

IN THE SUPREME COURT OF BELIZE, A.D. 2007

ACTION NO. 303 OF 2003

KENNETH GALE

Plaintiff

BETWEEN AND

WILLIAM EILEY

Defendant

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Leo Bradley for the claimant.

Mr. Hubert Elrington for the defendant.

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JUDGMENT

The claimant in this case, Mr. Kenneth Gale, claims that he had a contract with Mr. William Eiley, the defendant, for Mr. Eiley to sell to him a parcel of land in Placencia Village in the Stann Creek District.

2. The contract was said to be oral and not in writing and that the price for the parcel of land was said to be \$10,000.00.
3. Mr. Gale says that he bought a property from Mr. Henry Young for the sum of \$145,000.00. This property is adjacent to the parcel of land owned by Mr. Eiley. Mr. Gale says that he bought Mr. Young's

property on the clear understanding that Mr. Eiley would sell him his own adjacent parcel. Mr. Gale further says that Mr. Young had conveyed to him Mr. Eiley's agreement to sell him his own adjoining parcel for \$10,000.00.

4. Mr. Eiley for his own part denied ever agreeing to sell his parcel of land to Mr. Gale for \$10,000.00 or at all.
5. The real issue for determination in this case, in my view, is whether there was in fact an agreement between Mr. Gale and Mr. Eiley, for the sale of the latter's parcel of land to the former. The case therefore epitomizes the classic situation of the willing buyer and the unwilling seller.
6. Can this court intervene in the circumstances of this case to enforce the sale of the parcel of land to Mr. Gale, as was ably urged by his learned attorney, Mr. Leo Bradley?
7. In order to prove their respective case, both Mr. Gale and Mr. Eiley, made witness statements. Mr. Gale additionally had Mr. Young who had sold his own land adjoining Mr. Eiley's piece, and had allegedly conveyed Mr. Eiley's agreement to sell that piece to Mr. Gale for \$10,000.00, and Mr. Kenneth Gillett, a surveyor, to make witness statements, as well as Mrs. Gail Burke-Spence.
8. Mr. Hubert Elrington, the learned attorney for Mr. Eiley, cross-examined Mr. Gale, Mr. Young and Mr. Gillett, as well as Mrs. Burke-Spence. Mr. Bradley also cross-examined Mr. Eiley for Mr. Gale.
9. Mr. Gale's case is that Mr. Eiley agreed to sell his piece of land to him. This came about as a result of his negotiation with Mr. Young to buy

his property. Mr. Gale realized that without the piece of land belonging to Mr. Eiley, the purchase of the latter's property would not suit the purpose he had in mind. This purpose was to build condominiums. He explained this to Mr. Young. Mr. Young then undertook to negotiate the sale of Mr. Eiley's piece to Mr. Gale. Mr. Young later informed Mr. Gale that Mr. Eiley had agreed to sell his parcel for the price of \$10,000.00 on the condition that he would approve the location of the border of his piece of land. This was to be done by a survey of the land to his satisfaction and his fare to Placencia paid. All this was conveyed by telephone to Mr. Gale who was then in California, U.S.A. by Mr. Young. Mr. Gale accepted the conditions and paid Mr. Eiley's airfare to Placencia and the cost of the survey.

The parties later, together with Mr. Young and Mr. Gillett, the surveyor, went to Placencia. There the property was inspected for the location of markers on Mr. Eiley's piece of land. After this exercise, they, Mr. Gale, Mr. Eiley and Mr. Young, returned to the Lagoon Saloon where lunch/refreshment was had. Mr. Gale said that during the discussion over lunch, it was agreed that Mr. Young and Mr. Eiley would later attend Youngs Law Firm with their conveyances for the preparation of the documents of sale. Mr. Young duly did so and his property was conveyed to Mr. Gale and is recorded in the Deeds Book in the Lands Registry.

10. Mr. Eiley however, refused to attend Youngs Law Firm to convey his piece of land to Mr. Gale. Hence this action.
11. I cannot help but note the less than full throttle way the pleadings in this case stand. The claimant, Mr. Gale, or more strictly his attorney in the Statement of Claim, is asking this court to injunct the

defendant, Mr. Eiley, from selling or disposing of the land in question until the trial of this action **and to grant a declaration** that the parcel of land is to be sold by Mr. Eiley to Mr. Gale. In the alternative, Mr. Gale claims the follows: *i) the sum of \$145,000.00 presumably paid for the purchase of Mr. Young's property; ii) \$750.00 being the sum paid by Mr. Eiley for the surveying of the parcel of land; iii) \$200.00 representing cost of airfare for Mr. Eiley to go to Placencia; iv) \$1,800.00 being the sum expended by Mr. Gale for cleaning and filling depressions on the said parcel of land; and v) interest on the said sums.*

12. Mr. Eiley, for his part, adamantly denied ever agreeing to sell his piece of land to Mr. Gale. He said that when Mr. Young informed him of Mr. Gale's interest in his parcel of land, he replied that he would have to run it by his sons.
13. Again, the Defence filed, in my view, did not do justice to the line of questioning adopted by Mr. Eiley's learned attorney at trial. It soon became apparent that the stance of the defendant was that there was no agreement in writing between him and the claimant concerning the sale of the parcel of land. Therefore, it was contended, there could have been no legally enforceable contract between the parties for the sale of Mr. Eiley's parcel of land.
14. The facts of this case, in my view, impact on the equitable doctrines of specific performance and part performance on the one hand, and the statutory provisions contained in the **Law of Property Act – Chapter 190 of the Laws of Belize, R.E. 2000**, on the other hand. In particular, sections 43, 44 and 55, these provide in terms as follows:

43.-(1)Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol, no interest in land shall be created or disposed of except by writing signed by the person creating or conveying it, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law.

