IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W. 98/89

BETWEEN	HORACE ONEIL WILLIAMS	
A N D	JEAN ROSE WILLIAMS	PLAINTIFFS
A N D	CECIL BARRINGTON JOBSON	
A N D	SCHARLIE IRINE JOBSON	DEFENDANTS

D. Morrison and Miss Marjorie Rose instructed by M. Rose and Company for Plaintiffs.

Mrs. P. Benka-Coker and C. Piper instructed by Piper and Samuda for Defendants.

MARCH 4-8, 1991 and 26TH FEBRUARY, 1992

ELLIS, J:

The criminal behaviour of some citizens of this country can lead, and has led to some less than obvious ends.

When the female plaintiff and her children were terrorised by criminals early in 1987, I am of opinion that there was no thought of that circumstance giving rise to a Civil Suit in the High Court. It is therefore clear that the law is as much a social factor as is economics, history or unemployment inter alia.

The Plaintiffs in 1987, lived in Edgewater in St. Catherine. Early in 1987, the female plaintiff and her children were subjected to the very traumatic attention of criminals. That prompted the female plaintiff to give serious consideration for the welfare of the family and to seek relocation of their residence to a safer area in pursuit of that welfare. Mrs. Williams, the female plaintiff, who hails from Malvern in St. Elizabeth, on a visit there got information that a property called Roseberry was for sale. She, who had lived and gone to Hampton School in Malvern was quite familiar with the property and obviously, secured Mr. Williams' interest in it.

They went to see the joint owners of Roseberry, who are the defendants, in July 1987. A purchase price of the property of 88 acres was discussed and a price of $900,000 was suggested.

According to Mr. Williams, that price was out of their reach. In any event, the information which they had, spoke of $350,000 as purchase price but the defendants said that was the asking price years before.

Mrs. Williams enquired as to a possible subdivision of the property and was told that it was being considered. One week later, the parties engaged in further discussion about the property. On this, occasion, the defendants agreed to subdivide and sell the plaintiffs 20 acres with a dwelling house and other equipment thereon in the middle of the property for $350,000.

Although the discussion by the parties was with regards to a purchase of land, it ended in a lease for two years with an option to purchase. It appears as if the lease with option to purchase came about because the defendants were leaving the Island on vacation and the plaintiffs were anxious to have an agreement in place prior to the defendants' departure. The lease was drafted by Mr. B. A. Ricketts attorney-at-law on the instructions of Mrs. S. Jobson the female defendant.

On the 7th of July, 1987, the lease was signed by the parties and witnessed by a Mr. Hastings at Trout Hall where the defendants were then living. The term of the lease was for two years with a rental of $9,000.00 annually payable on 1st September, 1987 and on 1st September, 1988. (on the date of signing, the first year's rent was paid).

The option to purchase was in consideration of $30,000.00 and its terms are in terms contained in the Third Schedule to the lease. At the signing of the lease agreement, the $30,000.00, the consideration for the option, was not paid and no attempt to pay it was made until the 2nd of August, 1988.

The defendants then refused to accept the $30,000.00 and purported

to withdraw the option on ground that the offer had lapsed.

The plaintiffs in the circumstances claim:

(i) Specific Performance of the Option Agreement;

(ii) Damages for breach of contract;

(iii) Consequential accounts, directions and enquiries;

(iv) Interest;

(v) Other reliefs; and

(vi) Costs.

The plaintiffs contend that the option clause contemplated an exercise of the option within the two year term of the lease and that the $30,000.00 consideration was payable at any time within that period.

They say that the defendants waived the payment of $30,000.00 at the time of signing by not demanding its payment then. Moreover, the defendants well knew that the $30,000.00 the consideration for the option was to come from the sale of the plaintiffs' house in Edgewater and that sale was not completed on the 7th of July, 1987. In those circumstances, they contend for an enforceable contract which was breached by the defendants.

The defendants deny the existence of any enforceable contract. They contend that no consideration was paid on the 7th of July, 1987, and therefore all that existed up to 2nd of August, 1988, was a mere offer which they were competent to withdraw, at any time before acceptance.

An option, according to their argument, is a specie of agreement which is subject to all the requirements of a contract which are offer, consideration and acceptance.

