

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

**ON APPEAL FROM THE COURT OF APPEAL OF THE
CO-OPERATIVE REPUBLIC OF GUYANA**

CCJ Appeal N. CV 14 of 2007
GY Civil Appeal No 74 of 2003

BETWEEN

JASSODA RAMKISHUN

Executrix of the Estate of Sukhree, deceased, pursuant to a Grant
of Probate No 102 of 2004 and substituted by Order of Court dated
the 27th day of February 2004

APPELLANT

AND

CONRAD ASHFORD FUNG-KEE-FUNG

individually and in his capacity as the Administrator Ad Litem
of the Estate of Letitia Fung-Kee-Fung, deceased, Michael
Fung-Kee-Fung and Elaine Brooker, deceased, pursuant to Order
of Court dated the 7th day of February 2003

DOREEN ELIZABETH DEANE

LEILA GLENDON

RESPONDENTS

**EXECUTIVE SUMMARY OF THE JUDGMENT OF PRESIDENT DE LA
BASTIDE AND THE HONOURABLE JUSTICES POLLARD, BERNARD AND
WIT DELIVERED BY THE HONOURABLE MR JUSTICE WIT**

[1] This is an appeal from the judgment of the Court of Appeal of Guyana, concerning an agreement for the sale of a piece of land situated at lot 22 Section B, Plantation Ruimzicht, West Coast Demerara. The facts of the case were established by the High Court. These facts, so far as relevant, were the following.

- [2] In March 1980 Sukhree agreed to purchase the land from Solomon Fung-Kee-Fung and paid to him the sum of \$10,000 as a deposit on the purchase price of \$35,000. Sukhree obtained a receipt which was signed by Solomon in the presence of two witnesses and she was given possession of the land. Over a period of years she requested Solomon in vain to transfer the land to her. In February 1983 Solomon died without having transferred the land to Sukhree. She thereupon contacted Solomon's son, Ashford, the first respondent, who took her to his mother Letitia, widow of Solomon. Upon being shown the receipt Letitia, in the presence of Ashford, indicated that she was prepared to honour the agreement, but that she could not do so until she had obtained a grant of "probate." This in fact was to be a grant of letters of administration since Solomon had not left a will. The impression was conveyed to Sukhree that once the paperwork was completed, transport would be passed to her. This continued for several years to be the response whenever Sukhree inquired from Letitia about the transport.
- [3] Unknown to Sukhree, in August 1983 Letitia had obtained a grant of letters of administration of Solomon's estate, and in February 1984, in her capacity as administratrix of the estate she had passed transport of the parcel of land sold to Sukhree to the heirs i.e. herself and her five children. Despite this Letitia continued to make false promises to Sukhree until 1991 when Sukhree upon checking at the Deeds Registry discovered that the land had been vested in Letitia and the other heirs since 1984. When challenged Letitia again promised to pass the transport to Sukhree.
- [4] After filing two earlier actions in the High Court which were not pursued, in 1993 Sukhree finally filed the current action, and sought *inter alia* an order for specific performance of the agreement of sale against Letitia and the heirs of the estate of Solomon, deceased.

[5] The learned Chief Justice at the hearing in the High Court held that the conduct of Letitia and Ashford with respect to Sukhree amounted to a form of fraud (“equitable fraud”) by means of which the transport was obtained. The Chief Justice held that the action to rescind the transport on that basis was not subject to or barred by the twelve month time limit imposed by the proviso to section 23 of the Deeds Registry Act, Cap 5:01. Consequently, the Chief Justice declared the transport obtained by all the defendants void for the fraud of Letitia and Ashford. This resulted in the cancellation of the transport, and in an order that transport be passed to Sukhree upon payment of the balance of the purchase price.

