

COMMONWEALTH OF THE BAHAMAS

2018

IN THE SUPREME COURT

CLE/gen/00128

Common Law and Equity Division

BETWEEN

ALTHEA KNOWLES  
GREGORY KNOWLES  
KENDALL KNOWLES  
RODGER KNOWLES  
GENOSTA KNOWLES- WILLIAMS  
DEBORAH KNOWLES- MCCOY

Plaintiffs

AND

MONIQUE ROLLE

AND

MONIQUE ROLLE

(In the Estate of Daniel Forbes and Irene Rolle, deceased)

Defendants

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Mr. Carlton Martin for the Plaintiffs  
Mr. Wayne Munroe KC and Mr. Ryszard Humes for the Defendants

Judgement Date:

## JUDGMENT

### BACKGROUND FACTS

1. The Plaintiff seeks damages and part performance from the Defendants for the breach of a partially written and oral contract in respect to the compromise of the sale of a piece and parcel of land situate on Knowles Avenue ("**the Property**") having the following dimensions: ALL THAT piece parcel or lot of land situate on the south side of Harold Road in the Western District of the island of New Providence and bounded on the West by the land in possession of one Knowles and running thereon 250 feet on the East by land the property of Granville

Nicholls and a Public Road and running thereon 250 feet and on the North by land said to be the property of the Vendor (Daniel Forbes) and running thereon 250 feet together with the appurtenances belonging thereunto. The Defendants have rejected that there was a compromise with regard to the land in question as suggested by the Plaintiff. The land in question was set out in an agreed plan dated September 2009.

2. By this action the Plaintiff's claim the following relief against the Defendants:-
  - i) An order that he said compromise/agreement be specifically enforced
  - ii) Declaration that under the said compromise the firm of Munroe & Associated is entitled to its costs paid by the Plaintiffs out of the sale of a specific portion of their vacant land,
  - iii) Damages for breach of agreement
  - iv) Further or other relief and
  - v) Costs
  
3. The Plaintiffs allege that by an agreement dated the 3<sup>rd</sup> April 2017 and replicated again on the 27<sup>th</sup> July 2017 and executed on 2<sup>nd</sup> August 2017 between the Plaintiffs and the Defendants, the parties agreed to compromise the litigation existing between them in the Supreme Court and the Court of Appeal with respect to the Property. The express terms of the agreement were set out in a letter which stated:-

“I, Rodger Knowles who resides on property Harold Road and Knowles Avenue, son and representative of Althea Knowles another named siblings Genesta Knowles-Williams, Gregory Knowles, Kendal Knowles, Deborah Knowles-McCoy, have come to an agreement with Monique Rolle and children of Irene Virginia Forbes-Rolle, all adjacent properties next to where the apartments are situated, also the portion of land where my mother Althea Knowles presently resides, upon her demise goes back to the estate of Irene Virginia Forbes-Rolle, and her children.

Upon agreement, Monique Rolle and the other children of Irene Virginia Forbes-Rolle, Michael, Eleanor, Maxwell Rolle, that we have all decided to put the past behind and look forward to the future....”
  
4. The Plaintiffs submitted that implied terms of the compromise were:-
  - a) The Plaintiffs and Defendants will pay their own costs of the litigation of the Supreme Court action and the Court of Appeal
  - b) The Defendants will execute to the Plaintiffs or as they may direct a conveyance or conveyances by way of further assurances of all their right, title and interest in the land retained by the Plaintiffs and the Plaintiffs would do likewise with respect to the land going to the Defendants subject to the life estate of Althea Knowles. Each side shall pay their own costs connected with the conveyances.
  
5. The first named Plaintiff, Ms. Althea Knowles (**Ms. Knowles**) orally agreed to purchase the Property from Mr. Daniel Forbes for £750.00 and paid an initial down payment of £325.00 in 1966 and thereafter the remainder was paid in

1967. After payment was complete, the Plaintiffs claim that a conveyance transferring the Property to Ms. Knowles from Mr. Forbes was duly executed and instructions were given to stamp and record the said conveyance but it was not stamped or lodged for recording until 14<sup>th</sup> February 1975. . The Plaintiff allege that Ms. Knowles enjoyed peaceful occupation of the Property from the time of the initial down payment until her death.