Mr. Oneil Williams the male plaintiff gave evidence. He spoke of meeting the defendants and discussing with them the purchase of 88 acres of land at Malvern. He had the discussion believing that the price was $350,000.00 which he thought to have been a bargain. However he was told that was the price many years ago and a price of $900,000.00 was asked.

After further discussion, it was agreed that they would purchase and

the defendants would sell 20 acres for $350,000.00. This deal was subject to subdivision which would take sometime to obtain. Since he wished to move to St. Elizabeth and because defendants were leaving the country, a lease with an option to purchase included in it was drawn up. This lease was taken to his attorney-at-law who examined it and he signed it at Trout Hall on the 7th of July, 1987.

He entered onto the 20 acres, the subject of the lease, and he expended in excess of $150,000.00 over a three year period in making improvements to the property.

During the period 7th July, 1987, to 2nd August, 1988, he received no request for the payment of $30,000.00. He denied receipt of the letter from Ricketts dated 19th September, 1988, but admitted the receipt of one dated 21st October, 1988.

In cross-examination by Mrs. Benka-Coker Mr. Williams disclosed that the property in Edgewater was owned by his wife and that property was finally sold in 1989.

He answered that he told the defendants that the payment of the $30,000.00, the consideration for the option, was dependent on sale of the property in Edgewater. He however did not tell that to Mr. Ricketts who was drafting the lease agreement. He admitted that when he took a copy of lease agreement to his attorney the clause 4(e)- the option clause, was present in the document and also that the document carries no clause to the effect that the option consideration was to have been be paid from sale price of the Edgewater property.

When Mr. Williams was asked what was his understanding of the statement of receipt in the clause 4(e) in the lease, he interestingly said he understood it to be saving Mr. Ricketts the need of preparing a separate receipt. He said he did not understand it to be a requirement that the $30,000.00 should have been paid on signing of the lease and thought he had two years within which to pay it.

He was shown a letter dated 7th July, 1987, from Mrs. Scharlie Jobson to Mr. Barlow Ricketts. He said that letter was a fabrication but if it was genuine it suggested that the $30,000.00 should have been paid at signing of lease on the 7th July, 1987. He denied that Mrs. Jobson asked them for the

$30,000.00 on the 7th July, 1987, at Trout Hall. He denied that Mrs. Jobson was told that the amount was not paid because they the plaintiffs did not have enough time to have gone to their bank.

He denied that Mrs. Jobson kept his copy of the lease and said he would get it from Mr. Ricketts when he paid the $30,000.00 to him within a week and that she would send a note to that effect to Mr. Ricketts. He however admitted that he got a copy of the lease in February 1988.

Mrs. Jean Williams next gave evidence for the plaintiffs. She said Mrs. Jobson was her teacher at school in Malvern. She and her husband entered into a lease agreement for 20 acres of land at Roseberry in Malvern. There was an option to purchase and she understood that on payment of $9,000.00 rental they had two years within which to pay $30,000.00 the consideration for the option.

She told the court in her evidence in chief that the defendants were certainly aware that the consideration of the option was to come from the proceeds of sale of her house in Edgewater. She would tell Mrs. Jobson when they met that there was a buyer for the house at Edgewater and a sale would soon be completed. The sale of the house in Edgewater did not materialize on two occasions.

In July 1988 she was involved in a discussion with the defendants at Roseberry. The defendants were going overseas and she told them that before their return to Jamaica would have been paid.

She stated that in October 1988 she was at home when Mrs. Jobson came with four men and proceeded to inspect and show the men around the house. Mrs. Jobson left with the men and returned alone some minutes after. Mrs. Jobson then told her that one of the men wished to purchase the entire property and offered it to her for $1.2 million if they contacted her by 3 p.m. the following day.

Mrs. Williams said that she was shocked at this turn of events since she knew she was on the property to purchase 20 acres the subject of the lease.

She denied that she or her husband made any offer to buy the entire property.

On being cross-examined by Mrs. Benka-Coker, Mrs. Williams was shown

the option clause 4(e) of the lease. Her understanding of the clause was that the $30,000.00 could be paid at any time during the term of the lease.

Her attention was also drawn to the letter from Mrs. Jobson to Ricketts dated 7th July, 1987. She said the letter is a fabrication and was not present when the trial began.

