

IN THE PRIVY COUNCIL

No. 10 of 1973

O N A P P E A L

FROM THE COURT OF APPEAL IN JAMAICA

B E T W E E N

ROSE: HALL LIMITED (Defendant) Appellant

- and -

ELIZABETH LOVEJOY REEVES
(Plaintiff) Respondent

CASE FOR THE RESPONDENT

RECORD

- 10 1. This is an appeal, by leave of the Court of Appeal in Jamaica, from a Judgment of that Court dated the 24th March 1972 (Luckhoo P. and Smith J.A., Graham-Perkins J.A. dissenting) dismissing an appeal by the Appellant from an Order dated 24th October 1968 of the High Court of Jamaica (Zacca J.) by which it was ordered, on an application by the Respondent for summary judgment, that an agreement dated the 4th April 1961 (hereinafter called "the 1961 Agreement")
- 20 made between the Appellant as vendor and the Respondent as purchaser for the sale and purchase of two parcels of registered land situate in the Parish of St. James (therein and hereinafter referred to as "the Property") should be specifically performed and carried into execution.
2. As hereinafter appears, the principal, and perhaps the sole, question for decision on this appeal is whether for the purposes of Section 3 (2) of the Local Improvements

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P.23-25

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(Amendment) Act 1968 (Jamaica) (hereinafter called "the 1968 Act") a transfer of registered land is "effected" when the instrument of transfer has been duly executed and lodged with the Registrar of Titles for registration, or whether it is also necessary that the transfer should have been registered by the Registrar, the latter being the event which occasions the passing of the legal estate in the land from the vendor to the purchaser. The Respondent has throughout submitted that the transfer is not "effected" until it has been registered; and this submission was accepted both by the learned Judge and the majority of the Court of Appeal.

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P.26-27
P.69.23-29
P.78.11-19

3. The material events which occurred during the period before the issue of proceedings were, shortly stated, as follows :-

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(1) The 1961 Agreement provided (inter alia) (a) for a purchase price of £50,000 to be paid by the Respondent as to £12,500 by way of deposit on the signing thereof and as to the balance by two instalments (together with interest in the meantime) the second of which was to be paid not later than the 4th April 1971; (b) for the completion of the purchase by the transfer of the Property to the Respondent in fee simple on payment of the purchase money in full; and (c) for the Respondent to be given immediate possession of the greater part of the Property, subject to the payment of the deposit. The Respondent duly paid the deposit and went into possession accordingly.

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(2) The Appellant owned other land adjoining the Property, and the effect of the 1961 Agreement would therefore have been to cause a sub-division of its land. By virtue of Section 6 of the Local Improvements Law (Jamaica), Cap.227, it was necessary to obtain the sanction of the St. James Parish Council for such sub-division before the 1961 Agreement was made. That sanction

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was not obtained at that time and it is not in dispute that the 1961 Agreement was therefore, until the enactment of the 1968 Act, void. However, in 1963 the Parish Council did give its sanction to the subdivision subject to certain conditions which are not material.

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P.63.43-48

P.62, 111

10 (3) Notwithstanding the fact that the 1961 Agreement was void as aforesaid, until the making of the 1968 Agreement hereinafter referred to both parties treated the 1961 Agreement as if it were valid and subsisting. Further, the Respondent for her part has throughout observed and performed all her obligations under the 1961 Agreement.

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(4) On the 11th December 1967 the Respondent caused a caveat to be entered on the Register of Titles against all dealing with the Property.

P.63.10-13

20 (5) On the 25th May 1968, or alternatively on the 26th June 1968, and before the last date for the completion of the 1961 Agreement (the 4th April 1971) had passed, the Appellant entered into a fresh agreement (hereinafter called "the 1968 Agreement") for the sale of the Property to a third party.

P.63.18-24
P.107-109

30 (6) On the 22nd August 1968 the 1968 Act was enacted. Shortly before such enactment, and again by a letter dated the 26th August 1968 addressed to the Appellant's solicitors, the Respondent's solicitors offered on her behalf to complete the 1961 Agreement in accordance with the terms thereof by payment to the Appellant of all monies owing thereunder, but the Appellant refused and has continued to refuse to complete the same.