6. Prior to the said conveyance being stamped and recorded, Daniel Forbes devised the property to Irene Virginia Rolle, his daughter, by a Will dated 17<sup>th</sup> April 1968.
7. In 2006, Ms. Knowles became aware of the Second Defendant's desire to evict her from the property after threatening legal action against her. Ms. Knowles commenced action #1812 of 2007 in the Supreme Court seeking damages for breach of contract ("The First Action"). However, the Defendants were unable to admit orally that there was any contract between Ms. Knowles and Daniel Forbes as she would not have been privy to any alleged agreement. The Defendant did not deny that Ms. Knowles enjoyed peaceful occupation of the property but denied that the Plaintiffs were entitled to damages for breach of contract or specific performance.
8. The Defendants counterclaimed in the First Action seeking damages for trespass and vacant possession.
9. Judgment in the First Action was delivered in favour of the Defendants dismissing the claim of Ms. Knowles and upholding the counterclaim of the Defendants granting them entitlement to possession of the land. The Plaintiffs appealed of the judgment ("The Appeal"). When the parties appeared before the Registrar of the Court of Appeal, she ordered the Appellants to prepare and file the record of appeal within thirty days and pay a deposit security by bond for due prosecution of the appeal. The Appellants did not comply with the Registrar's orders and did not file a Notice of Motion for an extension of time to comply with the order and the Appeal was dismissed. Efforts were made to seek conditional leave to appeal the dismissal to the Privy Council.
10. In September 2009, the Defendants hired a tractor to clear down the back portion of the Property. This resulted in the Defendants discovering that the Plaintiff had erected a fence which the Defendants had removed to continue to exert her ownership over the property. In or about 2010, the Defendants hired and instructed a surveyor on three occasions to place boundary markings on the property as there were potential purchasers. The Plaintiffs refused to allow the Defendants to place boundary markers on the property and the Defendants had to get the police involved as they claimed the Plaintiffs had become uncontrollable.

11. The Parties had meetings which the Plaintiffs maintain led to a compromise as set out above. As a result of such compromise the Plaintiffs withdrew their application for leave to appeal the dismissal.
12. The Defendants requested that the Plaintiffs pay their legal fees in the amount of ninety thousand dollars (\$90,000.00). After consideration, the Plaintiffs agreed to pay the same by setting aside a portion of the land at the southwest of the retained property and immediately north of the fence and the land upon which Ms. Knowles lived, also being immediately south of the road running east and west into the retained land.
13. On 17<sup>th</sup> January 2018, the Plaintiffs maintain that the Defendants repudiated the entire compromise, inclusive of the agreement between themselves and the Plaintiffs for the Plaintiff to pay the Defendants legal fees. As a result there was a breach of the compromise by the Defendants.
14. The Plaintiffs allege that at all material times they were willing and able to meet the terms of the compromise and to settle the costs from the sale of the said land in the manner described.

#### **PLAINTIFFS EVIDENCE**

15. Rodger Knowles, the son of Ms. Knowles averred that after his mother commenced Supreme Court Action No. 01812 of 2007, which was dismissed and possession given to the Defendant there were settlement discussions between himself on behalf of his mother Ms. Knowles and his siblings and the Defendant. He conceded that the judgment of Barnett J., covered his property which he had brought from Daniel Forbes Jr., the uncle of the Defendant. He also accepted that all of the property was owned by the Estate of Irene Rolle.
16. He was unable to pay the final payment for his land and that he was never called on by the Defendants to pay any money or to vacate the property. By letter dated the 11<sup>th</sup> July 2017 his sister Deborah Knowles McCoy, wrote a 'To Whom It May Concern' letter to inform Ms. Rolle that she was willing to relinquish her property to Ms. Rolle. On the 2<sup>nd</sup> August 2017, the parties, without advice from their respective Counsel, entered into a written agreement to settle the First Action and the Appeal. On the 17<sup>th</sup> January 2018 the Plaintiffs withdrew the Appeal.
17. Under the settlement agreement, the Plaintiffs, except for Mrs. Knowles McCoy were to keep their portions of the Property which they had developed and upon the death of Ms. Knowles, her portion of the land would revert to the Defendants. The Plaintiffs highlighted the land as being behind the fence and at the back of the apartment building on the Property. The southern portion of the Property was bounded by a chain link fence. However, after the execution of the agreement, the Defendants cleared down the southern portion of adjacent land.

