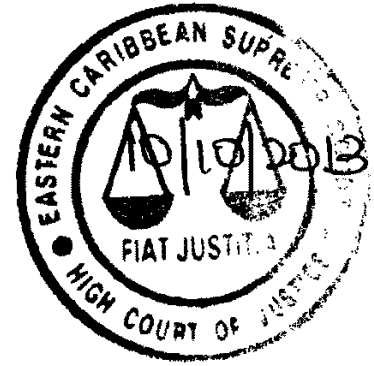


**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE



CLAIM NO. SVGHCV2012/0004

BETWEEN:

[1] LEONTIUS ROBINSON

Claimant

and

[1] EDGAR DAVIS

Defendant

Appearances:

Mr. C. B. Williams for the Claimant
Mr. Duane Daniel for the Defendant

2013: April 22
October 10

JUDGEMENT

- [1] **THOM, J:** Mr. Edgar Davis is the owner of the parcel of land described in Deed No. 891 of 1977 ("the land").
- [2] In 2004, he agreed to sell the land to Mr. Robinson for the sum of \$48,000.00.
- [3] Mr. Robinson alleges that between 2004 and 2005 he made part payment of the purchase price in the sum of \$23,000.00. However, in August 2006 Mr. Davis informed him that he would no longer sell him the land and agreed to refund him his \$23,000.00. Mr. Davis has not repaid the \$23,000.00, as a result he instituted this claim in which he seeks:

- (1) The return of the \$23,000.00.
- (2) Interest at the rate of 6% per annum on the said sum from 21st March, 2005 to the date of hearing of the claim.
- (3) Alternatively an order authorising the Registrar of the High Court to execute a Deed of Conveyance to him.
- (4) Costs.

[4] Mr. Davis in his defence admitted that he agreed to sell the land to Mr. Robinson for the sum of \$48,000.00. He contends that he did not agree for the purchase price to be paid in instalments. Mr. Robinson informed him in 2005 that the land was valued less than \$48,000.00 and he was not prepared to pay that sum for the land. Also the last payment having been made on 21st March, 2005 and the claim having been instituted on 6th January, 2012, the claim is statute barred pursuant to the Limitation Act.

[5] In his counterclaim Mr. Davis alleges that Mr. Robinson was in breach of the agreement, he remained in unlawful occupation of the land after he was told to vacate the land and Mr. Robinson frustrated the sale of the land by harassing and dissuading prospective purchasers. Mr. Davis claims the following reliefs:

- (1) A declaration that Mr. Robinson has no interest in the land.
- (2) An injunction restraining Mr. Robinson from trespassing on the land or recovery of possession of the land.
- (3) Damages for trespass.
- (4) Damages for loss of profit for sale of the land and interest at the rate of 6% per annum from December 31, 2011 until full payment.
- (5) Costs.

Evidence

- [6] Mr. Robinson testified and he called no witnesses. Mr. Davis testified and he called one witness Mr. Vertille Ferdinand.
- [7] The evidence of Mr. Robinson is that in 2004 while Mr. Davis was on holiday in Saint Vincent and the Grenadines (St. Vincent) Mr. Davis offered and he agreed to purchase the land for \$48,000.00. Mr. Davis told him he was returning to Canada soon and his business partner Mr. Ferdinand would take care of the transaction. Mr. Davis told him to pay a deposit of \$15,000.00 to Mr. Ferdinand and the balance when he could. He paid Mr. Ferdinand \$15,000.00 on 2nd April, 2004. Mr. Davis called him from Canada on three occasions and told him how much money to pay to Mr. Ferdinand. On 25th June, 2004 he paid Mr. Ferdinand \$3,000.00. He subsequently paid a sum of \$2,000.00 and on 21st March, 2005 he paid him a sum of \$3,000.00.
- [8] In April 2006 his mother died. Mr. Davis was in St. Vincent at the time and he attended the funeral. They spoke about completing the sale of the land and Mr. Davis told him not to worry he was in bereavement. Approximately four (4) months later Mr. Davis called and told him to pay the balance of the purchase price. He explained to Mr. Davis that he did not have all of the money but he was making arrangements to get the remainder. The following week Mr. Davis called and told him he no longer wished to sell the land to him and he would refund him the money. He agreed with Mr. Davis. He subsequently learnt that Mr. Davis had agreed to sell the land to one Ms. Sylvonne John before he spoke to him about paying the remainder of the purchase price.
- [9] In 2010 he saw Mr. Davis in St. Vincent and he requested the return of the \$23,000.00 and Mr. Davis refused to pay him.

