

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL JURISDICTION**

**No. 45 of 2003**

**BETWEEN:**

**CLINTON BEST**

*(Plaintiff)*

**AND**

**VERONICA SMITH**

*(Defendant)*

**Before the Honourable Mr. Justice Carlisle Payne, Judge of the High Court.**

**2003: October 27**

**December 29**

**2004: January 9**

*Mr. Gregory Nicholls for the Plaintiff*

*Mr. Edmund King for the Defendant*

## **DECISION**

[1] In this originating summons the Plaintiff (vendor) seeks, inter alia, a declaration that he has effectively rescinded a contract for the sale of land.

[2] It will be useful to consider the chronology of events and correspondence between the parties.

[3] By an agreement dated 26<sup>th</sup> April, 2001, the vendor agreed to sell to the Defendant (purchaser) a parcel of land on Baxters Road in Bridgetown. Clause 12 was as follows:

“Should any requisition whatsoever be made and insisted on which the Vendor is unable or unwilling on unreasonable grounds to satisfy or comply with the Vendor may (notwithstanding any attempt to satisfy or comply with the same or any negotiations or any litigation in respect thereof) by notice in writing to the Purchaser or to her Attorney-at-Law rescind this

Agreement upon repaying to the Purchaser or her attorney-at-Law the deposit paid as aforesaid but without interest costs or charges and the same shall be accepted by the Purchaser in full satisfaction of all claims under this Agreement or otherwise howsoever in relation to the lot agreed to be sold and the Purchaser or her Attorney-at-Law shall return to the Vendor or his Attorney-at-Law all title deeds and plans relating to the premises and thereupon this Agreement shall terminate and be null and void and of no effect but the Purchaser or her Attorney-at-Law may within 10 days after receipt by her or her Attorney-at-Law of the said notice to rescind withdraw in writing the requisition upon which the notice to rescind was founded in which case the notice to rescind shall be deemed to be withdrawn also."

[4] On 27<sup>th</sup> April 2001, the vendor's Attorney-at-Law submitted a draft conveyance to the Attorney-at-Law for the purchaser requesting the approved conveyance for engrossment.

[5] On 6<sup>th</sup> June 2001, the vendor's Attorney again wrote to the purchaser's Attorney requesting the approved conveyance for engrossment.

[6] The vendor's attorney further wrote on 6<sup>th</sup> December 2001 as follows:

"We have not yet received from you the perused conveyance (copy enclosed) and must assume that it meets with your approval.

We are proceeding to have same executed and will forward same to you shortly for execution."

[7] Again on 11<sup>th</sup> December 2001 the vendor's Attorney wrote following up the matter as follows:

"We refer to our letter of December 6 2001 and forward herewith the following documents:

1. Original conveyance for your client's signature;
2. Section 12A forms in duplicate;
3. Our completion statement, and
4. Copies of the land tax bill, receipt and certificate.

Kindly advise us of a date convenient for closing."

[8] A reply did not come until 31<sup>st</sup> January 2002. This was some 9 months after the vendor's Attorney had forwarded the draft conveyance. The vendor's Attorney now received, as far as the evidence goes, the first written communication from the purchaser's Attorney. It was

headed "Requisition on Title" and was as follows:

"(1) Line marks must be pointed out to the purchaser prior to completion.

(2) Kindly quote me the law by which the assent vests the property in Mr. Best as trustee.

(3) I reserve the right to requisition you further."

[9] The vendor's Attorney replied to the above requisition on 6 February 2002 as follows:

"(1) Dependent on your answer in 2.

(2) The point taken by you regarding the validity of the assent in Mr. Best in his individual

capacity is perfectly in order and we concede the point. The draft conveyance sent to you in which Mr. Best executed both in his individual capacity and as personal representative corrects any deficiency in the assent. Mr. Best is now conveying in his capacity as personal representative since she cannot legally convey in his individual capacity asset out in the agreement. In the event that you are not satisfied with your client's title in such circumstances the vendor will be unable to proceed. I have advised my client accordingly.