44.-(1)All interests in land created by parol and not put in writing and signed by the person so creating it, or by their agents there unto lawfully authorised in writing, shall have, notwithstanding any consideration having been given for it, the force and effect of interests at will only.

55.-(1)No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

The net effect of these provisions is to preclude any action relating to the sale or other disposition of land or any interests in such land unless the agreement upon which the action is brought **is in writing**. But paragraph (d) of section 45 of the Act and subsection (2) of section 55 expressly save the operation of **part performance**.

15. It has been correctly, I think, stated that:

“... a plaintiff may succeed in equity in obtaining specific performance, although there is not a sufficient memorandum in writing to satisfy a statutory evidentiary requirement, if he is able to establish fraud or dishonesty on the part of the defendant. Similarly he may succeed if, although there is no fraud or dishonesty in the required sense, he is able to show such part performance of his obligations as satisfies certain

established conditions.” *The Principles of Equitable Remedies*, 6th Ed. 1 CF Spry at p. 254; Maddison v Alderson (1883) 8 App. Cas. 467.

16. On the facts of this case, it is agreed on all hands that there was nothing in writing between Mr. Gale and Mr. Eiley concerning the latter’s parcel of land. Mr. Gale in fact candidly admits that it was all by word of mouth, by parol: first, as intimated to him by Mr. Young by telephone and secondly, by the discussion between him and Mr. Eiley at the Lagoon Saloon in Placencia.

But is there part performance of the agreement by Mr. Gale so as to take the absence of any statutory written evidentiary requirement as not fatal?

Yes, Mr. Eiley’s fare to Placencia was paid by Mr. Gale through Mr. Young.

Yes, Mr. Eiley attended the survey of his parcel of land in the company of Mr. Gale and the surveyor, whose fees were paid for by Mr. Gale.

Yes, Mr. Gale came over from California to meet with Mr. Eiley at Placencia where the piece of property was surveyed.

I must say also that there was some advertence to clearing the bush and filling in depressions on Mr. Eiley’s parcel of land by Mr. Gale. But no evidence or particulars of these were led before me.

17. But I am however, not satisfied or convinced that these acts, whether singly or together, are unequivocally referable to an agreement

between Mr. Gale and Mr. Eiley, concerning the sale of the latter's parcel of land to the former, that it would be inequitable, unfair or unjust, not to order the latter to specifically go through with the sale. These acts are equally referable to the preliminaries to an agreement for the sale rather than an agreement itself for the sale. I am, on the evidence, so inclined to find them. There was no consideration or purchase money wholly or in part, paid to Mr. Eiley which would incline this court to intervene and order specific performance. I find on the facts, no sufficiency of evidence to warrant this. I am equally not persuaded by the argument by Mr. Bradley, the learned attorney for Mr. Gale, that he detrimentally relied on the supposed agreement by Mr. Eiley to sell his parcel to him and as a consequence purchased Mr. Young's land for the sum of \$145,000.00. Needless to say, Mr. Gale got what he bought from Mr. Young. Contrary to Mr. Bradley's submissions, the facts and evidence do not disclose any inducement by Mr. Eiley of Mr. Gale to buy Mr. Young's property, I can therefore find no estoppel operating against Mr. Eiley.

18. There is also no evidence as to how the sum of \$10,000.00 representing the sale price was arrived at. Mr. Eiley flatly denied that he agreed to sell his land. He stated that if there was to be a sale he would have to run it by his sons.

This sum of \$10,000.00, I surmise, was what Mr. Young must have communicated to Mr. Eiley that Mr. Gale would pay for his land. Mr. Eiley however, flatly denied that he agreed to sell his land. In fact, he said under cross-examination that he later was approached by Mr. Gale with an offer of \$60,000.00 for his parcel of land; but he refused to sell.

19. I should add that although the doctrine of part performance is still part of the law in Belize, as expressly provided for in paragraph (d) of section 45 and subsection (2) of section 55 of the Law of Property Act, there is admittedly considerable uncertainty as to the degree of particularity with which an oral agreement for the sale of land has to be proved in order to ground a finding of part performance by a party to that agreement so as to warrant a court to intervene on her behalf. – see Steadman v Steadman (1976) A.C. 536, a decision of the United Kingdom House of Lords, which is credited with the uncertainty attendant on when part performance could prevail.
20. The facts of the instant case before me, exemplify this uncertain reach of part performance. I should observe in this context, that the doctrine has been abolished since September 27, 1989 in England by the Law of Property (Miscellaneous Provisions) Act 1989. I am however not satisfied on the evidence in this case that there was part performance such as to negative the statutory requirements relating to contracts for the sale of land in Belize.
21. It is for all these reasons that I am unable to grant the declaration sought in these proceedings. On the facts of this case and in the light of the evidence, this court cannot compel, in effect, Mr. Eiley to sell his parcel of land.

However, I think it is only reasonable and fair to have Mr. Eiley refund the sums of \$750.00 and \$200.00, representing the cost of the survey of his parcel of land and airfare respectively. As I have already said, there was no evidence led as to the costs of cleaning the land and filling in depressions thereon as claimed on behalf of Mr. Gale.

22. In the light of my findings and orders in the last paragraph, I will make no order as to costs in this case.

A. O. CONTEH
Chief Justice

DATED: 5th November 2007.