18. The Defendants' failure to honour the settlement agreement resulted in the commencement of this action to have the compromise specifically enforced. The written compromise agreement was prepared by the Defendants. At the Court of Appeal, the Defendants attorney raised the issue of costs. The Defendant's attorney discussed the suggestion that Mrs. Knowles McCoy's portion should be sold for ninety thousand dollars to settle his costs. An effort was made to find a buyer for this property.
19. Prior to the commencement of this action and after the withdrawal of the appeal, the Defendants sent officers to execute a writ of possession on numerous occasions. He would always tell the officers that his portion of the land was not involved and the officers would refrain from enforcing the said writ.
20. Mr. Knowles stated that shortly before the agreement was executed, he and the Defendants had measured the distance between the western wall of the triplex built on the land by his siblings Gregory and Kendal Knowles in addition to the vacant lot which was surrendered by Mrs. Knowles McCoy which was measured to be about twenty feet. He and the Plaintiffs instructed Mr. Hubert Williams, the land surveyor, to prepare a sketch or a plan of the physical features of the land, it was agreed that this vacant land in the sketch would not be part of the vacant land which went to the Defendants.
21. During cross examination, Mr. Hubert Williams averred that the two places on the plan prepared by him which had Mr. Knowles, Gregory and Kendal Knowles names, related to the two buildings situate thereon. The part of the plan that had Mrs. Knowles McCoy name was vacant property. He was able to agree the sizes of the property by using the features on the ground, such as the track road or road way to the north of it, shown by the dotted lines.
22. The distance from the apartment was given by him to Mr. Knowles without any documentation. There were dimensions for the vacant land but no dimensions for the middle part of the Property.
23. All of the other Plaintiffs concurred with the statements of Rodger Knowles. Ms. Knowles died before the commencement of the trial and it was agreed that Gregory Knowles would represent her estate.

## **DEFENDANTS EVIDENCE**

24. Ms. Monique Rolle averred that on 2<sup>nd</sup> May 2014, it was adjudged that she held the title to the Property. Ms. Knowles was unsuccessful in her application to the Court of Appeal for a stay of execution of the said judgement and her leave to appeal to the Privy Council was also dismissed. Further there was no agreement between herself and the Plaintiff as to costs outside of the orders of the Court for the Plaintiff to pay to the Defendant costs for both the Supreme Court and the Court of Appeal actions.

25. Ms. Knowles was only permitted to remain on the portion of the Property where she lived until her death, thereafter it would revert to her.

## ISSUE

26. Whether there is an enforceable compromise under the doctrine of part performance

## PLAINTIFF SUBMISSIONS

27. The Plaintiffs relied on the equitable doctrine of part performance to address the question of whether there was an enforceable compromise. They submitted that oral agreements or partly oral and partly written agreements were enforceable under the equitable doctrine of part performance as an exception to the requirements of Section 4 of the Statute of Frauds Act.

28. Section 4 requires that agreements relating to land are evidenced in writing. The Plaintiffs maintain that the agreement for sale of the Property was clearly evidenced in writing and if not accepted that it was in writing they relied on Megarry's "The Law of Real Property 4<sup>th</sup> Edition, para. 2, page 561 which provided:-

