Sale. Interest was demanded based on the fact that the Claimants were in possession of the property since 14 March, 2015, receiving the benefit of occupying it. This also formed the basis of his decision not to pay the WASA bill for this period.

C. Issues

20. Whilst the relief the Claimants seek is Specific Performance of the Agreement, it is clear that both parties desire finalization of the agreed transaction. In essence, the remaining dispute between the parties relates to the interest being claimed by the Defendant. The Claimants contend that it is only due to the Defendant's failure to provide the Completion Certificate that the contract had not been completed.

21. On the other hand, the Defendant claims that it is the Claimants' delay in completing construction of the house beyond the agreed time that delayed completion of the sale. Further, he contends that the construction done by the Claimants was outside of the approved specifications in the approved plans. That rendered it impossible to obtain a Completion Certificate. The Defendant argues that having delayed completion of the construction it was the obligation of the Claimants to finalize the sale and there was no

need to wait on a completion certificate. The failure to do so extended the duration of their occupation of the premises prior to completion of the sale and as such resulted in interest accruing which was payable to the Defendant.

22. The main issues to be determined, as identified by the parties during Case Management are

- i. whether either party has acted in breach of the agreement for sale
- ii. if so, what are the consequences in damages for such breach and
- iii. based on the Agreement for Sale whether interest is payable to the Defendant in the circumstances.

D. Analysis of Facts and Law

23. The main issue in dispute between the parties is as to what was agreed would be the date when the Claimants were required to complete works on the house. The Defendant argues that it was sixty days from the written agreement. This is not agreed by the Claimants and there is no proof of it other than the Defendant's testimony.

24. However, there is evidence that a time limit was contemplated by the parties. By letter dated October 18, 2016 the Claimants admitted that construction should have been completed by that date – i.e. approximately a year and a half after the written contract was signed and they took possession. The Claimants, by the said letter, asked for more time to complete i.e. an extension to December 31, 2016.

25. It is clear that the Defendant's understanding based on the Claimants' letter was that the Claimants had to complete by December 31, 2016. This is evident from his Attorney's letter dated February 13, 2017. That letter complained that the December deadline had not been met by the Claimants and demanded the balance of purchase price plus interest at 12%. It is my finding that the Claimants were bound, at the latest based on the oral agreement and their own October 2016 letter, to pay interest from at least 18 October, 2016.

26. The agreement between the parties for the Claimant to enter the property was oral. As such there is no written evidence of terms governing this arrangement. As aforementioned the oral testimony of the parties as to what the terms were differs. The authorities cited by the Defendant (and unchallenged by the Claimant in reply submissions) on possession before completion are helpful in determining the position at common law.

27. In **Barnsley's Conveyancing Law and Practice Fourth Edition Pages 255-256 Paragraphs 2 and (ii)** the learned author states –

“2. As we have seen, the vendor is entitled to retain possession until actual completion. The parties agree, otherwise...

*(ii) **As from the date of taking possession until actual completion** or until he vacates the property following rescission of the contract, the purchaser is responsible for repairs and for discharge of all outgoings by way of rates, rent, insurance and even non-recurrent outgoings such as the expenses incurred in complying with a dangerous structure notice. **He must pay interest on the balance of the purchase money, and is entitled to the rents and profits from any part of the property not physically occupied by him. These conditions basically confirm the open contract position, where the act of taking possession is an implied agreement to pay interest.**”* [Emphasis added]

28. In the case of **Fludyer v Cocker [1803-13] All ER Rep 471** it was observed:

*“The purchaser might have said that he would not have anything to do with the estate until he got a conveyance. But that is not the course he took, he enters into possession: an act that generally amounts to a waiver even of objections to title. He proceeds upon the supposition that the contract will be executed, and, therefore, agrees that from that day he will treat it as if it was executed. **The act of taking possession is an implied agreement to pay interest, for so absurd an***

*agreement as that the purchaser is to receive the rents and profits to which he has no legal title, and the vendor is not to have interest as he has no legal title to the money, can never be implied. The purchaser does not state any circumstances, any inconvenience, that he has sustained by not having the conveyance, any applications by him for a conveyance at an earlier period. He rests upon the agreement, implied from the fact of possession taken. It would sound very strange if the purchaser had paid the money, as being bound to pay it, and the vendor, having had the use of it for four or five years, should then refuse to account for the rents and profits; which is this case. **The only question is what is the equitable arrangement between the parties.** There is not a ground for refusing the payment of interest.” [Emphasis added]*

29. **JT Farrand Contract and Conveyance, Third Edition Page 173 Paragraph 4₁**, speaks of possession before completion. It states –