- [10] Under cross-examination Mr. Robinson testified that himself and Mr. Davis were very good friends. They grew up in the same neighbourhood, they attended the same church and did almost everything together. After Mr. Davis told him he was ready to complete the sale he applied for a loan. He maintained that this was after the death of his mother in 2006. Mr. Robinson agreed that when he applied for the loan he discovered the bank valued the land at \$32,000.00. He explained he was not disturbed by the valuation because he wanted to purchase the land since it was adjoining his property.
- [11] The evidence of Mr. Davis is that in April 2004 he agreed to sell the land to Mr. Robinson for \$48,000.00. He had originally requested \$75,000. The entire purchase price was to be paid by cheque delivered to his agent Mr. Ferdinand. The Deed of Conveyance was to be sent to him after Mr. Ferdinand confirmed payment of the purchase price. In breach of the contract Mr. Robinson paid a deposit of \$15,000. Mr. Robinson represented he would pay the balance soon. Sometime after the last payment was made in March 2005 a Deed of Conveyance was sent to him, he executed it and returned it to Mr. Ferdinand. Sometime later in 2005 Mr. Robinson told him the value of the land was less than \$48,000.00 and he was no longer prepared to pay that price for the land and he wanted his money back. He told Mr. Robinson that he would refund him the \$23,000.00 after the sale of the land to a third party.
- [12] On 2nd August, 2006 he entered into an agreement with Ms. John for the sale of the land but the agreement was terminated because Mr. Robinson represented to Ms. John that he had purchased the property.
- [13] Under cross-examination Mr. Davis testified that in 2005 Mr. Robinson told him he was seeking to get a loan to pay the remainder of the purchase price but his daughter's application was refused. He told Mr. Robinson that he would try and find another buyer. He denied that he had any discussions with Mr. Robinson about the land after 2005. He agreed that he went to Mr. Robinson's home after

Mr. Robinson's mother funeral in April 2006 but denied he had any discussion with Mr. Robinson. He also agreed that he told Mr. Robinson that he was no longer selling the land. He also agreed that he called Mr. Robinson and told him he should complete the sale in an expeditious manner. By expeditious he meant one to three months.

- [14] Under re-examination Mr. Davis clarified that he told Mr. Robinson that he would not sell the property after the application to the Bank for the loan was refused.
- [15] Mr. Vertille Ferdinand testified that he is a relative of Mr. Davis' wife. He was the agent for Mr. Davis. He did not receive the full purchase price for the land from Mr. Robinson. He received a deposit of \$15,000.00. He received a total of \$23,000.00 from Mr. Robinson.
- [16] Under cross-examination he testified that he was in contact with Mr. Davis. Mr. Davis would tell him when Mr. Robinson would pay certain sums of money and Mr. Davis would instruct him how to dispose of it. The Deed of Conveyance was sent to Mr. Davis sometime after the last payment was made in March 2005.

Submissions

- [17] At the end of the trial with the agreement of counsel on both sides an order was made that written submissions be made on or before 7th May, 2013. No submissions were received from Mr. Daniel on behalf of Mr. Davis.
- [18] Mr. C. Williams submitted that the terms of the agreement were for a deposit of \$15,000.00 to be paid and the remainder at a later time. Time was not of the essence. When the deposit was paid a receipt was issued to Mr. Robinson. The receipt showed the sum paid and the balance outstanding but no mention is made that the balance is to be paid by a certain date. Payments were made and accepted without any mention of time.

