

Privy Council Appeal No. 10 of 1973

Rose Hall Limited - - - - - *Appellant*

v.

Elizabeth Lovejoy Reeves - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH JANUARY, 1975

Present at the Hearing :

LORD MORRIS OF BORTH-Y-GEST
LORD WILBERFORCE
LORD SIMON OF GLAISDALE
LORD KILBRANDON

[*Delivered by* LORD WILBERFORCE]

This action was started by writ on 12th September 1968 by the respondent against the appellant in order to obtain specific performance of an agreement for the sale of land. A summons for summary judgment was taken out on 2nd October 1968. This summons was opposed by the appellant, who sought leave to defend the action, but on 24th October 1968 the judge, holding that the only point on which leave to defend was sought was one of construction of a section in an Act (later to be specified in this Opinion), decided the point in the respondent's favour and made the order asked for. The appellant, by notice dated 4th December 1968, appealed to the Court of Appeal on three grounds: first that the judgment ought not to have been given in summary proceedings; second that the judge erred on the question of statutory construction; and third that the remedy of specific performance ought not to have been granted.

The Court of Appeal, on 24th March 1972, by a majority, dismissed the appeal and in due course the appellant was granted leave to appeal to Her Majesty in Council. Before the Board the third ground mentioned above was not pursued, but the appellant sought to take an additional, and new point, namely that the action ought not to have proceeded in the absence of an interested and necessary party—a company called North Western Enterprises Ltd. (hereinafter referred to as “North Western”).

The contract on which the action was brought was in writing dated 4th April 1961. By this contract the appellant agreed to sell to the respondent certain land in the Parish of St. James, therein described, for

the sum of £50,000. Of this £12,500 was to be paid, and was paid, on the signing of the agreement and the rest was to be paid, with interest, in two subsequent instalments. On payment of the deposit the respondent went into possession.

The sale involved a sub-division of a larger area of land belonging to the appellant. By virtue of the Local Improvements Law (Jamaica) Cap. 227, Section 6, sanction for the sub-division should have been obtained from the Parish Council before the contract for sale was made. This was not done, and it is now accepted, following a decision of Douglas J. in the Supreme Court of Jamaica (*Watkis v. Roblin* (1964) 6 W.I.R. 533), that the 1961 Agreement was illegal and void. The Parish Council did however sanction the sub-division (subject to certain conditions) in 1963. The respondent remained in possession and on 11th December 1967 entered a caveat in the Register of Titles against all dealings in the property.

On 25th May 1968, or on 26th June 1968 (this is a matter of dispute), the appellant entered into a fresh agreement for the sale of the property to North Western, for £65,000. North Western was a company formed in Jamaica for the purpose of acquiring the property.

On 22nd August 1968 there was enacted the Local Improvements (Amendment) Act 1968. By section 3(1) of that Act, the previous Local Improvements Law was amended by the insertion therein of a new section 9A. Subsection 1 of this new section reads as follows:

“The validity of any sub-division contract shall not be affected by reason only of failure, prior to the making of such contract, to comply with any requirement of subsections (1), (2) and (3) of section 4 or to obtain any sanction of the Board under section 6 or section 6A, as the case may be, but such contract shall not be executed by the transfer or conveyance of the land concerned unless and until sanction of the Board hereinbefore referred to, has been obtained.”

By section 3(2) of the 1968 Act it is provided:

“This section shall be deemed to have come into operation on the 1st day of January, 1954 hereinafter referred to as the ‘operative day’ so, however, that as respects transactions which took place between the operative day and the date of enactment of this Act, the amendment effected in the principal Law by virtue of this section of this Act 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.”

This is the subsection which the Courts below have construed in the respondent's favour.

Before dealing with its interpretation, their Lordships will consider the other two grounds of appeal, which logically seem to require prior disposal.

The first is that the learned judge ought not to have given summary judgment in the respondent's favour but should have given leave to defend and let the case go to trial. The relevant section under which he acted is section 86A of the Civil Procedure Code. This is similar to the English R.S.C. 0. 86 and is so familiar that it is not necessary to set it out.