### **"B. A Sufficient Act of Part Performance**

1. **Fraud- the Statute of Frauds, 1677, was intended to prevent the fraud and perjury which were possible when contracts for the transfer of land could be alleged upon merely oral testimony. This it did, but it opened new and different possibilities of deception: a person who had made a genuine contract might repudiate it on the ground that there was no proper memorandum as required by the Statute.... In some cases of this kind of equity would invoke its wider jurisdiction to grant relief against fraud, even though this meant "decorously disregarding an Act of Parliament.".... the commonest and most important example of this principle is found in the doctrine of part performance....**
2. **Part performance- the doctrine of part performance appeared in the reports in 1686 and was firmly established by a decision of the House of Lords in 1701. Its fundamental proposition is that if the plaintiff has partly carried out the contract on his side, in reliance on the promise of the defendant, it is inequitable to allow the defendant to plead the statute. Equity will not allow the statute to be made an instrument of fraud.... Specific performance of the contract will therefore be decreed, and all its terms may be proved by oral evidence**
3. **Connection with the land- as the doctrine developed it was confined to acts of part performance which in some way indicated the land concerned. The object was 'to prevent a recurrence of the mischief which the statute was passed to suppress.... In the case of a contract for the sale, it was thus sufficient act of part performance if the purchaser was let into possession by the Vendor, for then it was clear that there must be some transaction between them concerning that land: the contract could not be fabricated by perjured evidence. But if the purchaser merely paid the vendor without taking possession, this was not a sufficient act of part performance**

because it did not by itself indicate a transaction about any land; it was a mere payment of money. Which in any case could be recovered..."

29. The doctrine was further advanced in Maddison v Alderson (1883) 8 App. Cas. 467 where Lord Blackburn stated:-

"...and it is not a little remarkable that there is no case, at least none was cited, and I have found none, in which there has not been a change in the possession of the land, or, in the case where the purchaser was a tenant already in possession, a change in nature of his tenure, which rightly or wrongly, was held equivalent to a change in the possession...The conduct of the parties may be such as to make it inequitable to refuse to complete a contract partly performed. Wherever that is the case, I agree that the contract may be enforced on the ground of an equity arising from the conduct of the party. The moral justice of the case was completely with the appellant in *Lester v Foxcroft*."

30. The Plaintiffs submitted that they were judgment debtors as it was found that the Defendants were entitled to possession. They were in lawful possession of the land as they were given possession by Mr. Forbes, the ancestor in title to the Defendants even though subsequent events brought an end to their right of possession. If their case had been properly pleaded before the Court in the original action, the outcome may have been in their favour.

31. At the time of their negotiation and agreement they were tenants at sufferance. Such change in the nature of their tenure was a change to the possession of the land which followed the compromise agreement. They further rely on **Sullivan v Porter 861 A 2d 625(2004)** which facts are similar to this case:-

"Porter (D) offered to sell his property to Sullivan and Andrews (P's) for \$350,000 which a \$20,000 down payment and Sullivan accepted orally. Porter said he would have his attorney prepare the paperwork. Sullivan took possession of the property in September 2000 and began improving the stable and rails, this continued until November 24, 2000 when Porter arrived at the farm with a real estate agent. Porter told Sullivan that another buyer was interested but told Sullivan that he would honour their agreement. The next day, Porter accepted \$3,000 down payment from Sullivan. Sullivan and Andrew began renovations and improvements on the property, started their new business, placed advertisements in the local newspapers and paid for an appraisal of the property. Porter regularly visited the property and received updates about renovations but did not produce the paperwork necessary to complete the transaction. Porter then offered to sell the property for \$450,000 with a \$50,000 down payment. Sullivan filed a complaint for breach of contract, promissory estoppel and specific performance and Porter asserted the Statute of Frauds. Porter appealed the courts judgement and award of specific performance in favor of Sullivan."

This decision was affirmed on appeal.

32. The Plaintiffs submitted that during the appeals process and negotiations they were allowed to remain in possession of the land. Mr. Forbes never objected to their possession of the land and the Plaintiffs were in possession of the Property from the mid-1960's. Ms. Knowles' only downfall was that she did not adduce any

evidence showing that the agreement for sale was in writing. They further relied on **Steadman v Steadman (1976) AC 536**, where Lord Reid stated:-

**“If one party to an agreement stands by and lets the other party incur expenses or prejudice his position on the faith of the agreement being valid he will not then be allowed to turn around and assert that the agreement is unenforceable. Using fraud in its other and less precise sense that would be fraudulent on his part and it has become proverbial that courts of equity will not permit the statute to be made an instrument of fraud. It must be remembered that this legislation did not and does not make oral contracts void; it only makes them unenforceable. And the statutory provisions must be pleaded; otherwise the court does not apply it.”**

33. The Plaintiffs maintained that, there must be a change of possession of the land and that if the purchaser was a tenant already in possession, a change in the nature of his tenure was held to be equivalent to a change in possession. At all material times the Defendant allowed them to remain in possession. Their possession was evidence that the parties had some transaction between them concerning the land.