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P.63.38-42
P. 91

40 (7) On the 12th September 1968 the Appellant and the purchaser under the 1968 Agreement executed, or purported to execute, an instrument for the transfer of the Property to the purchaser in fee simple pursuant

P.63.25-35

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to the 1968 Agreement. On the 13th September 1968 the instrument of transfer was lodged with the Registrar of Titles for registration, but the same was never registered because of the existence of the caveat hereinbefore referred to.

P.64.32-43

4. The effect of the enactment of the 1968 Act was retrospectively to validate the 1961 Agreement subject to the saving provision in Section 3 (2) thereof, which provides that the validation "shall not operate so as to nullify or affect any transfer or conveyance of land effected pursuant to any contract of sale made prior to the date of enactment of this Act". For the purposes of this appeal the Respondent accepts that the 1968 Agreement was a contract of sale made prior to the 22nd August 1968 and, as stated above, the question is whether the execution and lodging of the transfer on the 12th and 13th September 1968 was sufficient, or whether it was also necessary that the transfer should be registered before it can be said that it has been "effected" for the purposes of Section 3 (2).

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5. It is unnecessary for the purposes of this appeal to set out the progress of the proceedings in detail. The Writ was issued on the 12th September 1968 and a summons for summary judgment for specific performance of the 1961 Agreement pursuant to Section 86A of the Civil Procedure Code, Cap. 177, on the 2nd October 1968. On the hearing of the summons it emerged that there was a question of fact (raised by the Respondent) which was not decided and which could not be decided in summary proceedings. Accordingly, the learned Judge said that he would make no findings on the question of fact at that stage. He also said that he made no findings on exchange control problems either, since the law on that point was complicated.

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P.26.23-32

6. However, the learned Judge took the view, in the Respondent's submission quite correctly, that the question of the true construction and

effect of Section 3(2) of the 1968 Act (being the only point taken by way of defence) was one which could and should properly be decided in summary proceedings; and he decided the question in favour of the Respondent and made an order for specific performance of the 1961 Agreement with costs. On this appeal the Respondent will respectfully rely on the learned Judge's reasoning and on the following passage in particular :-

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P.27. 9-20

P.27.25-28

10 "The intention of the Section and the interpretation of "transfer effected" means registered, that is, when a transfer is registered and the estate passes and the legislature intended to protect cases where the estate had passed". P.27.15-20

7. By Notice of Appeal dated the 4th December 1968 the Appellant appealed against the order of the learned Judge on grounds which can be summarised as follows: first, that judgment in favour of the Respondent ought not to have been given in summary proceedings; secondly, that the learned Judge erred in law on the question of the construction and effect of Section 3(2) of the 1968 Act; and thirdly, that the learned Judge erred in holding that specific performance was the remedy to which the Respondent was entitled. P. 45

8. The appeal came on for hearing before the Court of Appeal on the 23rd, 24th, 25th and 26th November 1971, the 17th January and the 21st February 1972, and on the 24th March 1972 it was dismissed by the majority above referred to. The Record contains no report or note of the dissenting judgment of Graham-Perkins J.A. P. 60

9. In his judgment Luckhoo P., having disposed of an argument on behalf of the Appellant in relation to paragraph (g) of the special conditions in the 1961 Agreement which was neither raised nor argued before the learned Judge, expressed the view that the question of the true construction and effect of Section 3(2) of the 1968 Act was one which could properly be determined in summary proceedings. He then P. 61
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P.67. 15-19
P.69. 6-22

dealt with the question of construction and pointed out that if the Appellant's arguments were correct "it would have the result..... that in the case of land with a common law title the saving provision contained in Section 3 (2) would only apply if the legal estate or interest has passed by way of conveyance whereas in the case of land with a registered title the saving provision would apply while the legal estate or interest still remains in the vendor. A further observation may be made on this point. The signing and lodging of an instrument of transfer in itself creates no estate or interest in the purchaser. An equitable estate or interest may arise when the contract of sale is made. In the case of registered land the legal estate or interest is passed only when the transfer is registered". He went on to conclude that the equitable rights acquired by the purchaser under the 1968 Agreement had been adversely affected by the amendments made by the 1968 Act in that it was now deemed that under the 1961 Agreement the equitable estate in the Property passed to the Respondent as from the date in 1963 when the saction of the Parish Council to the sub-division was obtained and would take precedence over the equitable interest created in favour of the purchaser under the 1968 Agreement. Finally, he expressed the view that the discretionary remedy of specific performance had been rightly granted by the learned Judge.