[19] Mr. Williams further submitted that Mr. Davis breached the contract when he informed Mr. Robinson that he would not complete the sale. Mr. Robinson is therefore entitled to the refund of the \$23,000.00. Mr. Williams relied on the following passage in Barnley's Conveyance Law and Practices¹

"Unlike a deposit which is paid for an exchange of contract, a part payment of the purchase price is made afterward. It is not money paid as a guarantee of performance, so the vendor possesses no right in the absence of a contrary agreement to forfeit part payment on the purchaser's default. It may be that a purchaser has a lien on the land in respect of non-forfeitable installment recoverable from the vendor."

[20] Mr. C. Williams also submitted that the limitation period does not arise. Mr. Davis indicated in 2006 that he was no longer selling the property to Mr. Robinson. Twelve (12) years has not elapsed since 2004 when Mr. Robinson was entitled to specific performance.

Issues

[21] The issues to be determined by the Court are:

- (1) whether the action is statute barred.
- (2) whether Mr. Robinson or Mr. Davis was in breach of the contract.
- (3) whether Mr. Robinson is entitled to a refund of the sum of \$23,000.00.
- (4) whether Mr. Robinson trespassed on the property.

Findings

(1) Limitation

[22] The Limitation Act² provides various periods within which certain claims must be brought.

¹ 4th ed. p.241

² Cap. 129 Revised Edition 2009

[23] Mr. Robinson claims a refund of part payment due to breach of contract and alternatively specific performance of contract.

[24] The relevant provisions of the Limitation Act are sections 7 and 36. They read as follows:

7. Time Limit for actions founded on simple contract

An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

- 36.** (1) The following time limits under this Act, that is to say –
- (a) ...
 - (b) the time limit under section 7 founded on simple contract
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) ...

shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief.

- (2) Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground, of acquiescence or otherwise.

[25] The question that arises is when did the cause of action accrue. This will depend on whether there is a breach of contract and who breached the contract.

[26] The evidence of Mr. Robinson is that Mr. Davis terminated the agreement for sale in October 2006. Mr. Davis' evidence is that Mr. Robinson was in breach of the contract in 2004 when he failed to pay the full purchase price and paid a part payment of \$15,000.00 and after one year the full purchase price was still unpaid.

[27] The first issue that arises is what were the terms of the contract.

[28] Mr. Robinson testified that the terms of the contract were for him to pay a deposit of \$15,000.00 and for him to pay the balance when he could. Mr. Davis on the other hand testified that the agreement was for Mr. Robinson to pay the full purchase price in a single payment of \$48,000.00.

[29] I accept the testimony of Mr. Robinson. Mr. Robinson testified that after he paid the deposit, Mr. Davis would call and tell him how much more to pay to Mr. Ferdinand and he would pay to Mr. Ferdinand. Mr. Ferdinand testified that Mr. Davis would tell him when Mr. Robinson would pay a certain sum of money and Mr. Davis would instruct him how to dispose of it. Further Mr. Davis did not testify of any protest that he made when Mr. Robinson paid \$15,000.00 instead of \$48,000.00. Even if the agreement was for the full purchase price of \$48,000.00 and Mr. Robinson was in breach when he paid a sum of \$15,000.00, I find that Mr. Davis acquiesced in the breach. Mr. Davis testified that he agreed to put Mr. Robinson in occupation of the land after he paid the \$15,000.00. Mr. Robinson and Mr. Davis were very close friends for many years. They grew up in the same neighbourhood, they attended the same church. In the words of Mr. Robinson, and his testimony was not contradicted "we did everything together." The land is adjoining Mr. Robinson's home. I am of the view that as a result of their close relationship Mr. Davis agreed to a payment of \$15,000.00 and the remainder at a later date which was not specified.

[30] The next question that arises is when was the contract terminated.

[31] Having seen and heard the witnesses, I accept the evidence of Mr. Robinson. I do not believe the testimony of Mr. Davis that the agreement was terminated when he spoke with Mr. Robinson in March 2005 and Mr. Robinson told him that the land was valued at \$32,000.00 and he was not going to pay \$48,000.00 for it. Mr. Davis gave conflicting testimony. Mr. Davis testified that he signed the Deed of Conveyance after March 2005, he could not remember exactly when in 2005. Mr. Ferdinand also testified that he received the signed copy of the Deed of

Conveyance after he received the last payment in March 2005. If Mr. Robinson had indeed terminated the agreement in March 2005 then Mr. Davis would not have executed the Deed of Conveyance and returned it to Mr. Ferdinand.

