

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 3366 of 1988

BETWEEN

ANTHIA JACOB-HINDS Plaintiff

AND

FRANCIS BERNARD and

MARY BERNARD also called

ROSELIA AUGUSTA Defendants

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. Maundy for the Plaintiff

Mr. Warner for the Defendants

REASONS

No evidence was tendered on behalf of the Defendants to support the allegation made in the defence that the parcel of land which the 2nd Defendant admits to be that of the Plaintiff is the parcel of land coloured pink in the survey plan marked “A” attached to the Plaintiffs Statement of Claim filed herein.

The Plaintiffs evidence is that she bought the parcel of land from her mother sometime in 1980 and that when she visited the parcel of land some three years later she observed a building standing therein. Following discussions with the second named

Defendant the Plaintiff and the 2nd Defendant entered into an agreement on 16th March, 1987 for the 2nd Defendant to purchase the said parcel of land for a consideration of \$52,500.00.

In that agreement the 2nd Defendant agreed to submit details of the purchase price to the Plaintiff within 90 days following execution of the agreement and that if those terms are acceptable to the Plaintiff then the 2nd Defendant will have prepared a proper assurance of the parcel of land from the Plaintiff and the 2nd Defendant will be let into possession of same.

The Plaintiff testified that the second Defendant prior to returning to the United States of America did indicate to her that she will pay a deposit of \$10,000.00 followed by monthly installment of \$2,000.00 to \$3,000.00. The Plaintiff accepted those terms of payments and instructed her Attorney to confirm in writing her acceptance to the 2nd Defendant which her Attorney did by letter dated 3rd July, 1987 (see exhibit "AJH 3"). Notwithstanding the agreement and the acceptance of the terms of payment the Plaintiff said she received no money from the 2nd Defendant and as a result she brought these proceedings against the Defendant.

This Court accepted the evidence of the Plaintiff which was not challenged in any serious way during her cross-examination by Counsel for the 2nd Defendant. I refuse to accept Counsel's argument that the agreement executed by the parties on 16th March, 1987 is unenforceable in law.

The agreement which the 2nd Defendant duly executed (admitted in paragraph 4 of her defence) the parties agreed that the consideration for the parcel of land is \$52,500.00. Clearly, what was not agreed upon in the said written agreement were the terms of the

payment by the 2nd Defendant to the Plaintiff. In fact, paragraph 2 of the agreement is unclear and as worded makes no sense in light of paragraph one of the said agreement. It may be that what was intended by the parties in clause 2 is the details of the terms of payment of the purchase price to the vendor rather than simply “details of the purchase price”.

In my view the lack of clarity in clause 2 of the agreement does not affect the integrity of the agreement. In the agreement the parcel of land is clearly identified; the parties to the agreement are identified and the purchase price is specifically stated. Those specific details are sufficient to enforce the agreement or to give the agreement validity in law. In the absence of details for the payment of the purchase price the Court will imply a term that such payment ought to be made within a reasonable time from the date of the signing of the agreement.

In any event I accept the testimony of the Plaintiff that the terms of payment proposed by the 2nd Defendant before she left for the USA were accepted by the Plaintiff and that her Attorney did communicate to the 2nd Defendant by letter dated 3rd July, 1987 (see exhibit “AJH 3”) confirming acceptance of the terms offered. There is no evidence however that the 2nd Defendant actually received the communication sent to her by the Plaintiffs Attorney but in the view of this Court the absence of such evidence should in no way absolved the 2nd Defendant from her liability to the Plaintiff for payment of the agreed price of \$52,500.00 for the parcel of land for which the 2nd Defendant admitted liability by virtue of signing the agreement for sale on 16th March, 1987.

The evidence has shown that these proceedings began sometime in July 1988 almost one year after the agreement was signed by the parties. I would have thought that

even if confirmation of acceptance of the proposed terms was not received by the 2nd Defendant a period of one year after signing the agreement was more than a reasonable time within which the 2nd Defendant ought to have contacted the Plaintiff about the matter if only to demonstrate good faith.

From the evidence presented to the Court the 2nd Defendant paid no money to the Plaintiff in pursuance of the said agreement dated 16th March, 1987; offered no evidence to the Court at the trial and continued to deny the Plaintiff the rights to the enjoyment of her property.

On the totality of the evidence and after carefully considering the submissions made by Counsel for the Plaintiff and the Defendant I found that the Plaintiff has proved her case on a balance of probability against the 2nd Defendant and I gave judgment to the Plaintiff as follows:

- (1) Judgment for the Plaintiff against the 2nd named Defendant with cost to be taxed in default of agreement;
- (2) The Defendant is to pay to the Plaintiff the sum of \$52,500.00 with interest at 6% per annum from 1st October, 2000 until payment;
- (3) The payment of the said sum of \$52,500.00 with accrued interest is to be made on or before 29th January, 2001 and in default the said property described in paragraph one of the Statement of Claim including the building standing thereon be valued by Messrs. Raymond & Pierre at the instant of the Plaintiff and be sold by the Plaintiff by private treaty at a price not less than the value fixed by the Valuers and to deduct from the proceeds of sale the following:

- (a) cost of the valuation;
- (b) the judgment debt of \$52,500.00 with interest accrued thereon;
- (c) tax cost;
- (d) the balance if any to be deposited into Court to be held on trust for the 2nd named Defendant.

Dated this 30th day of November 2001

**Sebastian Ventour
Judge**