On no occasion prior to 2nd August, 1988, when the $30,000,00 was tendered, was any request for its payment made and its payment was certainly not demanded on the 7th July, 1987, at Trout Hall. She did tell her attorney Miss Rose that $30,000.00 should have come from the proceeds of sale of the property in Edgewater, and as far as she was concerned, she and her husband were waiting on a subdivision to purchase 20 acres of land at Roseberry.

She denied that she told Mrs. Jobson that she would try to match the $1 million offer which she had received. She admitted that she did call Mr. Ricketts to say that her banker considered the time within which to raise over $1 million was too short. She did say also in cross-examination that she would lie to save 20 acres of land for her children.

The defendants' case was evidenced by Mr. Barlow Ricketts and Mrs. Scharlie Jobson.

Mr. Ricketts acted as the attorney for the defendants. He told the court that in June, 1987, the plaintiffs and the defendants came to his office and discussed the lease and purchase of 20 acres of land part of Roseberry in St. Elizabeth. He took oral instructions from the parties and from those instructions and from the discussions, he prepared a draft lease with option to purchase. Later in June, the parties again met at his office and there was further discussions and a settlement of the terms of the lease.

The plaintiffs wished to have their attorney examine the lease. He gave them a copy of the lease toward that end.

They returned and told him that their attorney had inspected the draft. He read the document clause by clause to the parties and explained it to them and they were all agreed.

He said he explained the option clause to the plaintiffs and told them that as they were purchasing a present right to purchase property in

future the $30,000.00 should be paid at date of signing. He said he explained that the $30,000.00 the consideration for the option should be paid on the date of signing and that was the reason for including the receipt clause.

The plaintiffs toook the original and copy of the lease from his office in Mandeville to Trout Hall for signing. He received the documents during the week together with a Bank Book in the name of the defendants and a letter from Mrs. Jobson. He received those from a Mr. Austin Jobson. He was shown and he identified the letter at page 9 of the agreed bundle as the one he received from Austin Jobson. He expected the plaintiffs to come in to pay the $30,000.00 within the week. In August 1988, he returned to his office from Court and found a cheque for $30,000.00 from the plaintiffs payable to the defendants. He discussed the receipt of that cheque with Mrs. Jobson who instructed him to return it. She instructed him to do so since she had told the plaintiffs that the proposed sale was off.

He communicated the defendants' refusal to accept the cheque by a letter dated September 19, 1988, (page 17 of agreed bundle).

Mr. Williams came to see him about one week after he posted the letter dated 19th July, 1988. On that occasion, he told Mr. Williams that the defendants were still willing to sell but on re-negotiated terms and he tried to convene a meeting with the parties but without success. He subsequently returned the cheque to the plaintiffs by letter of 21st September, 1988, (See page 19 of agreed bundle).

Mr. Ricketts in answer to cross-examination said that from the time he received the executed lease and copy from the defendants in July 1987 until August 1988 he got no further instructions from them. He was instructed by the defendants to reject the $30,000.00 which was paid on 2nd August, 1988. He was not sure if he was so instructed before 2nd August, 1988. He said he told Mrs. Jobson that the plaintiffs were still interested in the purchase of the property. Mrs. Jobson then told him that she was willing to sell on re-negotiated terms of the option.

He emphatically said that -

(a) He did tell the plaintiffs that the $30,000.00 should be

paid on the signing of the lease and by a manager's cheque;

(b) it was not the understanding that $30,000.00 could be paid at any time during the term of the lease;

(c) Mr. Williams did admit to him receipt of the letter dated 19th September, 1988, (page 17 of agreed bundle);

Mrs. Scharlie Jobson next gave evidence for the defendants. She admitted meeting with the plaintiffs in May 1987 concerning the conveyancing of property at Malvern in St. Elizabeth.

She said Mrs. Williams informed her that it had become necessary for her family to relocate from Edgewater to Malvern a safer place. The plaintiffs told her that they received information that the property was being sold for $350,000.00 and she replied that it was for much more than that - $900,000.00 in fact.

The plaintiffs said they could not afford that price and asked if a subdivision of the property could be made to facilitate their getting a part of the property.

