

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO**

Claim No. CV 2006-03325

BETWEEN

**RAMDEO RAMSAROOP
JOAN RAMSAROOP
JOEL RAMSAROOP**

(by their lawful Attorney Renwick Austin, by virtue of Deed

Registered as No. DE200402452625D001)

Claimants

AND

**RICKY RAMPERSAD
INDIRA RAMPERSAD
RENNISA RAMPERSAD
MELISA RAMPERSAD**

Defendants

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Winston Seenath for the Claimants.

Mr. Gerard Raphael for the Defendants

ORAL JUDGMENT

I propose to give a very short Oral Judgment. I have read the submissions by attorneys for both parties and I accept that the chronology in relation to this matter is as set out in the witness statement of the defendant. That being so, the question of whether or not attorney at law for the claimants had sought to make time of the essence then becomes relevant, and it is clear that is what took place.

Even though the defendant was vastly in breach of the time frames set out in the agreement, requiring completion in 2004, and that he had several years to do so, the fact is he did not. The claimants, via their attorney, made time of the essence and engaged in a process which the defendants were required to participate in, and were participating in, intended to culminate in the sale of the property.

It is clear that the financing was being put in place, that deeds were being exchanged, and that the claimants, via their attorney, were engaged in the process of specifically performing the agreement, having sought to have made time of the essence.

There is no evidence that the claimants' attorney was acting without their instructions. This assertion was not supported by any evidence that I can accept.

Accordingly it is ordered that:

1. There be specific performance of the agreement dated 12th of March 1997 for the sale by the claimants to the defendants of the house and land known as Lot No. 109 Caroni Savannah Road in the Ward of Chaguanas in the Island of Trinidad, (hereinafter called the said property) at the price of \$100,000, of which \$53,000.00 remains due and owing.
2. That the defendants do pay the sum of \$53,000.00 to the claimant within fourteen (14) days of this order, that is on or before March 30th 2011.
3. It is further ordered that if the sum of \$53,000.00 is paid on or before March 30th 2011 that the claimants do execute a conveyance in favour of the defendants in respect of the said property and in default of so doing that the Registrar of the Supreme Court be empowered to execute such conveyance.
4. In default of the defendants paying the entirety of the sum of \$53,000.00 on or before March 30th 2011 the defendants are to vacate and deliver possession of the said property within six weeks (6) of the date of this order, that is on or before May 11th 2011.

Finally I consider that in the circumstances of this case that there should be no order as to costs. I should indicate I would have been minded to award interest on the sums owing but there is no claim for interest.

Dated this 17th day of March 2011.

REASONS FOR DECISION

THE CLAIM

The first named claimant is the brother in law of the first named defendant. He agreed to sell to the first named defendant a property situate at 109 Caroni savannah road (the property) at the price of \$100,000.00, payable over a period of 6 years with the sum outstanding attracting no interest. A written agreement was prepared and an “interim deed “was also prepared reflecting that transaction.

Despite the generous terms, and even despite the fact that the defendant rented out the property and generated an income from it, the period agreed for payment passed with only the sum of \$47,000.00 being paid. The claimants called upon the defendants to vacate the premises and offered to return the full sum paid provided that the property was left in good condition.

The claimant claims possession of the property and /or damages for breach of contract and /or damages for delay in completion of agreement.

The defendant counterclaims specific performance of the agreement made on March 12 2007 (sic) though this is obviously an error as the agreement was in fact dated 1997. The detailed chronology is set out in the defendant’s witness statement as follows:

CHRONOLOGY

Witness statement of Ricky Rampersad (emphasis added)

- 1) *Sometime in or about the 12th March, 1997 the Claimants agreed to sell the other Defendants and myself the property **in which we now reside** at Lot no. 109 Caroni Savannah Road, Chaguanas at and for the price or sum of One hundred Thousand Dollars (\$100,000.00) or Seventeen Thousand Dollars (US currency).*
- 2) *On the said 12th March, 1997 the other Defendants and I paid the sum of Thirty Thousand Dollars (\$30,000.00) as a deposit towards the purchase price and by way of promissory note we promised to pay the balance of Seventy Thousand Dollars (\$70,000.00) over a six (6) year period with a minimum payment of Ten Thousand Dollars (\$10,000.00) per year **interest free** with effect from 1st June, 1998 and every year thereafter ending the 1st June, 2004.*
- 3) *The Claimants also delivered to us an **interim Deed** made the 4th March, 1997 in United States of America conveying the said property to us.*
- 4) *As at the 27th July, 2002 we had made additional payments making a total of Forty Seven Thousand Dollars. (\$47,000.00). **The balance then owing was Fifty Three Thousand Dollars (\$53,000.00) .***