*“In conclusion, brief cross-references may be made to **the collected consequences of a purchaser taking possession before completion.** Firstly, it may indicate acceptance of the vendor’s title. Secondly, if the title is registered the purchaser acquires an overriding interest of the Land Registration Act 1925. Thirdly, the vendor’s duties as a trustee cease and he will have a lien on the land until paid. **Fourthly, interest becomes payable on the balance of the purchase price.** Fifthly, delay will not be a bar to an action for specific performance. And sixthly time begins to run for the purposes of s.10(1) of the Limitation Act 1939. Finally, vendors must not forget that a purchaser in possession may feel less pressure for an early completion and may indeed fail to complete, returning the property after damaging it.” [Emphasis added]*

30. **JT Farrand Contract and Conveyance, Third Edition, Page 187, Paragraph B₁** provides the principle on interest as follows “*on general principle it is not right that the purchaser both should have the income of the property from the date of the contract [sic] and in addition*

should be relieved from paying interest on the purchase price.” In the present case it is agreed that the property was incomplete and therefore not capable of earning an income until certain renovations were complete. It is clear that a reasonable period of time must have been given for these works to take place.

31. From the written correspondence between the parties, it is clear that both parties accepted that the works should have been completed by at least 18 October, 2016. At this point it is contemplated by both parties that the property should have become complete to a standard to have become income-earning. This understanding by both parties was clearly based on the terms of the oral agreement which altered the written terms for the vendor to complete the construction. This had an impact on his ability to produce a completion certificate as it left completion entirely in the hands of the Claimants who delayed in completing their works.

32. The oral agreement between the parties was such that the date for completion of the sale could not have been based on vendor obtaining a Completion Certificate. Ultimately, long after the oral terms were discussed, they both came to an understanding that the Completion Certificate was not required. However, this understanding came very late in the contractual relationship and prior to that both sides were clearly awaiting completion of the works as precursor to closing the sale. That was the state of affairs at least up to January 2017 when the Defendant sought to put in writing that the Claimants were responsible for the Completion Certificate.

33. Therefore, interest must run from the October 18, 2016 date by which it is clear that the Claimants had delayed completion beyond the timeframe contemplated by both sides. As contemplated in **Fludyer v Cocker** (above) this is in my view the equitable arrangement reasonably applicable to the parties based on the circumstances of this case.

34. The Defendant has therefore succeeded partly in his Counterclaim for interest due to the Claimants having remained in possession of the property since the date of the agreement having been given a reasonable period to complete the works on the house for it to become capable of earning an income.
35. Regarding the Claimants' averment that it was the failure of the Defendant to produce the Completion Certificate that prevented the closure of the sale, I do not so find. That the works done by the Claimant were out of sync with agreed plans has not been proven by the Defendant. On the other hand, the Claimants have admitted that they did not look at those plans.
36. In substance, the parties now agree that failure to comply with the plans does not affect the ability of the parties to close. It was always in the interest of the Defendant to complete the sale and it is clear from his correspondence to the Claimants since at least February 2017 that he was pressing to complete the sale. The belated May 2017 complaint about the Defendant's non-production of the Completion Certificate before finalizing the sale appears to be an attempt by the Claimants to shift responsibility for the prolonged transaction, given their benefit and use of the property since 2015.
37. The sticking point appears to have always been the length of time the Claimants were undergoing works on the property without paying the balance of the purchase price. The Claimants have failed to prove on a balance of probabilities that the Defendant was in breach of the contract by not producing a Completion Certificate. Instead the delays in completion were caused by the Claimants who while in possession of the property delayed completion of the construction. They did so to the prejudice of the Defendant without interest on the purchase price being agreed to by the Claimants when it was demanded in February 2017.

E. Conclusion

38. It is hereby ordered as follows:

- (i) Judgement for the Defendant on paragraph 1 of the Counterclaim that the balance of the purchase price being \$1,125,000.00 is to be paid by the Claimants to the Defendant forthwith and the Agreement for Sale dated March 14, 2015 is to be duly completed thereafter.
- (ii) Interest on the balance of the purchase price is awarded to the Defendant at 12% from 18 October, 2016 to the date of this Judgement.
- (iii) In the event of failure by the Claimants to comply with parts (i) and (ii) of this order within two months, the Defendant is awarded vacant possession of the premises situate at Lot No. 86, St. Anthony's Park, Cunupia
- (iv) In the event that the Defendant fails to complete the sale of the property the Registrar of the Supreme Court is empowered to sign and do all that is required to complete the sale.
- (v) Costs of the Counterclaim are to be paid by the Claimants to the Defendant on the prescribed basis.
- (vi) The Claim is dismissed with costs to be paid by the Claimants to the Defendant on the prescribed basis. Leave is granted to the Claimants to appeal the decision as to costs of the Claim.
- (vii) Liberty to apply

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by: Christie Borely JRC I