Mrs. Jobson said they had not thought of a subdivision but were willing to consider it. The defendants registered interest in lot 2 in the middle of the subdivision diagram. (Page 13 of agreed bundle). Mrs. Williams asked for a lease until the sub-division was completed.

After several meetings at Trout Hall and at Malvern all four of them met at Mr. Ricketts's office in Mandeville. She told Ricketts of the proposed sale and the terms. Ricketts was to work out the details of the agreement and the parties were to meet at his office again. The lease was prepared and at a meeting with the parties Ricketts read each paragraph and explained it to them in detail and asked if the parties understood what should be signed.

Mr. Jobson said the only question which was asked by one of the plaintiffs was what would be the status of the document if both defendants were to die.

On the day the parties were in Ricketts' office the rental of $9,000.00 was paid and she lodged that to the bank on the 3rd July 1987, (See 43 of agreed bundle).

On the 7th July, 1987, the plaintiffs came to Trout Hall with the original and copy of the Lease Agreement with option to purchase.

The parties signed it and she asked the plaintiffs for the $30,000.00 which represented the option money. She expected it to be paid upon signing of the agreement.

The female plaintiff said they obtained the Lease Agreement from Mr. Ricketts late on the Monday evening and it was late to go to the bank and they had to be at Trout Hall at 8 a.m. the Tuesday morning. She asked for their copy of the document which she refused to give her. Mrs. Williams told her that she would take the document and a cheque for $30,000.00 to Ricketts during the course of the week.

Mrs. Jobson went on to say that as they were leaving the country on the said 7th July, 1987, she sent the original and copy of the lease, a bank book and a note to Ricketts. She was shown the note and she identified it as the one which she sent to Ricketts. (Page 9 of agreed bundle).

On returning to Jamaica on the 28th July, 1987, she enquired from Mr. Ricketts if the plaintiffs had come to his office. Mr. Ricketts told her that he had not seen them and he received no cheque from them.

On Mr. Ricketts' advice the plaintiffs were put in possession on the 1st September, 1987 not because of any option but because they had already paid the rent of $9,000.00.

Whenever she saw Mrs. Williams she would ask for the payment of the $30,000.00. She saw her and asked for the money on at least four occasions between August and December, 1987. She was given various excuses as to why the money was unpaid e.g.

(a) Money not forthcoming from their attorney-at-law;

(b) Sale of property at Edgewater not materializing.

In December 1987, she informed Mrs. Williams that the option could no longer be left open as she needed the money and whoever come first with the money would get property in its entirety.

In July 1988 one year after the signing of the lease the money was not paid. She was going on vacation and Mrs. Williams told her that by the

time she returned the $30,000.00 would be taken to Ricketts' office. When she heard that she told Mrs. Williams that since she now had some money the deal could be re-negotiated.

On her return for vacation she received a telephone call from Ricketts who told her that the plaintiffs had sent a cheque for $30,000.00. She instructed Ricketts to return the cheque as the option was no longer open. Ricketts invited her to his office where he returned her bank book which he had from July 1987.

In October 1988, she was contacted by a Mr. Millington with regards to purchasing the property in its entirety and a price of $1 million was agreed. On the 11th of October she took Mr. Millington to inspect the property and they inspected with the permission of Mrs. Williams.

She told Mrs. Williams that millington had offered $1.2 million for the property. On hearing that Mrs. Williams said that she would leave for Kingston to see her banker - Mrs. Ilgner about raising a loan to enable her to purchase the property.

She Mrs. Jobson advised Mrs. Williams to see her at 3 p.m. at Trout Hall the following day as she had arranged to meet with Millington at 4:30 p.m. at Williamsfield.

Up to 3 p.m. neither plaintiff came to Trout Hall. She left for Williamsfield leaving instruction with her helper that should Mrs. Williams come she could call her at her brother-in-law's house at Williamsfield. She got no call from Trout Hall and they eventually agreed with Millington for him to purchase the property. As a consequence of that agreement to sell the property in its entirety, application for subdivision was withdrawn (See letter at page 18 of agreed bundle).

Mrs. Jobson was cross-examined by Miss Rose. She said that the commmencement date of the lease of 1st September, 1987, was the suggestion of the plaintiffs and it suited her as it gave her time to give notice to a tenant who occupied the house. Two years was given as the period for the lease as it was expected that a subdivision would have been effected within one year of its commencement.

