

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. N. 114 OF 1985

BETWEEN	MANUEL NUNEZ	PLAINTIFF
A N D	WALTER GERALD JONES	
A N D	SYLVIA JONES	DEFENDANTS

Mr. Michael Hylton, instructed by Messrs. Myers, Fletcher and Gordon for plaintiff.

Dr. Lloyd Barnett, and Miss Leila Parker for defendants.

HEARD: JUNE 24; AND DECEMBER 20, 1991

PANTON, J.

The plaintiff claims against the defendants for -

- (a) specific performance of an agreement in writing;
- (b) damages for breach of contract; and
- (c) costs.

There is no dispute so far as the important facts of this case are concerned.

In August, 1980, the plaintiff and his late wife signed an agreement to purchase from the defendants the property known as 4, Elmwood Close, Kingston 8. A deposit of One Thousand Dollars (\$1,000.00) had been paid prior to the signing of the agreement. Thereafter, a further amount was paid. The sale was "subject to the purchasers obtaining a mortgage from the Jamaica National Building Society of not exceeding Jamaican Fifty-eight Thousand, Five Hundred Dollars (J\$58,500.00)". The plaintiff took possession of the property, and began paying rent. He still pays rent.

In October, 1980, the plaintiff's wife became seriously ill. She was then a secretary at the Jamaica National Building Society. In a letter dated November 18, 1980, the plaintiff and his wife wrote as follows to the defendants' attorney-at-law:

"Dear Sir,

Re: Purchase of 4 Elmwood Close, Kingston 8

We hereby wish to advise you that we have surrendered our rights in connection with the acquisition of the above property to Mr. L.F. Reynolds or his nominee. Mr. Reynolds

"has refunded us our deposit of \$6,000.00.

Mr. Reynolds will make his own arrangements with you for the payment of the balance of the purchase money, and we will make our own arrangements with the new owners as it relates to the tenancy of the property.

Signed: Manuel Montrose Nunez in his own right

Signed: Edith Cecelia Nunez per Manuel Montrose Nunez her lawful and duly authorised agent and husband."

In another letter of the same date, the Mortgage Manager of the Jamaica National Building Society wrote thus to Messrs. Judah, Desnoes, Lake, Nunes, Scholefield and Company, attorneys-at-law:

"Re: Proposed mortgage loan - \$49,000
4 Elmwood Close, Kingston 8
Manuel and Edith Nunez) - L.F. Reynolds

We would refer to our instructions to you on 19th September, 1980, when we ask (sic) that you prepare the Mortgage Documents for Manuel and Edith Nunez. We hereby cancel those instructions and enclose a new offer of Finance in the name of Mr. Lancelot Fitzgerald Reynolds. The attached copy letter confirms the transfer of interest from the Nunez to Mr. Reynolds. Kindly therefore, do the necessary changes to the Transfer Documents, forwarding same along with the Mortgage Documents for the signature of Mr. Reynolds.

This is a very urgent matter and we would appreciate all that you can do to expedite it."

On the very next day, Mr. Reynolds wrote to the defendants' attorney-at-law advising that a loan was being processed on his behalf by the Jamaica National Building Society and that the amount due was expected to be paid by the end of the month.

On December 30, 1980, the defendants' attorney-at-law wrote to Messrs. Judah, Desnoes, Lake, Nunes, Scholefield and Company informing them that the defendants were not prepared to transfer the property to Mr. Reynolds.

In August, 1981, the defendants served on the plaintiff a notice to quit and deliver up possession of the premises.

On September 3, 1981, the plaintiff's attorney-at-law wrote to the defendants' attorney-at-law, insisting that the defendants should complete the sale, and enclosed a notice making time of the essence of the contract.

The defence contends that -

1. the agreement was conditional and the condition has not been fulfilled;
2. the plaintiff, having purported to assign his rights under the agree-

ment, does not now have any legal or enforceable contractual right; and

3. further, or alternatively, the plaintiff has repudiated the agreement and the defendants have accepted that repudiation.

In my judgment, the most important matter for consideration is the letter dated November 18, 1980, from the plaintiff and his late wife to the defendants' attorney-at-law. This letter has already been quoted above. I have tried to see whether it does not mean what it says but I have some difficulty in so finding. Words are to be given their plain, ordinary meaning. That is a basic rule of construction. In this letter, the plaintiff and his late wife clearly announced that they had surrendered their rights under the contract. In my view, in the instant set of circumstances, it matters not whether they surrendered their rights to someone or his .inee, or to no one in particular. They were fortunate enough to have recovered their deposit from a stranger to the contract. They further advised that the stranger to the contract would be making his own arrangements with the defendants' attorney-at-law for the payment of the balance of the purchase money. Finally, in that letter, the purchasers said that they would negotiate a new tenancy agreement with the new owners.

In my view, this letter is fatal to the plaintiff's claim. The plaintiff has surrendered his rights; those are his words. If there has been an effective assignment made to Reynolds, the plaintiff cannot now claim that he still retains that which he had passed to Reynolds. Of course, it ought not to be forgotten that Reynolds repaid the deposit. If there has been an effective assignment, it would have been for Reynolds to bring an action. Alas, Reynolds has not so done and it would now be too late for him so to do.

If there has been no effective assignment to Reynolds, the position is in reality the same so far as the plaintiff is concerned in that he has repudiated the contract, clearly saying that he had no further intention of fulfilling his obligations thereunder.

On the very day that the plaintiff and his late wife were communicating their repudiation of the contract to the defendants' attorney-at-law, the Mortgage Manager of the Jamaica National Building Society was, in a separate letter, cancelling the instructions to Messrs. Judah, Desnoes, Lake, Nunes, Scholefield and Company to prepare documents for the purchasers. That, to my mind, was the

final nail in the plaintiff's contractual coffin as he, in any event, then became incapable of fulfilling the special condition.

There is in existence nothing for the Court to order specific performance of. In the circumstances, it seems inevitable that judgment has to be entered for the defendants; their costs are to be agreed or taxed.