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Paz v Borham

Jurisdiction: Belize

Judge: Moe, C.J.

Judgment Date: 04 November 1983

Reported In: BZ 1983 SC 53

Court: Supreme Court (Belize)

Docket Number: No. 37 of 1981

Date: 04 November 1983

PDF

Supreme Court

Moe, C.J.

No. 37 of 1981

Paz
and
Borham

Mr. E.L. Flowers, for the plaintiff.

Defendant unrepresented.

Contract - Specific performance of a contract for the sale of land — Damage in lieu of specific performance — Third party acquiring interest in land in the interim — Vendor not in position to comply with an order for specific performance.

Moe, C.J.

The plaintiff claims (1) specific performance of an agreement for the sale by the defendant to the plaintiff of a parcel of land at San Pedro, **Ambergris Caye**, (2) damages for breach of the agreement in lieu of or in addition to the specific performance. The defendant admitted the agreement and payment of certain sums pursuant to the agreement. She pleaded that Section 55 of the *Law of Property Ordinance* CAP 193 has not been complied with, that the plaintiff never entered into possession and has been guilty of delay.

The defendant did not appear at the hearing and the only evidence on the matter is from the plaintiff. On that evidence I find that pursuant to the agreement for the sale, as admitted, on an initial payment by the plaintiff toward the purchase price the defendant let the plaintiff into possession of the parcel of land concerned. He entered into possession, cleared it and has been using it as a right of way for transporting materials to other lands of his. He has also removed posts placed on the land which he did not put there.

In the circumstances the first and second pleas of the defence fail. The contract admitted was entered into on 18th June, 1980 for the sale of the land at a price of \$6,000 on which date a sum was paid towards purchase price. A further sum was paid on the 4th July, 1980 and another on the 19th August. At that date the balance left was \$3,000. Payment of the balance was requested on behalf of the defendant by a letter dated 17th November, 1980 and again by

letter dated 5th January, 1981 which stated “Unless you pay the sum of \$3,000.00 with interest at 10% from 20th August, 1980 — by Saturday the 17th instant she (the defendant) will consider this transaction as having come to an end.”

On the 13th January, 1981, the plaintiff tendered the \$3,000 balance of the purchase price as agreed under the contract. The defendant did not take it and on the 4th February, 1981, she sent the plaintiff a cheque for \$3,000 and he did not accept it. He issued a writ on the 9th February, 1981.

Time was not originally of the essence of the contract and when it was made so by notice the plaintiff fulfilled his obligation. I do not find the plaintiff to be guilty of delay and the third plea of the defence fails.

In the result there is no defence to this action and the plaintiff is entitled to judgment. What I am left to determine is whether there are any circumstances which make it inequitable to order the defendant to do what she has, agreed to do. A matter which emerged for consideration is evidence that the defendant entered into an agreement with another person for the sale and purchase of the same parcel of land. The stranger to this suit has filed against the plaintiff an action in which there is a pleading that the stranger bought the land from the defendant in March 1981.

There may be a question as to the true position of the defendant in relation to the monies she received from the stranger as the purchase price for land she had already contracted to sell to the plaintiff or as to whether the stranger took the land subject to the plaintiff's interest. Neither issue is for determination in this action. But the fact that the defendant has resold the parcel of land appears to be an obstacle in the way of the court ordering the defendant to fulfil her duty under her contract with the plaintiff. It is unfortunate that at some stage the stranger was not joined as a defendant to this action.

When I considered the circumstances that at the time of the sale to the stranger the plaintiff would have been using the land for about nine months including transporting over it of materials to a hotel which he is constructing on adjoining land and more importantly that the plaintiff had served the defendant with a writ in the present proceedings one month before the defendant sold to the stranger I felt there was good and sufficient reason to enforce the

plaintiff's contract with the defendant. But I am unable to make against her an order which clearly cannot be carried out unless the stranger is also enjoined to assist in carrying out that order.

Regretfully I must decline the plaintiff the grant of specific performance of the agreement with the defendant and I proceed to consider the question of damages to be awarded to the plaintiff in lieu of the grant of specific performance.

I refer first to the principle that the measure of damages for breach by a vendor of a contract for the sale of land is "the difference between the contract price and the value at the time of the breach of the contract." There was evidence as to the contract price but none as to the market value of the land in February 1981 the date at which I hold the defendant's breach of contract occurred. There was also no evidence as to the price obtained by the defendant on the second sale. Consequently the plaintiff's damages would have to be nominal. Consideration must be given to the fact that the plaintiff paid to the defendant \$3,000 a part of the purchase price.

I would therefore order that the plaintiff be paid by the defendant damages in the sum of \$3,200 with interest on \$3,000 at 6% from 15th January, 1981 until payment and his costs.