[32] Having regard to the evidence I find that Mr. Davis terminated the contract in 2006 when he agreed to sell the land to Ms. John. Ms. John was willing to pay substantially more for the land. After the agreement with Ms. John was made Mr. Davis informed Mr. Robinson that he was no longer desirous of selling the land and would repay him the \$23,000.00.

[33] In view of my finding that the contract was terminated in October 2006 the action was instituted before the limitation time of six (6) years elapsed.

(2) Part Payment

[34] Mr. Robinson claims that he is entitled to be repaid the \$23,000.00 he paid to Mr. Davis. Mr. Davis in his evidence accepts that he received this sum and he further agreed to pay the sum to Mr. Robinson when the land was sold to another buyer. The law is very clear on this issue. I agree with the submission of Mr. C. Williams and the passage quoted from Barnley's. The issue was also considered in the cases of Harrison v Holland and Hannan and Cubitts³ and Mayson v Clouet⁴. Mr. Robinson's testimony (which testimony I accept) is that the agreement was not for a single payment but for payments in instalments with the first payment in the sum of \$15,000.00. The \$15,000.00 was a part payment and not a deposit.

³ [1922] 1KB p.211

⁴ [1924] AC p. 980

Counterclaim

(1) Declaration

[35] Mr. Davis seeks a declaration that Mr. Robinson has no interest in the land. The short answer is that Mr. Robinson in his reliefs sought, does not claim an interest in the land. He claims a refund of \$23,000.00 and alternatively enforcement of the contract. Declaration is an equitable relief which the court will grant where the circumstances warrant it. In the case at bar the circumstances are such that it does not warrant a grant of a declaration, since Mr. Robinson is not claiming an interest in the land.

(2) Trespass

[36] Mr. Davis claims damages for trespass, an injunction to prevent Mr. Robinson from trespassing on the land and or recovery of possession.

[37] No evidence was led to show that Mr. Robinson is in possession of the land or that he was threatening to possess the land. This is a baseless claim by Mr. Davis. Mr. Davis admitted that he put Mr. Robinson in possession of the land in 2004 after Mr. Robinson had paid the \$15,000.00 towards the purchase price. Mr. Robinson agreed that in 2009 a Police Officer and Mr. Malcolm, Attorney-at-Law informed him not to occupy the land. I believe the evidence of Mr. Robinson that by 2009 he had ceased to occupy the land. By this time Mr. Robinson and Mr. Davis friendship had broken up, Mr. Robinson had provided a statement in support of Ms. John's case against Mr. Davis.

(3) Loss of Profit

[38] Mr. Davis claims loss of profit on the sale of the land. It is not disputed that Mr. Davis entered into an agreement with Ms. John for the sale of the land at the price of \$75,000.00. Mr. Davis' evidence is that Mr. Robinson caused this agreement to be terminated because he informed Ms. John that Mr. Davis had sold the property to him and he made a statement in the action in Canada brought by Ms. John to recover part of the purchase price paid to Mr. Davis. Mr. Robinson does not dispute this evidence. Mr. Davis has no cause of action on Mr. Robinson for which damages for loss of profit can be granted. When the evidence is examined Mr. Robinson's statement is factually correct. This claim is also without merit.

[39] In conclusion I find that Mr. Robinson has proved on a balance of probabilities that he is entitled to be repaid the \$23,000.00. The action is not statute barred pursuant to the Limitation Act. Mr. Davis has failed to prove on a balance of probabilities that he is entitled to any of the reliefs sought in the counterclaim.

[40] It is ORDERED:

- (1) Judgment is entered for the Claimant.
- (2) The Defendant shall pay the Claimant the sum of \$23,000.00 on or before 30th November, 2013.
- (3) The Defendant shall pay the Claimant interest on the said sum at the rate of 6% per annum from the 6th January, 2012 until full payment of the said sum.
- (4) The counterclaim is hereby dismissed.
- (5) The Defendant shall pay the Claimant prescribed costs pursuant to Part 65.5 of CPR 2000.


.....
Justice Gertel Thom
HIGH COURT JUDGE