[6] On appeal to the Court of Appeal the decision of the Chief Justice was reversed, and in a majority judgment (Singh, Chang, JJ.A.) the appeal was allowed on the ground that the mere intentional breach of contract cannot be fraudulent and being a party to such a breach cannot translate into fraud; further, that the proviso to section 23 of the Deed Registry Act, Cap. 5:01 covers all forms of fraud so that any action to rescind a transport obtained by fraud must be brought within twelve months of the discovery of the fraud, which requirement Sukhree had not met. A minority judgment of Roy J. dealt with an issue that was first raised on appeal ie that Letitia and the other heirs received the transport as volunteers. Roy J held that this was correct and that as a consequence the heirs were under a duty to honour the contract with Sukhree who was a purchaser for value under the agreement of sale which remained alive after Solomon’s death and bound his estate. The delay of Sukhree in bringing the action, though considerable, was due mainly to Letitia’s reassurances and promises to pass the transport to her and therefore was not considered unreasonable.

[7] In this regard the main issues which were considered were:

- (a) the concept of fraud in the proviso to section 23(1) of the Deeds Registry Act, and the relevance of South African case law;

- (b) whether the twelve-month limitation period in the proviso to section 23(1) applies to all forms of fraud;
- (c) the position of the heirs as volunteer transferees, and the grant of specific performance against a volunteer both in English law and Roman-Dutch law;
- (d) the grant of specific performance in Guyana in accordance with section 3(d)(iii) of the Civil Law of Guyana Act, Cap. 6:01; and
- (e) limitation and *laches*.

[8] After detailed and extensive discussion of the issues the Court held “that the word “fraud” in the proviso to section 23 of that Act includes the situation where the owner of a property or the administrator of the estate of which such property forms part intentionally breaches a contract of sale with a purchaser of that property in order to have it transferred to another who knows of the earlier contract but who nevertheless in his own interest participates and assists in that breach”. The Court agreed with the Court of Appeal, however, that the twelve month limitation period of the proviso applies to all forms of fraud and so the action of Sukhree which was brought after more than two years after discovery of the fraud, was time-barred. Another reason why the action had to fail was that although two of the heirs knew about the contract of sale between Solomon and Sukhree, there was no evidence that the other four heirs had any knowledge of that and so it could not be said that **all** of them had participated in the fraud.

[9] That left the alternative route of a grant for specific performance against the heirs on the ground that they were all volunteers. The legal basis for this action was section 3(d)(iii) of the Civil Law of Guyana Act, Cap 6:01, which provides that “relief by judgement for specific performance shall be granted in the case of immovable property *on the same principles on which it is granted in England* in the case of contracts relating to land or to interests in lands”. In England specific performance can be granted against a transferee who is not a party to the contract

if he is a volunteer. It was however not clear whether this principle could be applied in Guyana as the English position is linked with the concept of an equitable interest in land, which concept is repugnant to the law in Guyana. In this respect, the Court held that the principle was not necessarily premised on the existence of an equitable interest. The Court found that in Roman-Dutch law, which does not recognise the concept of equitable interests, specific performance could be equally obtained against a volunteer albeit on the basis of general equitable principles. The granting of such relief therefore does not necessarily require the existence of an equitable interest for its application.

- [10] On these grounds Sukhree was entitled (subject to a possible defence based on her delay in bringing this action) to an order for specific performance against the heirs. As this action was not based on the proviso to section 23(1) of the Deeds Registry Act, Sukhree was not bound by the limitation period laid down in that proviso. Any limitation of the period in which the action can be brought is governed by the equitable doctrine of *laches*.
- [11] Although the Court conceded that a very long time (nine years) had gone by before Sukhree filed her action, it concluded that it was evident on the facts of the case that almost seven of those nine years were lost due to Letitia's deceit. At no point in time could her conduct have been interpreted as acquiescing in the situation between 1984 and 1993. Furthermore, the respondents never alleged any prejudice because of the delay, and the evidence disclosed no such prejudice or detriment.
- [12] The appeal was allowed, and the respondents were ordered to convey to the appellant within eight weeks of the date of the order the property described as lot 22 Section B, Plantation Ruimzicht, West Coast Demerera, upon payment of the balance of the purchase price, failing which the Registrar of Deeds was authorised and empowered to do so.

[13] The respondents were ordered to pay the appellant the cost of these proceedings in this Court and in the courts below, such costs to be taxed unless agreed.

[14] In a separate judgment Nelson JCCJ concurred in the result of the judgment of the Court but for somewhat different reasons.