

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

2016/CLE/gen/00236

BETWEEN

CARLA TURNQUEST

Plaintiff

AND

EARL MILLER

Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Krystal Rolle for the Plaintiff

Kendal Wright for the Defendant

12 April 2016, 10 May 2018 and 18 June 2018

JUDGMENT

WINDER J

This is the plaintiff's application for foreclosure with respect to property situated at the Tonique Williams Darling Highway (the Property).

1. It is perhaps best to show the background to this dispute with a short chronology:

- Feb 15 Carla Turnquest (Carla) entered into an agreement to sell a one (1) acre tract of land to the defendant, Earl Miller (Earl) for \$300,000. Carla says that she executed the agreement but does not have a copy of the executed document only the draft. She says that the draft reflected the terms of the executed document. The terms of a subsequently revised agreement provided for a cash payment of \$40,000 and a mortgage back in the amount of \$260,000.
- 26 Feb 15 Carla purported to execute a conveyance of the property to Earl in accordance with the terms of the agreement. The conveyance was not formally completed, although formally executed as the front page was not affixed at the time of execution by Carla.
- 26 Feb 15 Carla takes a mortgage of \$260,000 from Earl over the Property. Document is property executed by Earl. Sums borrowed to be repaid in installments in accordance with the mortgage, the first of such payments in the amount of \$20,339.31 due on 1 June 2015.
- >26 Feb 15 Carla returns to the US where she resides and learns that the conveyance was not completed and recorded.
- 1 Jun 15 Payment due but not paid as agreed. \$20,000 ultimately paid in 5 installments between June and September.
- 7 Jul 15 Letter of demand to Earl by Desmond Bannister on behalf of Carla
- 1 Sep 15 Payment due but unpaid.
- 1 Dec 15 Payment due but unpaid.

- 11 Dec 15 Letter of demand to Earl from Alexiou Knowles & Co. on behalf of Carla. Carla demands \$240,000 and accrued interest in the amount of \$19,334.59.
- 23 Feb 16 Action commenced against the defendant for foreclosure and possession of the Property. The particulars required pursuant to Order 77 of the Rules were:
- (a) The balance of the purchase price and the amount advanced to the Defendant and secured by the Mortgage was \$260,000.00.
 - (b) The total amount repaid by the Defendant is \$20,000.00.
 - (c) The amount of interest in arrears as at the date hereof, that is as at 23rd February, 2016, is \$28,108.77.
 - (d) The total amount which remains due and owing by the Defendant under the Mortgage as at the date hereof, that is as at 23rd February, 2016 is \$287,443.36.
2. This action was commenced by Originating Summons dated 23 February 2016. The Originating Summons seeks the following relief:
- (1) An Order for Forclosure with respect to the Property
 - (2) An Order for Possession of the Property
 - (3) Costs
3. The application was supported by the affidavits of Carla Turnquest dated 23 February 2016, 11 April 2016. The defendant filed an affidavit in response on 8 April 2016.
4. Carla seeks foreclosure and possession. Earl says that there was no effective agreement of sale and purchase. He says that there was discussions but the terms were never concluded and hence there was no concluded agreement and that as such there was never anything to be received. Earl acknowledges that he paid \$40,000 and made further payments in anticipation of concluding an agreement. He says that the transfer of the property did not take place as the conveyance was never delivered as it remains in the possession of Carla

and it was never sealed. He says that the land remained in the possession of Carla.

5. On the evidence, the challenge caused in this action appears to arise as the same attorney acted for both parties. Earl denies that there was an effective agreement for sale and purchase but such an averment dismisses the fact that there is an executed mortgage in favor of Carla. A mortgage which he signed and does not deny he signed. Additionally, Earl acted in accordance with the terms of the mortgage by way of paying the deposit and the partial payments to the balance owed. The property described in the mortgage is the same property described in the partially completed deed whereby Carla purports to transfer the property to Earl.
6. A review of the evidence demonstrates that there was an agreement for sale in the amount of \$300,000 which was to be backed by a mortgage for \$260,000. The deposit was paid and the Earl attempted to comply with the terms which he agreed. Assuming there was a doubt as to whether Carla passed title, which there seems to be, there was sufficient part performance to compel the completion of the transaction. Numerous equitable maxims apply, "equity looks on as done that which ought to be done" and "equity imputes an intention to fulfil an obligation" readily come to mind.
7. In all the circumstances I am satisfied that Earl mortgaged the property, if only equitably, to Carla. As there is no dispute that the mortgage is hopelessly in default some four years later, I grant the order for foreclosure and possession as prayed with costs to be taxed if not agreed.

Dated this 12th day of February 2019



Ian Winder

Justice