She vehemently denied any knowledge of where the plaintiffs would obtain $30,000.00 the consideration of the option offer. She said the option clause in the lease was fully explained and it was never suggested that the consideration for the option could be paid at anytime during the currency of the lease. She said that on the withdrawal of the offer for the option she was willing to sell to the plaintiffs but on renegotiated terms.

She did ask for the option money on date of signing of the lease and on more than one occasion between July 1987 and December 1987. That was the evidence from defendants.

SUBMISSIONS

Mrs. Benka-Coker for the defendants contended that there was no contract and all parties are agreed that the $30,000.00 as option money was not paid on the 7th of July, 1987, but one year after on the 2nd August, 1988.

She said crucial questions are, what is an option? and what construction can be place on clause 4(e) of the Lease Agreement?

She stated that the plaintiffs were discredited on their evidence and cross-examination. She asked the court not to place any reliance on Mr. Williams since he was evasive and abusive in demeanour.

Mrs. Williams, she said, cannot be relied on since she admitted that she lied to Mrs. Jobson and said she would lie to save 20 acres for her children.

On the other hand, she ascribed rectitude and proper demeanour to the witnesses for the Defence and stated that in any area of conflict between the plaintiffs and the Defence witnesses the defendants are to be accepted.

She cited the case of Lynch v. Lynch S.C.C.A. No. 36/89 delivered on the 4th February, 1991, (unreported) in support of that contention. She said the plaintiffs are lying when they say that their thinking was that $30,000.00 could have been paid at any time and claimed support for that from the letter at page 9 of the agreed bundle.

She emphasized three issues in Law -

1. Waiver
2. Construction of clause 4(e) of the document at pages 1 - 8 of the agreed bundle;
3. The qualities of an option contract.

In relation to waiver the case of Bruner v. Moore [1904] 1 Chancery 305 was cited. To establish a waiver of the payment of the $30,000.00 the plaintiffs would have to show and the court have to find conduct of the defendants which led the plaintiffs to believe that the defendants would not have asserted their rights under the option.

Reliance was also placed inter alia, upon Charles Rickards, Limited v. Oppenheim [1950] 1 All E.R. 420 at 425, Caribbean Asbestos Products Limited v. Andre Leopold Lopez et al [1974] 21 W.I.R. 462, Sherwood v. Tucker [1924] CH. 440 and Dickinson v. Dodds [1874] 2 CH. 463.

As far as the clause 4(e) of the Lease is concerned, Mrs. Benka-Coker argued that "at anytime" in the clause applies to the exercise of the option and not its creation. She said it was clear on a proper construction that the $30,000.00 should have been paid at the time of the signing of the lease and referred to the inclusion of the receipt clause.

On the construction of clause 4(e) of the lease she submitted that, being a commercial contract, it demands a full consideration of all surrounding circumstances in determining its meaning.

In relation to the nature of the clause 4(e), it was submitted that -

(i) It was a mere offer which was revocable at any time before acceptance. There was therefore no option as contended for by the plaintiffs;

(ii) Since there was no option, there was no contract of sale;

(iii) The plaintiffs have no enforceable contract on which to rely;

(iv) In the absence of a valid enforceable contract there can be no grant of a special contract.

Finally, Mrs. Benka-Coker argued that the defendants have not conducted themselves in any manner indicative of a breach of contract. The plaintiffs have no interest in the lease since it has expired by effluxion of time and in any case the Rent Restriction Act does not apply to Agricultural Tenancies. The plaintiffs are not entitled to any relief under a Contract for

the Sale of Land, The Rent Restriction Act, or the Lease.

Mr. Morrison for the plaintiffs at the outset of his submissions said the court would be asked to make determinations on -

(i) The intention of the parties with regards to the payment of the $30,000.00;

(ii) Whether on the 7th July, 1987, an agreement was made for the payment of $30,000.00;

(iii) Whether or not after the 7th July, 1987, Mrs. Jobson enquired as to the payment of $30,000.00 by the plaintiffs;

(iv) Did Mrs. Jobson in December 1987, inform the plaintiffs that they had delayed too long and the option could not be treated as being alive?