In applying this section to the facts of individual cases, judges often encounter conflicting arguments. On the one (the plaintiff's) side it is contended that the purpose of the provision is to save costs and to avoid delay and that it ought to be used in all cases where either there is no substantial defence, or where (there being no dispute of fact) the defence turns solely upon a short or simple point of law which can just as well be decided in summary proceedings as at a trial. On the other (the defendant's) side, it is normally urged that if there is any real issue of fact or law, the defendant should not be deprived of his right to a trial where all the contentions can be fully argued. It is inevitable that different judges resolve dilemmas of this kind in different ways: moreover there is to be found in the authorities a difference of emphasis as to the factors which ought to resolve the dilemma (cf. *Cow v. Casey* [1949] 1 K.B.474, 481 *per* Lord Greene M.R.—“really unarguable”, *Brickwoods v. Butler* [1972] 23 P. & C. R. (C.A.) 317, 322 *per* Russell L.J. and *Mottram Consultants Ltd. v. Bernard Sunley & Sons Ltd.* (judgment delivered in the House of Lords on 13th November 1974)).

Their Lordships do not consider that it is necessary or opportune to attempt to reconcile such differences of emphasis as these, and other, cases reveal, or to prefer one line of authority to another. In the present case they are faced with the fact that two courts in Jamaica have taken the view that the particular issue between the parties could properly be decided in summary proceedings, and have felt able so to decide it. In itself the case is one which might perhaps have been dealt with either way: the arguments in favour of one course or the other are certainly not so decisive as to require their Lordships to take a different view from that taken in Jamaica. Accordingly they are not prepared to accede to the appellant's contention on this point.

The appellant's second contention has more apparent attraction. By the 1968 contract North Western acquired an equitable interest in the property. The order of the learned judge, dated 24th October 1968, contained however an injunction which prevented the appellant from giving effect to this interest. Further, the effect of the order for specific performance, when this is carried out, will be to transfer to the respondent a full legal interest in the land free from North Western's equity. It might therefore seem reasonable to contend that North Western should have been made a party to the action. The Civil Procedure Code contains appropriate provisions for parties to be added and for third persons to intervene (section 100). These, it is said, should have been applied.

Their Lordships however consider this contention, in the circumstances of the case, to be without merit. Apart from the fact that this is a new point, not taken in either court below, it is clear that both the appellant and North Western had every opportunity, if they had so wished, to bring North Western into the case. North Western was represented in Jamaica by the same solicitor as acted for the appellant. He made application on 10th October 1968, on behalf of North Western, to the Bank of Jamaica for information regarding Exchange Control, with reference to North Western's intended purchase of the land. He swore an affidavit and gave evidence at the trial. A director of North Western also gave evidence. It was never suggested that North Western needed to be joined as a party: evidently the view was taken that North Western's interests (if any) could adequately be looked after by the appellant. Neither the trial judge, nor the Court of Appeal, whom these facts cannot have escaped, thought it necessary to give any directions as regards North Western.

In these circumstances it is hopeless to contend, at this stage of final appeal, that, on a matter essentially one of procedure within the control of the parties, the proceedings should now be considered defective on account of North Western's absence from them. Their Lordships accordingly reject this second submission.

Their Lordships can now proceed to the third and substantial issue in the appeal—namely the interpretation of section 3 (2) of the Act of 1968 quoted above. The general objective of this provision is clear enough. Section 9A (1) had changed the then existing legal position by providing that sub-division contracts theretofore invalid under the Land Improvements Law (Cap. 227) were not to be treated as invalid, and, provided that sanction of the Board was obtained—even though subsequently to the contract—might be executed by transfer or conveyance. Section 3 (2) gave retroactive effect to this provision, so that it was necessary to deal with transactions which might have taken place between the retroactive date (1st January 1954) and the date of enactment (22nd August 1968). In general terms the objective was, as might be expected, to protect rights in property which had accrued in this period. The only question is as to the nature of the rights so protected.