## **DEFENDANTS SUBMISSIONS**

34. The Defendants relied on Section 4 of the Statute of Frauds Act which provides:-

**“No endorsement or memorandum of any payment, written or made, after the time appointed for this Act to take effect, upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said enactment.”**

35. In respect of the costs argument, Ms. Rolle relied on the judgment of Isaacs JA in **Althea Knowles et al and Monique Rolle et al SCCiv App No. 126 of 2014** where he stated:-

**“The application is withdrawn and dismissed. Inasmuch as costs follow the event, the costs are to the Respondent. Such costs are fixed to \$6,500.00 to be paid to the Respondents.”**

36. Ms. Rolle contended that despite Mr. Knowles' evidence that his portion of the land was not in question, Barnett J had previously declared that it was a part of the Estate of Irene Rolle. The purported compromise failed to convey any land from her to any of the Plaintiffs as it only speaks to Ms. Knowles being allowed to remain on the property until her death and that all of the property would remain as part of the Estate. Ms. Knowles has now died.

37. The compromise agreement did not comply with section 4 of the Statute of Frauds Act and therefore void. At all material times she was the beneficial owner of the property and would have no reason to make an agreement with any of the Plaintiffs for the land to be conveyed to them. She concluded that as costs were awarded to her in the original action there was no agreement and no reason to negotiate with them in this action to sell a parcel of her land in order to recover costs.



## DECISION

38. The principal issue in this action is whether there is an enforceable compromise agreement between the parties. In Daron Dean and Merlene Dean v Felix Gray SCCiv App & CAIS No. 84 of 2018, Evans JA Actg stated:-

“11. The Statute of Frauds passed in 1677 was intended to prevent the fraud and perjury which was possible when contracts for the transfer of land could be alleged upon merely oral testimony. The doctrine of part performance had been developed by the Chancery Courts to bypass the strictures of the Statute of Frauds and the absence of a written memorandum. There must be shown a real, existing contract and the provisions thereof, which could be suitably enforced by the remedy of specific performance. The doctrine permits the grant of an order for specific performance if the party alleging the existence of the agreement is able to satisfactorily prove the contract.

12. Secondly, to comply with the doctrine of part performance the plaintiff must show that he performed certain acts. These acts must have been done by him, or on his behalf, or at his request, on the faith of the contract and with the knowledge of the defendant. The acts must be, to use the language of Lord Selborne in *Maddison v. Alderson*, (1883) 8 App Cas 467 “unequivocally, and in their own nature, referable” to the transaction alleged. These acts of part performance must be satisfactorily proved before, in theory at least, the court may proceed to hear oral testimony as to the terms of the transaction itself. It is obvious however, that the evidence led must be cogent and credible to be accepted by the Court.

13. In substance then the doctrine require that a party seeking redress must prove:-

- i. that he acted to his detriment;
- ii. that the act was on the faith of and consistent with the contract —it must be referable to the contract claimed;
- iii. that the other party was aware of these acts;
- iv. that the oral contract was complete; and
- v. that if the contract had been in writing, specific performance would have been available as a remedy

39. The Plaintiffs have maintained that there existed a compromise between the Defendant and themselves. However, the Defendant averred that the only compromise was regarding Ms. Knowles remaining on the property until her death. After such time the remaining Plaintiffs were expected to vacate the property. Ms. Knowles died before the trial.

40. Can the doctrine of part performance be applied to these circumstances? In my view the question for determination is whether there is a basis for this Court to interfere with the judge’s finding in the First Action as a result of the compromise agreement.

41. The document which the Plaintiffs rely on states:-

“I, Rodger Knowles who resides on property Harold Road and Knowles Avenue, son and representative of Althea Knowles another named siblings Genesta Knowles-Williams, Gregory Knowles, Kendal Knowles, Deborah

Knowles-McCoy, have come to an agreement with Monique Rolle and children of Irene Virginia Forbes-Rolle, all adjacent properties next to where the apartments are situated, also the portion of land where my mother Althea Knowles presently resides, upon her demise goes back to the estate of Irene Virginia Forbes-Rolle, and her children.

