

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO.E329/1989

BETWEEN R.A. ENTERPRISES LIMITED PLAINTIFF
AND WILLIAM TRITT DEFENDANT

IN THE MATTER of Registration of
Title Act

AND

IN THE MATTER of the Removal of
Caveat Forbidding Registration of
any change in Proprietorship or
any dealing with Estate or Interest

Miss Monica Ladd instructed by Myers, Fletcher & Gordon for
Plaintiff.

Mr. Ernest Smith instructed by Ernest Smith & Company for the
Defendant.

September 25, 1990

LANGRIN, J.

This is an application on Originating Summons by the
plaintiff seeking an Order that the Defendant forthwith remove
Caveat No.100061 which he has lodged against Certificate of
Title registered at Volume 547 Folio 57 of the Register Book
of Titles.

On October 25, 1980 the plaintiff and the defendant
entered into a hand-written agreement for sale of land known as
"Three Courts" in the parish of St. Mary. The agreement stated
that it was subject to Contract. The consideration stated was
U.S.\$60,000. Subsequently, the hand-written agreement formed
the basis of two typed agreements. One was an agreement for the
sale of land with a stated consideration of U.S.\$45,000 while
the other, was an agreement for sale of furniture and furnishings,
for a consideration of U.S.\$15,000.

In accordance with these agreements the plaintiff paid
U.S.\$60,000 in full. The property was subsequently transferred

to the plaintiff on March 28, 1981 and the purchase was completed in July 1981 when the defendant delivered the Certificate of Title to the plaintiff.

The matter did not end here, since the defendant and the plaintiff on the 25th October 1980 entered into an agreement for the purchase of machinery and tools. In view of the vital importance of this latter agreement in the decision which I am asked to make I have decided to set out in full this agreement.

"Agreement for Purchase and Sale

We hereby agree to purchase your machinery and tools on said premises known as Three Courts Volume 545 Folio 57 for the sum of JA\$26,700 to be paid on the same day as the contract for purchase of property.

R.A. Enterprises Limited

October 25, 1980

Sgd: William Tritt".

On January 4, 1981 the Defendant lodged a caveat against the land because of the non-payment of the JA\$26,700, the consideration stated in the agreement for Purchase and Sale of the machinery and tools.

Miss Monica Ladd, Counsel for the plaintiff quite correctly identified the two questions which the Court is asked to consider

Firstly, whether an agreement for Sale of machinery and tools constituted an interest in land which can be registered under the Registration of Titles Act.

Secondly, whether in some way that agreement can be made part of the agreement for sale of land?

Needless to say she submitted that the answer to both questions is No.

Section 139 of the Registration of Titles Act dealing with Caveat states as follows:-

"Any beneficiary or other person claiming any estate or interest in land under the operation of

this Act, or in any lease,
mortgage or charge, under any
unregistered instruments, or by
devolution in law or otherwise,
may lodge a caveat with Registrar
.....".

It is not being contended by Mr. Ernest Smith, Counsel for the defendant, that the agreement for Purchase and Sale of the machinery and tools standing by itself creates an interest in land but, he submits, when one looks at the agreement and documents relevant to the whole transaction, it is patently clear, that the parties intended, that all three agreements should be part of a single transaction for the sale of land.

It is instructive to observe that the agreement for purchase of furniture and furnishings, unlike the agreement for purchase of machinery and tools, contains words incorporating it by reference in the principal agreement for the Sale of land. Additionally, the parties to the principal agreement are bound by the insertion of a clause which makes it obligatory for the purchaser of the land to purchase the furnitures and furnishings.

There are in my view, substantial difficulties in the way of the contention advanced by the defendant's Counsel. The subject matter of the agreement relates to tools and machinery, which do not comprise an interest in or concerning land and more importantly, there is nothing in the agreement under consideration which stipulates that it should be incorporated by reference into the agreement for the sale of land. Further, a mere incorporation by reference of the agreement for the Purchase of tools and machinery in the agreement for the sale of land without more, would render the former agreement severable unless there were binding statements making the sale of the chattels a condition precedent to the sale of the land.

In such a case, where there were sufficient words to bind the parties, thereby making the agreement for Purchase and Sale of tools and machinery a condition precedent to the purchase of lands, then that agreement would constitute one entire contract

and in those circumstances would create an interest in or concerning land.

In the present case, the agreement for the Purchase and Sale of tools and machinery is collateral to the plaintiff becoming the owner of the land and consequently is not an agreement in any way relating to an interest in or concerning land. Indeed, it is in fact an agreement for the sale of goods.

I have no hesitation in saying that in my judgment the defendant in making what I call a collateral agreement without having it incorporated and binding in the principal agreement for sale of land, which was completed since 1981, a period of 7 years before the caveat was lodged, acted in a manner inconsistent with a person who claims an equitable interest in land.

Accordingly, I find that the application succeeds and the caveat should be discharged. Costs should go to the plaintiff to be taxed if not agreed.