

**IN THE CARIBBEAN COURT OF JUSTICE**  
**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS**

**CCJ Appeal No CV 1 of 2009**  
**BB Civil Appeal No 3 of 2006**

**BETWEEN**

**VERNON O'CONNELL HOPE**

**APPELLANT**

**AND**

**SHAKA WAYNE RODNEY**  
**PORTFOLIO INVESTMENTS LIMITED**

**1<sup>ST</sup> RESPONDENT**  
**2<sup>ND</sup> RESPONDENT**

**EXECUTIVE SUMMARY**

- [1] In 1996 Mr Hope agreed to sell to Mr Rodney a parcel of land at Prospect, St. James on the West Coast of Barbados. The purchase price originally agreed was \$395,000, ten per cent of which was paid as a deposit to Mr Hope's attorney-at-law. It was further agreed that completion of the sale would take place on 28<sup>th</sup> February, 1997. Mr Rodney later assigned his rights and interests under the agreement to a company called Portfolio Investments Inc. ("Portfolio") of which Mr Rodney was a director and shareholder, and the parties subsequently agreed to an increase of the purchase price to \$430,000.
- [2] The sale was not completed on the scheduled date. Mr Hope was not in possession of all the requisite documents and in any event, Mr Rodney was not then in a position to pay off the balance of the purchase price. Mr Hope eventually got all his documents in order and as soon as he was in a position to give a good title, he issued a notice to Portfolio making time of the essence of the agreement and requiring the transaction to be completed on or before 26<sup>th</sup> May, 1998. Again Portfolio neglected to tender the balance of the purchase price but on the said 26<sup>th</sup> May Portfolio informed Mr Hope that it was ready, willing and able to complete.

- [3] On the 3<sup>rd</sup> June, 1998 Portfolio reiterated its offer to complete the purchase but in response Mr Hope's lawyer stated that completion had been placed "on hold". On 31<sup>st</sup> August, 1998 Portfolio issued Mr Hope with its own formal notice to complete the contract. Mr Hope ignored this notice and matters remained like this until July 2000 when Mr Rodney and Portfolio launched these proceedings in which they sought against Mr Hope an order for specific performance of the agreement.
- [4] For reasons that are no longer important the trial judge held that both notices to complete were ineffectual. The judge also held that Portfolio was not entitled to specific performance because there had been no valid assignment to it by Mr Rodney and that in any event it had not been demonstrated that either Portfolio or Mr Rodney had the requisite funds to pay the balance of the purchase price.
- [5] Portfolio's appeal to the Court of Appeal was allowed and an order for specific performance was made against Mr Hope. He appealed to this Court. The validity of the assignment having been conceded by counsel for Mr Hope, the critical questions facing this Court were whether the purchasers had demonstrated their readiness and ability to complete the purchase at the material time and for this purpose, when was the material time.
- [6] This Court held that in the circumstances the material time was the date of the trial; that Portfolio was not under an obligation to have the purchase monies in hand when it issued its notice to complete or when it filed its claim. Portfolio was required to plead its readiness and ability to complete the purchase and support that pleading by demonstrating by evidence at the trial that it had the capacity to raise and produce the required funds at such time as a proper deed of transfer was tendered to it in accordance with the Court's order.
- [7] The trial judge had made no analysis along these lines of Portfolio's financial capacity and this Court was at liberty to peruse the evidence in order to make its own. That evidence suggested that Mr Rodney's attorney-at-law had been prepared to advance Portfolio the purchase monies and that he had actually attempted to complete the purchase on 3<sup>rd</sup> June, 1998 using his own funds. There was also unchallenged evidence

that in the expectation of closing the transaction, Mr Rodney had secured credit facilities from the Caribbean Commercial Bank which had made available to Portfolio a total of \$430,000 until 31<sup>st</sup> May, 1999 and that a sum of \$330,000 was actually deposited in Portfolio's account on or about 15<sup>th</sup> July, 1998.

- [8] Since Mr Hope had wrongfully placed the transaction "on hold" and Portfolio had demonstrated at the trial that it was ready and able to complete, Mr Hope's appeal was dismissed and he was ordered within forty-five days upon payment made to him by Portfolio of the balance of the purchase price to do all acts and things necessary to convey to Portfolio the property. Mr Hope was also ordered to pay the costs in this Court and the courts below certified fit for two attorneys-at-law.