- 5) *By letter dated 1st June, 2004 my Attorney-at-Law wrote to the Claimants letting them know that we had Twenty Thousand Dollars in our possession which could be paid to them immediately and the balance or sum of Thirty Three Thousand Dollars would be paid to them in three (3) weeks as we were making arrangements to the Hindu Credit Union to obtain the balance.*
- 6) *By letter dated 27th June, 2004 Ms. Debra James the Claimants' Attorney-at-Law wrote to our Attorney-at-Law stating that we had breached the promissory note and that the Claimants were **not** minded to accept the offer of an immediate payment of Twenty Thousand Dollars and/or any additional payments.*
- 7) *By letter to us dated 28th June, 2004 the Claimants' Attorney-at-Law wrote to us requesting us to vacate the premises by the 1st August, 2004 and offering to refund us the monies we had paid on account.*
- 8) *By letter dated 8th July, 2004, our Attorney-at-Law replied to the Claimants' Attorney-at-Law, stating that the Claimants' interest was in the recovery of the monies due to them and not in the property as such and stating further **we had obtained a loan from the Hindu Credit Union to liquidate the entire balance of the purchase price** and that the Claimants were required to execute a Deed conveying the property to us.*

- 9) *By letter dated 28th July, 2004 the Claimants' Attorney-at-Law wrote to us requesting us to complete the transaction by paying the balance of the purchase price on or before the 13th August, 2004.*
- 10) *By letter dated 3rd August, 2004 the Claimants' Attorney-at-Law wrote to our Attorney-at-Law stating that since the promissory note/agreement for sale of the property did not make time of the essence of the agreement they were giving us an opportunity to complete the sale on or before the 13th August, 2004 thereby making time of the essence.*
- 11) *By letter dated 4th August, 2004 Messrs. R.C. Chadeesingh & Co., Attorneys-at-Law for the Hindu Credit Union and the Attorneys preparing one Deed wrote to Ms. Debra James, the Claimants' Attorney-at-Law enclosing the Deed of Conveyance for execution by the Claimants and letting her know that they were prepared to exchange the cheque for the balance of the purchase price for the said Deed upon execution of same by the Claimants.*
- 12) *At the same time Messrs. R.C. Chadeesingh & Co. by letter dated 19th August, 2004 were making arrangements with the Hindu Credit Union for us to execute the Deed of Mortgage.*

- 13) *By letter dated 8th September, 2004 the Claimants' Attorney-at-Law wrote to our Attorneys-at-Law stating that she had perused the draft Deed of Conveyance and found it to be satisfactory save the names Rennisa Rampersad and Melisa Rampersad our children were omitted and requested a correction of the Deed.*
- 15) *By letter dated 8th September, 2004 our Attorneys-at-law pointed out to the Claimants' Attorney-at-Law that our children were minors and that because of the mortgage their names could not be included in the Deed.*
- 16) *By letter dated 14th September, 2004. Ms. Debra James responded stating that she no longer represented the Claimants in the matter.*
- 17) *We had received word that the Claimants had visited the offices of Mr. Richard H. Sirjoo and as a result by letter dated 22nd September, 2004 our Attorneys-at-Law wrote to Mr. Richard H. Sirjoo letting him know that we were ready and willing to complete the transaction. However, our Attorneys-at-Law received no reply to the said letter.*
- 19) *At all material times we were ready and willing to complete this transaction as we had made all arrangements with the Hindu Credit Union for a loan to complete the transaction. We are still ready and willing to complete the transaction as we have sufficient funds of our own to complete the transaction.*

AUTHORITIES

In **Civil Appeal No. 165 of 1985 - Bidaisee v Sampath-** L.B. Gopeesingh J.A. after careful consideration of all the authorities stated at page 31:

*“Accordingly, following those decisions, I hold that **in a contract which fixes a date for completion** (as opposed to an open contract), if one party fails to complete by that date, although time is not made of the essence in that contract, **the party in default is deemed to be in breach of that non-essential term**. The date fixed for completion cannot be treated as a mere target date. As a result **the innocent party** may immediately thereafter **give a notice** that the other party is in breach of contract **and make time of the essence**. However, the time limited for completion by that notice has to be reasonable. It is no longer necessary to wait until there has been an unreasonable delay after that breach before such a notice may be served. **Such a breach of a non-essential term does not, however, entitle the innocent party to treat the said breach as a repudiation of the contract, justifying rescission and to rely on same as a ground for avoiding an action for specific performance by the party in breach**. It is only if the party, after being served with a notice to complete within a reasonable time is in breach and fails to complete within that reasonable period fixed by the notice (which in effect makes time of the essence) that the innocent party can treat such failure as a repudiation of the contract justifying rescission.”*

In Williams v Greatrex [1957] 1 W.L.R. 31-

A landowner entered into an agreement to sell to a builder certain building plots. The transaction was to be completed within two years of the agreement. The builder was allowed to enter for the purpose erecting a building. Ten years after the agreement he brought an action for specific performance. The Court held that the agreement was an agreement for the sale of land simpliciter and not a commercial transaction, accordingly, time was not of the essence and the failure of the parties to complete within the stipulated two years was not a bar to the action.