(3) Dependent on your answer in 2."

[10] This was accompanied by the following letter.

"Enclosed please find our Replies to Requisitions, which is self-explanatory.

In the event that we do not receive your acceptance of the title as set out therein by midday on 8<sup>th</sup> instant, we will have to assume that your client is no longer interested in completing the sale. Inasmuch as the agreement was executed by him in his individual capacity we will not advise him to pursue a completion notice and will be returning your deposit at the aforesaid time."

[11] The vendor's Attorney awaited a reply until 9<sup>th</sup> May 2002, and then wrote as follows:

"In accordance with Clause 12 of the Agreement herein the vendor hereby rescinds the said agreement and encloses the deposit in the sum of \$8,650.00.

Kindly return all title deeds and plan relating to the said agreement."

[12] Some 8 weeks later, namely on 4<sup>th</sup> July 2002, the vendor's

Attorney received the following from the purchaser's Attorney:

"I return herein your cheque which represented Veronica Smith's deposit.

I have recorded the Agreement between the above-mentioned parties. A copy of the receipt is enclosed.

It is my opinion that the problem with the transfer to the purchaser can be resolved by joining the beneficiaries in the conveyance. If this is done, we can complete the sale.

It is our intention of bringing an action against Mr. Best for specific performance of the contract, because the problem we face can easily be corrected."

[13] The vendor filed his originating summons supported by affidavit on 9<sup>th</sup> January 2003 and the purchaser filed his affidavit in reply on 14<sup>th</sup> August 2003.

[14] As stated in Williams on Title, 4<sup>th</sup> edition at Page 522, requisitions, even in the absence of any condition, must be made within a reasonable time after delivery of the abstract.

[15] There was an inordinate delay in making the requisition on behalf of the purchaser, and I consider that this entitled the vendor to take the position adopted in the letter accompanying the Reply to Requisition. In the result, I find that the vendor was entitled to rescind the agreement as he did.

[16] In any event, the vendor was unwilling to answer, or answer further, the requisition, and I consider that this was communicated quite clearly in his replies to requisition and accompanying letter.

[17] The requisition itself does not ask for the joining of the beneficiaries in the conveyance, but I am satisfied from other evidence that this is what was intended and understood: The purchaser's Attorney had informed the vendor's Attorney that the purchaser was relying on the approval of the bank which would become the mortgagee, and it was known to all concerned that the position of the bank was that the beneficiaries should be joined in the conveyance.

[18] Mr. Nicholls submitted that the bank, or their Attorney should be regarded as the agent for the purchaser on this issue, but I do not think it necessary to determine that. The purchaser was adopting the same position as the Bank.

[19] But it is to be noted that the solution favoured by counsel appearing for the defendant is a reconveyance of the property to the estate, and a conveyance from the estate to the defendant. This would not involve joining the beneficiaries.

[20] I agree with counsel appearing for the defendant that the matter could be resolved without joining the beneficiaries in the conveyance. I therefore find that the vendor's unwillingness to embark on the exercise of obtaining the consents and signatures of all of the living beneficiaries, and the representatives of those who have died, was reasonable.

[21] If there was any doubt that the purchaser's requisition intended the joining of the beneficiaries, and that the purchaser was insisting on the requisition, the letter of 4<sup>th</sup> July 2002 removes any doubt that they may have been about this. I find that the requisition in the context of the correspondence between the parties required joining the beneficiaries, and that the purchaser was insisting on the requisition.

[22] I therefore find that the vendor was also entitled to rescind the agreement under clause 12, and that he effectively did so.

[23] There will be an order accordingly and further, an order that the purchaser's Attorney deliver up the title deeds to the vendor's Attorney by 16<sup>th</sup> January 2004.

[24] Costs for the vendor to be agreed or taxed.

[25] Stay of execution for 6 weeks.

High Court Judge.