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P.70.30-44

P.71-73

P.73,74

10. In his judgment Smith J.A., having likewise disposed of the argument of the Appellant in relation to paragraph (g) of the special conditions in the 1961 Agreement, also expressed the view that the question of the construction and effect of Section 3(2) could properly be decided in summary proceedings. He dealt with this point in the following manner :-

"I entirely agree with the submission for the plaintiff that if the only defence raised on an application for summary judgment is a question of law which is precisely defined and capable of being permanently decided on the basis of the

10 undisputed evidence put before him it is the judge's duty to decide it even if it appears difficult. I cannot see that any advantage would be gained or purpose served by allowing the issue to go to trial. Very difficult points of law are decided from time to time in Chambers without disadvantage to the parties. Once the judge has made a decision then, as far as he is concerned, it is a plain case and it is he who must decide at that stage whether it is a plain case or not".

20 He then went on to consider the question of construction and, having referred to certain dictionary definitions of "effected" as meaning the same as "brought about" or "achieved" or "accomplished", said that a transfer or conveyance of land could only be brought about or achieved or accomplished by the passing of the legal estate - in the case of registered land by registration and in the case of unregistered land by delivery of an executed conveyance. Having then looked at the matter in another way, he expressed the view that the meaning of the words was perfectly clear; that it was a plain case; and that it was, therefore, competent for the learned Judge to give the Respondent leave to sign summary judgment. Finally, he also expressed the view that the discretionary remedy of specific performance had been correctly granted.

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P.77.21-28

P.77.29-50
P.78. 1-19

30 11. On the hearing of this appeal the Respondent will respectfully submit to Your Lordships' Board that the decisions of the learned Judge and the majority of the Court of Appeal were right and ought to be affirmed. In addition to the enactments hereinbefore referred to, the Respondent will refer to and rely on the Registration of Titles law (Jamaica), Cap.340, and in particular the provisions thereof which provide that the legal estate in registered land shall not pass until the instrument of transfer has been actually registered.

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40 12. The Respondent will also respectfully submit that that question of the construction of Section

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3(2) of the 1968 Act is a short one and furthermore a simple one. The Respondent will in general rely on the reasoning of the learned Judge and the majority of the Court of Appeal, and in particular on those reasons to which specific reference has already been made.

13. The Respondent accordingly respectfully submits that the appeal should be dismissed and the decision of the Court of Appeal affirmed for the following (among other)

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R E A S O N S

(1) BECAUSE the question of the true construction and effect of Section 3 (2) of the 1968 Act was one which could and should properly be decided in proceedings for summary judgment.

(2) BECAUSE under the said Section 3(2) a transfer of registered land is not "effected" unless and until the instrument of transfer has been duly registered.

(3) BECAUSE in the circumstances, and by virtue of the validating provisions of the 1968 Act, the equitable interest of the Respondent under the 1961 Agreement takes priority over the equitable interest of the purchaser under the 1968 Agreement.

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(4) BECAUSE the majority of the Court of Appeal's reasons for rejecting the Appellant's argument in relation to paragraph (g) of the special conditions in the 1961 Agreement were right and, further or alternatively, because it was not open to the Appellant to take that argument on appeal.

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(5) BECAUSE the discretionary remedy of specific performance was rightfully granted.

(6) BECAUSE the decisions of the learned Judge and the majority of the Court of Appeal were right for the reasons given in their respective judgments.

MARTIN NOURSE
JOHN JOPLING

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REEVES Respondent

CASE FOR THE RESPONDENT

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