(v) In July 1988, the plaintiffs advised the Jobsons that $30,000.00 would have been paid to Ricketts and this evoked no protest or negative response from the defendants. He argued that the court should accept the defendants as witnesses of truth and make determinations on the above in their favour.

In a reference to the Lease Agreement clause 4(e) he contended that the clause did not make the payment of $30,000.00 a condition precedent. It was an implied term that payment could be made at anytime during the currency of the Lease.

He alternatively argued that even if the defendants are right and the $30,000.00 should have been paid, that does not prevent a binding contract from coming into force since a binding obligation to pay is good consideration. He supported this contention by citing and relying on Barba and Another vs. Gas and Fuel Corporation of Victoria [1976] 136 C.L. R.120.

Mr. Morrison continued by submitting that although strict compliance with the conditions of an option is required, it is only required in relation to the exercise of the option. In this premise he invited the courts attention to the cases of United Scientific Holdings vs. Burnley Borough Council [1977] 2 All E.R. 62; United Dominions etc. vs. Eagle Aircraft [1968] 1 All E.R. 104; Hare v. Nicholl [1966] 1 All E.R. 285 and Millichamp v. Jones [1983] 1 All E.R.

267. I understand that argument to be that it was not necessary to have strict compliance as to payment of the $30,000.00.

He argued that the case of Caribbean Asbestos Products Limited vs. Andre Lopez et al [1974] 21 W.I.R. 462 is distinguishable on two grounds:

(i) The terms of the option clause in that case expressly made the payment of consideration a condition precedent; and

(ii) It was a lease for a year with option to renew for a second year. The option to purchase was contained in the original lease. The year had expired and the lessee did not execute a new lease on which to hang the option to purchase.

Mr. Morrison also submitted that if the court should hold that the option was alive then it is clear on the defendants' case that there was a waiver of the payment of the $30,000.00 consideration until December, 1987. He cited the case of Bruner v. Moore [1904] 1 CH. 305 at 313 in support of that submission.

That was the total of the submissions. Between husband and wife marriage is like playing in a band in which the husband may play second fiddle. In this case, the husbands were clearly the second fiddlers. The transactions were conducted by Mrs. Williams and Mrs. Jobson.

It is, in my opinion, of crucial importance to determine whether or not the option contained in the lease could be treated as inoperative by the Defendants.

The option is contained in clause 4(e) of the Lease Agreement and reads thus:

> "At any time before the expiration of the term hereby created, and in consideration of the sum of Thirty Thousand Dollars paid by the Lessees to the Lessors (the receipt of which is hereby acknowledged) the lessors hereby grant to the Lessees the option to purchase the leased premises for an estate in fee simple for the sum of Three Hundred and Fifty Thousand Dollars upon the terms set forth in the third schedule hereto."

In Griffith v. Pelton [1958] 1 Ch. 205 at page 225 it was decided that although an option contained in a lease is collateral to the lease, it is in itself a distinct Contract having all the essential characteristics of an option in gross.

An option in gross for the purchase of land, is a conditional contract for the purchase by the grantee of the option from the grantor upon giving the prescribed notice and otherwise complying with the conditions upon which the option is made exercisable.

The option in this case, is contained in the lease and is therefore attractive of the description given to that type of option in Griffith v. Pelton.

Now, since an option in gross is effective on compliance with the conditions which accompany it, it is necessary, to ascertain what were the conditions, if any, which accompanied the option at 4(e) of the lease in this case.

The first condition I apprehend is the Clause "at any time before the expiration of the term hereby created." That is a condition which, I find, goes to the exercise of the option. The next condition is contained in "and in consideration of the sum of Thirty Thousand Dollars paid by the Lessees (the receipt of which is hereby acknowledged)." The Plaintiffs contended that this condition could have been complied with, at anytime during the currency of the lease. They argued that the payment of the Thirty Thousand Dollars was linked to the two (2) year period of the lease. The Defendants argued that it was a condition precedent. They contended for a payment at the time of signing of the lease.

There are other conditions with regards to the option contained in the Third Schedule to the Lease to wit:-

2. The option is not exercisable until a sub-division plan is approved.
3. If Lessees (Plaintiffs) exercise the option after approval of sub-division plan, option money is to be reckoned as part of purchase price.
7. Option money is only refundable in the circumstances stated in the Third Schedule.

