

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2002/0751

BETWEEN:

(1) FRANCIS GIRARD
(2) GEORGE GARNIER

Claimants

and

JOSEPH FELICIEN acting herein and represented by
PAMELA REYNOLDS also called PAMELA PHILGENCE

Defendant

Appearances:

Mr. Kenneth A.P. Monplaisir Q.C. for the Claimants.
Mr. Gerard Russell Williams for the Defendant

2003: October 28, November 05
November 06
2004: May 03

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This claim for specific performance came on for hearing on 28th October and 5th November 2003 respectively. On 6th November 2003, I gave an oral judgment and indicated that the reasons therefor would be reduced into a written judgment subsequently. I do so now.
2. The facts of this case are not in dispute. On or about 5th March 1998, the claimants, Francis Girard and George Garnier were introduced to Pamela Reynolds a.k.a. Pamela Philgence (Ms. Philgence) by Ms. Theodora Jn Baptiste. The purpose of their introduction concerned lands

which at the time, Ms. Philgence was offering for sale. The claimants were desirous of purchasing some land and as a consequence, Ms. Philgence took them to view it.

3. They were pleased with what they saw. So, the very next day, that is, 6th March 1998, they all headed straight to the Law Offices of Mr. Evans Calderon. Mr. Calderon drew up an agreement for sale and they all signed it in his presence. Ms. Philgence, the duly appointed attorney of Joseph Felicien, agreed to sell and both claimants agreed to buy one acre of land each to be dismembered from a larger portion registered in the Land Registry as Parcel 1455B 566 for the consideration of \$50,000.00 per acre. They paid by way of deposit the sum of \$4,000.00 and agreed to pay a further sum of \$21,000.00 by 13th March 1998.
4. The claimants informed Ms. Jn Baptiste of what had earlier transpired. They advised her that they will be sending \$21,000.00 later and she must give it to Ms. Philgence. Ms. Jn Baptiste agreed to act as their intermediary. They both returned to the USA.
5. They each sent the sum of \$21,000.00 within the stipulated time period. The money was handed over to Ms. Philgence.
6. In the meantime, Ms. Philgence had to do certain things which would pave the way for the execution of the Deed of Sale. They are contained in Clause 4 of the Agreement for Sale. Clause 4 states:

“The vendor agrees to execute the Deed of Sale and transfer title to each purchaser as soon as the sub-division is approved by the Planning Authority and survey is executed where upon the balance of \$25,000.00 will be paid.”
7. As a result, she engaged the services of Mr. Allan J. Hippolyte, Licensed Land Surveyor to prepare a sub-division of the two (2) acres of land. On 27th March 1998, Mr. Hippolyte lodged the application with the Development Control Authority (DCA) for planning approval, after which if granted, a survey plan would have been lodged at the Survey Department.

8. Shortly thereafter, the claimants received words from Ms. Jn Baptiste that everything was almost finalized except the access road. Upon hearing so, they sent down the final payment of \$25,000.00.
9. Some time passed. By early 1999, the claimants still did not receive the Deed of Sale. They became anxious. Mr. Garnier spoke to Ms. Jn Baptiste. She told him that she was experiencing difficulties in contacting Ms. Philgence despite the fact that she had left messages on her answering machine.
10. Then in 2000, Ms. Philgence telephoned Mr. Garnier and said that there was no land as Housing and Urban Development Corporation (HUDC) had purchased the property. She agreed to return their money. But they did not want money; they wanted their land.
11. They promptly sought legal advice. In their anxiety to do so, they consulted at least three lawyers. Numerous letters were exchanged between Ms. Philgence's solicitors, Messrs. Richelieu & Associates and solicitors for the claimants with a view to resolving the dispute amicably. That having failed, the claimants instituted these proceedings claiming specific performance of the said agreement.

Was application for subdivision approved by Planning Authority?

12. At paragraph 3 of her defence, Ms. Philgence alleged that she authorized Mr. Hippolyte to make the application to DCA for approval of the sub-division and such approval was not granted.
13. In her oral testimony, she maintained that planning approval was not granted. In an affidavit sworn to on 20th March 2003, Mr. Hippolyte also alleged that planning approval was not granted.
14. This issue is simple and factual. If indeed, the Planning Authority did not approve the application for dismemberment, the matter ends there as Clause 5 of the Agreement comes

into play. Clause 5 states as follows: "if no approval is obtained, the Vendor agrees to refund the deposit for each Purchaser."

15. However, the claimants were able to prove by documentary evidence that Mr. Hippolyte submitted 3 sets of plans for the dismemberment of two (2) acres of the said land from a larger portion which is registered as Parcel No. 1455B 566 for the Registration Quarter of Gros Islet.
16. The Register of Plans for 1998 shows that the Planning Authority approved of the plans on 15th May 1998. (Exhibit MJ 3).
17. It is therefore not difficult for me to conclude that both Ms. Philgence and Mr. Hippolyte have been untruthful witnesses to the court and as such, their evidence is rejected.

Specific Performance/ Damages

18. There is evidence that the 2 acres of land was included in a portion of land sold to the Housing & Urban Development Corporation (HUDC) which was executed on 26th February 1999 and registered as Parcel No. 1455B 660 (See Claimants' bundle of exhibits). There is also evidence that HUDC had placed a caution on the land. The Corporation has since removed it. So, in effect, the land is still available to the claimants. In the premises, I will order that the claimants are entitled to specific performance of the agreement with Costs of \$10,000.00 to each claimant.
19. In arriving at costs, I was guided by the recent judgments of the Court of Appeal in **Rochamel Construction Limited v National Insurance Corporation¹** and **Saint Lucia Furnishings Limited v Saint Lucia Co-operative Bank Limited et al²**.

Indra Hariprashad-Charles

¹ Civil Appeal No. 10 of 2003 (unreported) Saint Lucia

² Civil Appeal No. 15 of 2003 (unreported) Saint Lucia

High Court Judge

5th May 2004