

46/85

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N

SAMUEL AYOUNG CHEE

Appellant  
(Defendant)

- AND -

DIARAM RAMLAKHAN

Respondent  
(Plaintiff)

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from the Judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali, C.J., Kelsick, J.A., and Clinton Bernard, J.A.) dated the 26th day of January 1983 which allowed an appeal from the judgment of the High Court of Trinidad and Tobago (Braithwaite, J.) dated the 28th November 1980, when the said High Court (1) dismissed the Respondent's (Plaintiff's) claim for specific performance of an agreement contained in a Deed of Lease dated the 7th October 1973 between the Plaintiff and the Defendant (Appellant) for the sale to the Plaintiff of a parcel of land situate at Mount Lambert in respect of which he (the Plaintiff) was in occupation as a tenant for a term of 4 years commencing 1st November 1973 and (2) gave judgment to the Defendant on his counterclaim for possession of the demised premises, arrears of rent in the sum of \$1800 and mesne profits from 1st November 1977 at the rate of \$600 per month to the date of possession.

pp.39-62

pp.19-33

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2. Clause 4(4) of the Deed of Lease provides as follows:

p.70 ls.13-27

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"(4) At any time before the expiration of the term of FOUR (4) YEARS hereby created the Tenant shall be entitled to purchase the freehold property described in the SCHEDULE hereto subject to good title and free from encumbrances for the sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$120,000.00) and on condition that the said sum of (\$120,000.00) shall be paid in full by the Tenant to the Landlord before the expiration of the term of FOUR (4) YEARS hereby created; and upon payment by the Tenant as aforesaid of the said purchase price as well as all arrears of rent hereunder (if any), the Landlord shall forthwith execute a Deed of Conveyance vesting the said freehold property in the Tenant in fee simple or as he shall direct."

p.72

3. On the 29th June 1977, the Plaintiff's Solicitors wrote the following letter to the Defendant:

" 29th June 1977

Mr. Samuel Ayoung Chee  
68 First Avenue  
Mount Lambert  
San Juan

Dear Sir,

Re: No.66 First Avenue Mount Lambert  
leased to Diaram Ramlakhan by lease  
dated the 8/10/73 registered as  
No.14159 of 1973

We are instructed by our client Diaram Ramlakhan the lessee in the above mentioned lease to notify you that he is desirous of exercising the option to purchase the above numbered property contained in the said deed of lease for the sum therein stated.

Kindly note that our client is ready and willing to complete the said purchase and we should be glad if you will call at our office at any time to execute the deed of conveyance.

We may mention that after the expiration of the month of July 1977 no further rents will be paid under the deed of lease.

Yours faithfully,

Wong & Sanguinette

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10 4. Proceedings for specific performance of the agreement were commenced by the Plaintiff by Writ of Summons dated 29th September 1977. In his Statement of Claim dated 10th October 1977 the Plaintiff pleaded the Deed of Lease, Clause 4(4) thereof and the letter dated 29th June 1977, are continued: pp.1-2  
pp.3-4

"5. The Plaintiff has at all material times and is now ready and willing to fulfil all his obligations under the option contained in the said deed. p.4 ls.8-11

20 6. Notwithstanding the request contained in the said letter the defendant has neglected and/or refused to complete the said purchase."

5. Evidence was given by the Plaintiff, a Mr Sooknanan (who delivered the letter of 29th June 1977 to the Defendant) and Mr. Wong, the Plaintiff's Solicitor, who spoke of writing the letter and continued: pp.10-13

30 "Sooknanan delivered the letter. The defendant came to see me a month or two after the letter was written. Mr. Ayoung Chee told me that he could no longer sell the property at that price and that the price was too low as values of properties had risen. I told him that he had given an option to purchase at a specified price. He said in spite he could not sell for that sum. I suggested that he see his Counsel as Counsel had prepared the deed of lease." p.13 ls.19-29

40 6. Evidence for the Defendant was given by the Defendant himself and Mr. Paul Williams, a licensed surveyor. The Defendant claimed that there was a disparity between the area set out in the deed of lease and that found by the surveyor to be occupied by the Plaintiff (190 superficial fee). pp.14-15