Some argument was based on the existence of the "receipt clause" in Clause 4(e) of the Lease, that its presence is merely to relieve the

conveyancer from drawing a separate receipt and therefore in this case, it is suggestive that the Thirty Thousand Dollars option money could have been paid at anytime during the currency of the Lease.

The removal of the necessity to draw a separate receipt is an incidental reason for a receipt clause being incorporated in the body of a deed. That however is not the main reason.

The law of Real Property 5th Edition by Sir Robert Megarry and H.W.R. Wade at page 158 says that "a solicitor who produces a conveyance containing such a clause which has been executed by the vendor shows that he has authority from the vendor to receive the purchase money."

So also are to be found similar and other reasons in Gibson's Conveyancing 19th Edition at pages 179-180.

I adopt the reasons in the cited books as good law. Moreover, the letter accompanied by a Bank Book and dated 7/7/87 from Mrs. Scharlie Jobson to her Attorney Mr. Barlow Ricketts, are cogent indicia of an expectation and a requirement that the Thirty Thousand Dollars would have been paid at the time of signing the lease.

It is my view that it cannot be said that the Plaintiffs could have delayed payment of the option money until they saw fit to pay it. I also accept that Mr. Ricketts the defendant's attorney, did advise the Plaintiffs that the option consideration should have been paid on date of the Lease Agreement.

In those circumstances, I hold that the payment of the Thirty Thousand Dollars was a condition precedent.

I so hold mindful of Barba v. Gas and Fuel Corporation [1976] 136 C.L.R. 120 which was cited and relied on by Mr. Morrison. That case is, in my opinion, distinguishable on the ground that the Court there found evidence of an oral agreement as to the payment of the option money. There is no such evidence in the instant case. I cannot therefore agree with Mr. Morrison that there is any circumstance which created any binding obligation which could be called good consideration.

WAIVER OF CONDITION

Having found that the pyament of the Thirty Thousand Dollars was a condition precedent, the question of whether or not there was a waiver of the condition comes to be considered.

In Bruner v. Moore [1904] 1 CH. 305 there is dictum to the effect that if parties who enter definite and distinct terms which carry certain legal consequences, afterwards by act or consent enter upon a course of conduct which has the effect of leading one of the parties to assume that the strict rights arising under the contract will not be enforced or will be suspended, the party who might have enforced any legal consequence will not be allowed to do so if it would be inequitable having regards to the conduct which have taken place between the parties.

Was there conduct on the part of the defendants which could have lead the Plaintiffs to assume a waiver of the payment of the Thirty Thousand Dollars at time of singing the lease?

On the evidence I answer that question in the negative. It is true that there was some delay in positively conveying to the Plaintiffs the withdrawal of the offer. However in December 1987 some indication as to its withdrawal was given by Mrs. Jobson to Mrs. Williams and that was prior to the payment on 2/8/88. I do not find any conduct on the defendants part which suggests a waiver of payment of the option money. Mrs. Jobson's conduct towards Mrs. Williams could be discribed as benevolent but it cannot be right to penalize benevolence.

In any case, I am reluctant to ascribe credit to Mrs. Williams when she denied receiving any instruction that the Thirty Thousand Dollars should be paid on signing of the lease and that no request was made for its payment prior to 2/8/88. My reluctance comes from Mrs. Williams statement that she would lie to save 20 acres of land for her children.

Mr. Morrison did say that the option, being a unilateral contract, time being of essence was only in relation to the two year period of the lease. Having found that the payment of Thirty Thousand Dollars was a condition precedent I am constrained to reject Mr. Morrison's contention. He

referred to two cases in support of his argument - United Scientific Holdings Ltd. v. Burnley Borough Council; Cheapside Land Development Coy. Ltd. and another v. Messils Service Col [1977] 2 All E.R. 62 and United Dominions etc. v. Eagle Aircraft [1968] 1 All E.R. 104. Both cases speak of synallagmatic or bilateral contracts.