The Court further held that **the purchaser, having paid the deposits on and having entered into possession of the land became the equitable owner of the land under the contract binding on the Vendor such that the Vendor could not now object to specific performance on the ground of laches unless he could show that he had not acquiesced in the purchaser's acts of possession or that the purchaser had abandoned the contract;** and that the evidence showed sufficient acquiescence by him and no abandonment by the purchaser. Accordingly despite the lapse of time, **the purchaser was entitled to specific performance on payment of the balance of the price and interest thereon for the intervening years.**

Lord Denning at page 35 of the judgment stated: (emphasis added)

“ it seems to me that this was a contract for the purchase of land in which the parties through their own common solicitor, put forward the period of two years as their target for completion but that was as is usual in cases of the sale of land only a target: it was

not something which was of the essence of the matter. Our legal procedure is well adapted to meet such a situation. If either side wanted to bring the other up to mark **all he had to do was to give him reasonable notice requiring him to complete.** Neither side did so, and, therefore, time is not by itself a bar to the action.”

Lord Denning stated on the question of laches at page 36:

“Once the purchaser went into possession of the land, having the contractual right to be there, he not only had an equity to be there, but also the benefit of a contract to sell him these two plots. That was not only an equity: it was an equitable interest in the land. He was in a sense the equitable owner of the land. So long as he was in possession of the land he does not lose his rights simply by not proceeding at once for specific performance.”

APPARENT AUTHORITY

Whether the claimants authorized their attorney at law to waive their initial demand for possession

The Claimants admitted that they had appointed an agent who resided in Trinidad and who gave instructions to Ms. Debra James on their behalf. There is no evidence apart from the statement by the claimant that the letter of August 3rd was not written on the instructions of or with the consent of the Claimants.

Both this letter and the letter of July 28th 2004 were within the scope of the ostensible or apparent authority of the claimants' attorney at law. Further, the claimants do not dispute that the letter of July 28th 2004 represented their instructions,. The defendants had no reason to believe at the time that these letters were received by them, that they did not represent the instructions of the claimant, and in fact acted on the basis that the proposal was valid and made in good faith.

They arranged their financing and demonstrated that they were ready, willing and able to complete. In fact up to September 8 2004 the response of the claimants' attorney gave no indication that the new arrangement was not valid or authorized by the claimants.

RENTS RECEIVED BY DEFENDANT

Under cross examination the defendant admitted renting the premises and receiving rent in sums of \$1200/\$2000 per month ,sums which far exceeded the amount he was required to pay under the promissory note. There is no prohibition against renting in the agreement, although no convincing explanation was provided as to why this income was not applied to satisfying the obligation to pay off for the property.

The Interim Deed executed by the Claimants made it clear that the Defendants were agreed/expected to be treated as purchasers in possession up to the 1st June 2004.

INTEREST

Interest is not claimed in the claim form. In any event the original agreement was for interest free financing, and no evidence was led as to the quantum of interest.

CONCLUSION

The claimants via their attorney at law, whom they clothed with apparent authority to do so, waived any right to immediate possession, provided extra time for completion, and made time of the essence. Within that time the defendants arranged financing and were ready, willing, and able to complete. The claimants are not now entitled to dispute their attorney's apparent authority and rescind the agreement, and the defendants, having demonstrated that they were ready, willing and able to complete within the extended time afforded them by the claimants' attorney, are entitled to specific performance.

DISPOSITION

In those circumstances it was ordered that:-

1. There be specific performance of the agreement dated 12th March 1997 for the sale by the claimants to the defendants of the house and land known as Lot 109 Caroni Savannah Road in the ward of Chaguanas in the island of Trinidad, (the said property), at the price of \$100,000.00 of which \$53,000.00 remains due and owing.

2. The defendants do pay the sum of \$53,000.00 to the Claimant within 14 days of the date of this order that is on or before March 30th 2011.
3. It is further ordered that if the said sum of \$53,000.00 is paid that the Claimants do execute a conveyance in favour of the defendants in respect of the said property, and in default of so doing that the Registrar of the Supreme Court be empowered to execute such conveyance
4. In default of the defendants paying the entirety of the sum of \$53,000.00 on or before March 30th 2011 the defendants are to vacate and deliver possession of said property within 6 weeks of the date of this order, that is, on or before May 11, 2011.
5. That there be no order as to costs

Dated this 12th day of May, 2011.

Peter A. Rajkumar
Judge.