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pp.19-33

7. In his judgment dated 28th November 1980, the learned trial judge accepted the evidence of the Plaintiff, Mr. Sooknanan and Mr. Wong. He rejected the evidence of the Defendant, viz.

p.32 ls.30-37

"I did not accept the account given by the defendant. My view of his account is that having regard to the rising prices of land in Trinidad and Tobago, he wanted to take full advantage of this factor and to that end relied upon the disparity between the area set out in the deed of lease and that found by the surveyor to be occupied by the plaintiff - 190 superficial feet, to set up his defence."

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8. The Court of Appeal concurred with these findings of fact. In his Judgment dated 26th January 1981, Clinton Bernard J.A. said:

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p.43 ls.12-19

"As I see it on the evidence before the trial judge and that which he preferred, the position must amount to this: The respondent had deliberately and unequivocally refused to execute the conveyance. And he had resiled from his obligations under the lease in this regard because he wanted more money! In effect as I see it, the respondent had repudiated the transaction for a reason neither covered nor contemplated by the lease."

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9. With regard to the interpretation of Clause 4(4) of the lease, the learned trial judge held, it is submitted wrongly, that:

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- (a) the Plaintiff's entitlement to purchase the property depended upon his payment in full of the agreed purchase price before the 8th October 1977,
- (b) the relationship of the vendor and purchaser could not arise until the Plaintiff paid the sum of \$120,000 before 8th October 1977,
- (c) there was no evidence that the

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Plaintiff paid, offered to pay or tendered to the defendant the agreed purchase price.

(d) there was no valid contract for sale and "equity will not permit a decree of specific performance".

10 10. The learned judge dismissed the Plaintiff's claim with costs and upheld the Defendant's counterclaim with no order as to costs. p.32 ls.2-3  
p.32 l.45-  
p.33 l.1

20 11. The Plaintiff appealed to the Court of Appeal which allowed the appeal on the 28th day of January 1983, set aside the Judgment of Braithwaite J. in the High Court, granted to the Plaintiff the relief of specific performance and dismissed the counterclaim. Judgments were delivered by Clinton Bernard, J.A. and Kelsick, J.A. with which the Chief Justice concurred. pp.36-37  
p.63

12. In his judgment, Clinton Bernard, J.A. said that he viewed Clause 4 in this way: p.45 ls.1-18

30 "I view Clause 4 in this way: It did not create a contract between the parties. Although it formed part of the lease it was collateral to but independent of the lease itself. The option gave the appellant a choice in action or equitable interest in the freehold reversion of the demised premises with the right to have the said freehold reversion conveyed to him at a later stage if he so wished. This right to the freehold reversion would immediately vest in the appellant upon the exercise by him of his option provided that he exercised it at any time before the expiry date of the lease itself - that is to say - by October 40 the 31st of 1977, at least. However, it was also a condition precedent to the appellant's right to the conveyance of the freehold reversion in the demised premises that he would pay to the respondent the sum of \$120,000.00 therefor as agreed between the parties at some time before the expiry of the lease though not necessarily at the same time when the appellant exercised his option of purchase."  
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Having held that under the terms of the lease the Plaintiff, by virtue of his option, had an equitable interest in the freehold reversion in the demised premises, he continued:

p.47-1.16-  
p.48 1.15

"In my opinion, having regard to the terms of clause 4, the letter of the 29th June 1977, (D.R.2) and the evidence for the appellant which the trial judge believed and accepted, the appellant having accepted the respondent's offer while the option was current, a binding and irrevocable contract for the sale to the appellant of the respondent's interest in the freehold reversion, to with the fee simple, was created between the parties. In my judgment, the relationship of vendor and purchaser arose between them at that stage - See in this connection Hill & Redman - op. cit - Paras 83 and 85 - Pages 157-159; Halsbury's Laws of England - 4th Edition Vol. 27 Paras 110 and 112 - Pages 89 - 90. The fact that the appellant neither made payment nor a tender thereof at that time was immaterial because at that stage he was by the terms of clause 4 under no compunction so to do in order to create the particular relationship. What was necessary to create the relationship was the due and proper exercise by the appellant of the notice of option. As I see it if despite the exercise of the option the appellant took no effective steps later during the currency of the lease to acquire the freehold reversion the option would have lapsed.