In the former case, at page 71 at letter d, Lord Diplock with reference to such contracts said -

> "Both in the Court of Chancery and in the Courts of Common Law the rules that have been developed about particular stipulations not being of the essence of the contract or not being 'conditions precedent' applied to synallagmatic contracts only. They did not apply to unilateral or 'if contracts' of which the example most germane to the instant appeals is an option."

At letter e on the said page 71, Lord Diplock went on to cite a dictum of Lord Denning in the United Dominion Case as follows:-

> "In point of legal analysis, the grant of an option in such cases is an irrevocable offer (being supported by consideration so that it cannot be revoked). In order to be turned into a binding contract the offer must be accepted in exact compliance with its terms. The acceptance must correspond with the offer."

Lord Diplock then continued at letter f to say "Exact compliance with the terms of the offer in an "if contract" had been required in equity as well as in Common Law: See Weston v. Collins [1865] 5 New Rep. 345; Finch v. Underwood [1876] 2 CH. D. 310.

Again at letter g, Lord Diplock refrained from repeating the elaborate juristic analysis of the difference between synallagmatic and unilateral contracts. He said:-

> "A more practical business explanation why a stipulation as to the time by which an option to acquire an interest in property should be exercised by the grantee must be punctually observed is that the grantor, so long as the option remains open, submits to being disabled from disposing of his proprietary interest to anyone other than the grantee --------."

I adopt Lord Diplock's practical approach and say that in the instant case, the fact of non-compliance with the condition of paying the Thirty Thousand Dollars at time of signing the lease, created no disability

on the part of the defendants to dispose of their property to persons other than the plaintiffs.

I also do not think that the case of Hare v. Nicoll [1966] 1 All E.R. 285 affords any comfort to the Plaintiffs in this case. Lord Justice Willmer at page 289 letter F had this to say:-

> "----------It is well established that an option for the purchase or repurchase of property must in all cases be exercised strictly within the time limited for the purpose. The reason for this, as I understand it is that an option is a species of privillege for the benefit of the party on whom it is conferred." That being so, it is for the that party to comply strictly with the conditions stipulated for the exercise of the option."

I adopt that dictum and say that in this case the Plaintiffs did not comply with a stipulated condition.

The Plaintiffs failure to comply with the condition as to payment of Thirty Thousand Dollars was, to my mind, not an oversight so as to take the case within the decision of Millichamp and others v. Jones 1 All E.R. 267 cited by Mr. Morrison.

The Defendants relied on the case of Caribbean Asbestos v. Lopez and others [1974] 21 W.I.R. 464. Mr. Morrison submitted that there were two distinguishing features in the case and therefore should not be treated as any support for the Defendants. I agree that there was an express requirement as to payment of option money on signing fo the lease in that case also that there was a failure to execute a new lease. Those features are not fatal to the authoritative nature of the case. I say so since I find on the evidence, behaviour on the Defendants' part which certainly implied a requirement as to payment of the option money on signing.

The case is therefore supportive of the Defendants contention that the non-payment of the Thirty Thousand Dollars at time of signing the lease created no valid option exerciseable by the Plaintiffs.

I hold that the Defendants were entitiled and competent to withdraw the offer of the option.

Each of the Plaintiffs claim is dismissed.

The Defendants by way of Counterclaim sought,

1. Declaration that the Plaintiffs are not entitled to enforce the terms relating to the grant of the option to purchase contained in the Agreement of 7th July, 1987.
2. A declaration that the Defendants and/or Anthony Delroy Millington are entitled to possession of the said premises occupied by the Plaintiffs.
3. An Order for possession of the said premises occupied by Plaintiffs pursuant to the Agreement dated 7th July, 1987.
4. Damages for breach of Contract.
5. Further relief as may be just.
6. Costs.

In the light of my findings on the Plaintiff's claim, I find on the Defendants counterclaim that the Plaintiffs are not entitled to retain possession of the land the subject of this case as against the Defendants. There will be declarations in terms of those sought at 1 and 2 above limited to the Defendants. Millington is a stranger to these proceedings and cannot be in this court's contemplation.

It is also ordered that the Plaintiffs do give up possession to the Defendants the property which is the subject of this suit.

There is no award of any damages. There will therefore be Judgment for the Defendants on both the Claim and the Counterclaim and the Defendants are to have their costs on each to be agreed or taxed.

ELLIS, J.

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