

**BARBADOS**

**No. 1318 of 2006**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**Civil Division**

**BETWEEN:**

**CLIVE MCNALLY**

**PLAINTIFF**

**AND**

**LYNN MOORE  
RONALD THOMAS MOORE  
ROLYN, INC**

**FIRST DEFENDANT  
SECOND DEFENDANT  
THIRD DEFENDANT**

*Before: Dr. The Honourable Madam Justice Sonia Richards, Judge of the High Court*

**2010: January 14, 15, 18  
November 09, 10, 11, 16**

**Mr. Amilcar Branche for the Plaintiff**

**Mr. Stephen Lashley for the Defendants**

**DECISION**

*Background*

[1] This matter began in 2006 with a Writ of Summons filed by the Plaintiff in which he sought specific performance of a contract for the sale of a property at Lot 2 Inch Marlow in the parish of Christ Church.

- [2] The Plaintiff alleged that the agreement for him to purchase the property was concluded on 22 March 2006. The agreed price was £240,000 (or \$880,962 Bds) for a property with an unfinished house. The Plaintiff paid a 10% deposit of £24,000.
- [3] In December 2006, the Court granted the Plaintiff an injunction to restrain the Defendants from selling, disposing of, mortgaging, charging or otherwise dealing with the property.
- [4] A summons to discharge the injunction was dismissed on 08 August 2008,

*Property Valuations*

- [5] A valuation from LAMS Caribbean Inc dated 27 October 2006, stated as follows:-
- (1) Forced sale value (house and land): \$1,100,000.
  - (2) Market value as at 27 October 2006: \$1,500,000.
  - (3) Estimated market value on completion: \$2,700,000.
- [6] Felicity Limited submitted the following valuation:
- (1) market value at 22 November 2008: \$2,400,000
  - (2) market value at 26 January 2006 based on the First Defendant's information: \$1,000,000 (N.B. agreed purchase price in March 2006 was \$888,962 Bds)

- (3) market value at 26 January 2006 based on the Plaintiff's information: \$1,700,000
- (4) cost of improvements March 2006 - August 2007 based on the First Defendant's information: \$442,000
- (5) Cost of improvements March 2006 to August 2007 based on the Plaintiff's information: \$184,000. (NB a difference of \$258,000 that has implications for the credibility of the Plaintiff).

*Relevant Orders*

- [7] By a consent order made on 30 June 2009, the parties agreed to allow the Defendants to rent the property and the rental income to be placed in an escrow account. The Defendants were also permitted to deduct reasonable sums for the maintenance of the property and to notify the Plaintiff of the deductions.
- [8] By another consent order made on 28 January 2009, the parties further agreed to a determination of two specific issues by the Court. The essential clauses of that order are that:-

“1. The sole issue of determination at the next hearing of this matter remains to be the actual cost of improvements made to the property more particularly described in the Schedule hereto between the 22<sup>nd</sup> day of March, 2006, and the 31<sup>st</sup> day of August, 2007.

...

5. At the conclusion of the hearing, the court shall make a final determination as to a fair price to be paid by the Plaintiff to the Defendants in the compromise of this action.”

*The Actual Cost Of Improvements*

- [9] With respect to the determination of the actual cost of improvements, expert evidence was given by Mr. Steven Wiltshire, a valuer with Felicity Limited. In Mr. Wiltshire’s opinion the cost of improvements to the property between March 2006 and August 2007, based on information provided by the First Defendant, was \$442,000. Based on information provided by the Plaintiff, Mr. Wiltshire valued the costs of improvements over the same period at \$184,000.
- [10] When questioned about the two versions given by the Plaintiff and the First Defendant, Mr. Wiltshire’s comment was insightful. He said that “Having seen the video, and having looked at the written statements, I would say that [the First Defendant’s] version was a little more accurate than [the Plaintiff’s], whose perhaps was a little overstated in some areas.” Counsel for the Plaintiff has also conceded that the improvements to the property cost \$442,000.
- [11] The Court finds that the actual cost of the improvements to the property by the Defendant was \$442,000.

*Determining A Fair Price*

[12] The parties also agreed that the Court should determine a fair price to be paid by the Plaintiff. The Plaintiff was prepared to pay the original purchase price in addition to the costs of improvements i.e. a total of \$1,330,692, from which the deposit of \$88,800 should be deducted.

[13] This price would not now be fair for following reasons:

1. This price represents a loss of over 1 million dollars to the Defendants, given the 2008 valuation of 2.4 million dollars for the property.
2. If the Plaintiff's had obtained an order for specific performance, the Defendants would have been entitled to ask the Court to exercise its discretion by increasing the purchase price to take into consideration the current market value of the property and the improvements thereto.
3. The amount outstanding on the purchase price was £216,000 or Bds \$800,064 using an exchange rate of 3.704.
  - (1) Between 2006 - 2008, \$800,064 would have attracted a fixed deposit rate of approximately 4 per cent i.e. \$64,005.

- (2) Between 2009 – 2010, the deposit rate in Barbados fell to approximate 2.5 per cent i.e. \$40,002 on \$800,064.
- (3) The improvements of \$442,000 over the three year period 2007 – 2010, if considered as a loan that attracted a mortgage rate of approximately 6 percent, would have yielded \$79,560.

Using this method the Defendants would be entitled to the sum of \$800,064, plus \$64,005, plus \$40,002, plus \$442,000, plus \$75,560; a total of \$1,421,631.

But the Defendants invested in real property which accelerated in value to 2.4 million in 2008. Therefore, this method represents a loss of just under one million dollars to the Defendants.

4. The property was originally priced for a quick sale. The Court accepts the valuation of one million dollars for the property in January 2006. The Defendants accepted £240,000 or Bds \$888,962, using an exchange rate of 3.704. Therefore, they were prepared to take a loss of approximately \$111,000, or about 11 percent. Using the 2008 market value of \$2.4 million, and deducting 11 percent or \$264,000, that gives a purchase

price of \$2,136,000 minus the deposit of \$88,800, leaving \$2,047,200.

[14] For these reasons the Court is of the view that the purchase price of \$1,330,692 proposed by the Plaintiff would not be a fair price.

[15] The parties have not given much assistance to the Court in its determination of a fair price. Bearing in mind that:

- (1) this is a compromise arrangement;
- (2) the Defendants do not or cannot expect to receive the current market value;
- (3) the Defendants were prepared to take an initial loss on the value of the property;
- (4) a price of \$1.3m, or \$1.4 million would not be fair given the market value in 2008 of \$2.4m;

the Court believes that in all circumstances it should fix a price that combines the methodology at paragraph [13] 3, with a split in the difference between the purchase price assessed in that paragraph and the valuation of \$2.4 million. In other words, to \$1,421,631 should be added \$489,184.50 (half of the difference between \$2.4 million and \$1,421,631). This gives a purchase price of \$1,910,815.50.

[16] The Court is of the view that a fair price for the property is \$1.9 million.

*Disposal*

[17] The Order of the Court is that the Defendants shall convey the property to the Plaintiff on or before 31 December 2010 for the sum of \$1.9 million. The sum of \$800,064 is payable at an exchange rate of 3.704. The balance of the purchase price is payable at the exchange rate prevailing at the date of completion.

[18] The Defendants shall pay the Plaintiff's costs in any event to be agreed or taxed.

[19] There shall be liberty to apply.

*S. L. Richards*  
SONIA RICHARDS  
Judge of the High Court