Under the contract dated 26th June 1968 (or 25th May 1968 if that is the correct date), North Western acquired an equitable interest in the property, which, if nothing else had supervened, they had the right to convert into a legal interest through transfer and registration. The argument for the appellant essentially is that it must have been the legislative intention to protect an interest of this character, which, at the time when it arose, had priority over any interest of the respondent. The words "transfer or conveyance" should therefore be given a wide meaning.

Their Lordships are unable to accept this argument. It would indeed have been quite possible, and even reasonable, for protection to have been given to any interest in property acquired for valuable consideration prior to the date of the amending Act, but in order to do so different language would have had to be used. The words "transfer or conveyance" both taken singly, and even more so when read in conjunction, can only refer to legal interests in land brought about, in the case of registered land, by transfer, and in the case of unregistered land by conveyance. This conclusion, which in any event would be hard to avoid on the wording of the subsection alone, is reinforced by section 9A (1) which refers to a contract being executed by transfer or conveyance: a clear distinction is drawn between the position arising under a contract, and that which results when the legal estate passes. Moreover, it seems clear from the words (in section 3 (2))

"as respects transactions which took place between the operative day and the date of enactment of this Act"

that, in order to obtain protection, the transfer or conveyance must be effected within this period: the words quoted govern those which follow. This supplies an answer to the appellant's contention that the transfer to North Western ought to have been registered on 13th September 1968 and that the rights of the parties should be the same as they would have been had this occurred—the answer being that the transfer would be one subsequent to the enactment of the 1968 Act. A further argument by the appellant was that even though, at the date of enactment of the 1968 Act, a formal transfer had not been executed, nevertheless, since the contract of sale, and part payment of the purchase price, the purchaser had,

even before registration, rights in the land which extended beyond a mere equitable interest. The appellant relied for support upon the well known authority of *Barry v. Heider* (1914) 19 C.L.R. 197 and other cases to the same effect in jurisdictions where the Torrens system of land registration prevails, *O'Regan v. Commissioner of Stamp Duties* [1921] St. R. Qd. 283—where the word “effectual” was discussed, *Great West Permanent Loan Company v. Friesen* [1925] A.C. 208 (on appeal from the Court of Appeal of Saskatchewan), *Abigail v. Lapin* [1934] A.C. 491 (on appeal from the High Court of Australia). Their Lordships recognise the value of these authorities, as deciding that an unregistered transfer of land may confer rights over land which surpass mere equitable interest. But it is one thing to say that such transfers may be called “effectual” or “effective” and quite another to say that a transfer is effected pursuant to a contract before a registered, or at least a registrable, transfer is made. It is the latter which is required by the section in order to give protection.

One final argument may be mentioned. The respondent had, as has been stated, registered a caveat on 11th December 1967 with the Registrar of Titles, Jamaica. This of course had the effect of preventing any dealings with the land while it remained effective. The appellant's contention was that this caveat was void, since at the date when it was lodged, the appellant had no interest to protect: consequently the rights of the parties should be dealt with as if it had never existed. Their Lordships cannot accept this. In the first place the concept of a void caveat is novel and difficult to comprehend and was not explained by the appellant. A caveat is simply a fact—it may be justified in law or not—and whether it is either must be decided through the procedure laid down in the Registration of Titles Law. Even if, which appears probable, it could have been removed, prior to 22nd August 1968, or subsequently, it was not so removed. Its existence, moreover, only had the effect that on 13th September 1968, when the transfer to North Western was presented, the Registrar refused to register the latter. But by that time the amending Act of 1968 had taken effect. Their Lordships therefore cannot accept that the lodging of the caveat, valid or invalid, has any bearing on the critical issue in the case.

For the reasons stated their Lordships are of opinion that the decision of the Court of Appeal was correct and that the appeal must be dismissed: they will humbly so advise Her Majesty. The appellant must pay the costs of the appeal.

In the Privy Council

ROSE HALL LIMITED

v.

ELIZABETH LOVEJOY REEVES

**DELIVERED BY
LORD WILBERFORCE**