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As I said earlier, Clause 4 in my view, contemplated the possibility of the payment of the purchase money either at the time of the exercise of the option or at some time subsequent thereto. That being so, then it follows that the non-payment of the purchase money at the time of the exercise of the option would not have affected the relationship that had been created by the exercise of

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10 it. It cannot, in my view, be contended that if a condition is not precedent to the validity of the exercise of an option failure to honour that condition at the time of its exercise could, even remotely, affect the validity of the option itself or the relationship that may have been created by the due and proper exercise of it.

20 Further, I am unable to appreciate how counsel for the respondent could rely successfully upon the appellant's failure to pay the purchase money in any event during the currency of the lease or even to make a tender thereof (about which latter point I shall come later) as a ground for his contention against the relief sought when the nonfulfilment of the condition was due entirely to the respondent's own fault.

30 I am of the opinion that the clear and unequivocal refusal by the respondent to honour his side of the bargain unless he was paid more was effective in the circumstances to deprive the appellant unjustifiably of his entitlement to the freehold reversion in the premises at the stipulated price as agreed and that his resilement therefrom amounted to a repudiation by him of the contract."

The learned judge concluded:

40 "On the evidence in this case not only did the appellant properly exercise his option but, in my judgment, it is also clear from all the surrounding circumstances that he had demonstrated at all material times his readiness and eagerness to perfect the bargain to the extent that following upon the Respondent's clear and unequivocal resilement he took the necessary steps to cause the respondent to comply with his side of the bargain. He did so by resort to the only legitimate process available to him in the circumstances. To this end he promptly filed and issued his writ on the 29th September, 1977, which, incidentally, was before the  
50 expiry date of the lease for the equitable relief of specific performance."

p.52 ls.27-39

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13. Kelsick, J.A., having reviewed the documents, the facts and several authorities, summarised his conclusions as follows:

p.61 1.16-

p.62 1.6

- "(1) that on a true construction of clause 4(4) of the deed of lease it was not a condition precedent to the valid exercise of the option that the purchase money should be paid or tendered; 10
- (2) that clause 4(4) conferred on the appellant an irrevocable offer to purchase the property;
- (3) that clause 4(4) constitutes an agreement binding on the respondent whereby the appellant bought the right to purchase the property at any time during the continuance of the lease, subject to the performance by the appellant of the conditions subsequent - that is, giving notice of his intention to purchase at any time during the continuance of the lease and paying the purchase money on or before the last day of the lease; 20
- (4) that by the letter of June 29, 1973, the appellant effectively exercised his option under that clause, whereupon he was entitled to a conveyance of the property; 30
- (5) that the refusal of the respondent to complete the contract for sale was an anticipatory breach of the agreement, which excused the appellant from further performance by way of tendering the purchase money;
- (6) that the appellant was then entitled either to accept the repudiation, whereupon the agreement provided in the lease came at an end, and to sue for damages for breach of contract; or alternatively, as he did, not to accept the repudiation, and to regard the contract as continuing and to sue for specific performance of the same." 40 50



14. On the 6th June 1983, the Court of Appeal gave the Defendant/Appellant final leave to appeal to the Judicial Committee of the Privy Council.

15. The Respondent respectfully submits that this appeal should be dismissed with costs for the following amongst other

R E A S O N S

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1. BECAUSE as to the facts there are concurrent findings of two courts below in favour of the Respondent.
  2. BECAUSE as to the law, the interpretation of Clause 4(4) by the trial judge is wrong and the interpretation given by the Court of Appeal is right.
  3. BECAUSE the judgment of the trial judge is wrong for the reasons given by the Court of Appeal.
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4. BECAUSE the judgments of Clinton Bernard, J.A. and Kelsick J.A. (with which the Chief Justice concurred) are correct for the reasons stated therein.

EUGENE COTRAN