Upon agreement, Monique Rolle and the other children of Irene Virginia Forbes-Rolle, Michael, Eleanor, Maxwell Rolle, that we have all decided to put the past behind and look forward to the future....”

This letter does not state that any of the Plaintiffs would get any land. The only agreement was to allow Ms. Knowles to live on the Property until her death and there is nothing in this agreement which speaks to Ms. Rolle giving any of the other Plaintiffs any part of the Property which Justice Barnett had ruled belonged to her.

42. The description of portions of the land in the agreement may not have described all of the property in issue, but it cannot be construed as stating that Ms. Rolle agreed that they should keep the portions described or omitted.
43. In the absence of any documentary evidence which states what the Plaintiffs claim, can an oral agreement be relied on? I must determine whose evidence of the oral agreement I believe. The Plaintiffs have not in my opinion produced adequate evidence that a compromise existed between the parties, as a result of an oral agreement. They have not produced any other evidence except their “say so” to support the oral agreement. The Defendants categorically deny the existence of any such oral agreement and the initial written agreement does not assist the Plaintiffs. The evidence of the Plaintiffs is not credible as to the existence of an oral agreement.
44. As in **Daron Dean and Merlene Dean v Felix Gray (supra)**, to comply with the doctrine of part performance the Plaintiffs must additionally have showed that they performed certain acts in reliance on the alleged compromise agreement. The Plaintiffs actions do not arise from the compromise agreement. It would seem as though they were piggy-backing on the agreement made with their mother, Ms. Knowles. Nothing was done by them subsequent to the letter agreement which can prove that they performed certain acts to show reliance on the compromise agreement. The buildings existed before the agreement was executed.
45. I am satisfied however, that an agreement existed between the Plaintiffs and Ms. Rolle allowing Ms. Knowles to remain on the Property until her death and after her death the Property would revert to the Defendant’s estate.
46. The doctrine of part performance provides that where a party to a contract acted on the contract in reliance on the promise of another then the contract would be

enforced in equity despite the lack of a written agreement. The Plaintiffs have not proven that they acted to their detriment. Although they began building on the property, the evidence was that these buildings existed before the compromise agreement and the compromise agreement related only to Ms. Knowles. Although their actions or lack thereof may have been as a result of what they may have believed to be a contract, they have been unable to prove that a compromise, oral or written existed. The Plaintiffs have alleged that Ms. Rolle knew that they lived on and had developed the property. However, from the evidence presented and the judgment in the First Action, it is clear that once Ms. Rolle became aware of the extent of the Plaintiffs presence on the property she sought the assistance of the police to remove them and also commenced a previous action in the Magistrates Court.

47. If Ms. Knowles were still alive and residing on the Property and tried to assert her rights under the compromise agreement, then this action would be resolved differently. She would have been allowed to exercise her right as the Defendant accepts, to remain until her death.
48. The Plaintiffs have not acted to their detriment. None of their acts were referable to the alleged compromise.
49. I find that a case for part performance has not been made out by the Plaintiffs. While the Plaintiffs have attempted to prove the existence of an agreement, which was part written and part oral, to prove that a compromise existed which would allow them to remain on the Property, they have not done so. I am satisfied that the written agreement only benefitted Ms. Knowles until her death. No other Plaintiff was given any right. There was no agreement or compromise with regard to the costs awarded in the First Action or the Appeal.
50. Further I am not satisfied that the Plaintiffs:-
- i) acted to their detriment; or
  - ii) their acts were consistent with what they maintain as the agreement; or
  - iii) the Defendant was aware of any such acts; or
  - iv) if the agreement alleged by them had been in writing, specific performance would have been an available remedy.
51. The Plaintiffs claim for part performance of the compromise agreement is hereby dismissed. The Plaintiff is to pay the Defendants' costs of this action to be taxed if not agreed.

Dated this 13th day of October 2022

  
The Hon. Madam Justice G. Diane Stewart