

IN THE SUPREME COURT OF BELIZE, A.D. 2008

Action No. 80/1989

BETWEEN (ISMAEL O. SHABAZZ PLAINTIFF
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(AND
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(MILLICENT ARNOLD DEFENDANT

Before the Hon. Justice T.J. Gonzalez

Mr. Philip Zuniga for the plaintiff
Mr. Lionel Welch for the defendant

JUDGMENT

This case concerns an agreement between the plaintiff and the defendant in which the plaintiff authorized the defendant to sell his property at No. 3305 Patridge Street, Belize City, together with a concrete house on it. This agreement is not in dispute by either of the two parties.

HOW THE AGREEMENT AROSE

Plaintiff's version

According to the plaintiff's evidence, he executed a mortgage between himself and the Development Finance Corporation (D.F.C.) for a loan of

\$14,000.00 in 1978. The subject matter of the mortgage was his property, lease lot No. 3305. Nevertheless, a portion of this lot had been sold to the defendant by the plaintiff for \$500.00/\$600.00 though there was no transfer of it to her. The whole was mortgaged to the D.F.C. by the defaulted in his payments, subsequently in 1980, he went to the United States to raise the finance to pay off the mortgage. Despite his efforts he was unsuccessful in raising the finance to pay off the mortgage. The D.F.C. threatened to sell the property and then Mrs. Arnold, with the consent of the plaintiff took over the mortgage loan on the agreement that the plaintiff would repay the loan money. This she did because her interest on the front portion of the said land was threatened. The plaintiff again failed to carry out his agreement this time and she spoke to the plaintiff about his failure to repay the loan. As a result the plaintiff entered into an agreement with the defendant to execute a mortgage for the said property to her in the sum \$15,946.01 on the 14th of September, 1984.

The plaintiff was to pay \$300.00 per month, sixty dollars was to come from the rental of the house on the said land, and the remainder \$140.00, the plaintiff was to pay out of his own pocket. The plaintiff defaulted in his payments to the plaintiff and the plaintiff's attorney wrote to him in this

regard on the 16th September, 1985, and that the plaintiff would commence foreclosure proceedings.

In that signed letter the plaintiff's attorney explained to him of his understanding that the plaintiff was in agreement that defendant sell the said property, to send a notarized request to the Lands Department for the lease to be transferred in the name of Millicent Arnold. On the 30th September, 1985, the plaintiff wrote to the defendant confirming his obligation under the mortgage which he had not met and at the same time conferring the authority to her to sell the said property i.e. Lot No. 3305 and tools to recover the monies owed to her by the plaintiff on the \$15,946.000 loan, and if after the sale any money was remaining it should go to him.

The plaintiff complied with the request on paragraph three of the letter of 16th September, 1985 and sent a notarized request to the Lands Department to have the lease of the said lot to the defendant.

The defendant had the property valued by one Mr. Moody who put a value of \$11,300.00 on it. As the plaintiff was not satisfied with this valuation he had Mr. A.C. Garbutt appraise the property. He appraised it at \$25,500.00. The report, Exhibit I.O.S. 1V and is dated 13/11/86.

Despite the plaintiff's authorization to sell the property, the property has not been sold. In November of 1989, the defendant asked the plaintiff to

clear the garage of his tools after which she renovated the garage and house at a cost of \$4,517.80 and increased the rent from \$60.00 to \$175.00 per month. The plaintiff has not taken possession of the property and has not received any monies in connection with the property and has not had any account of monies the defendant has obtained from the rental of the property. The plaintiff called a witness to testify on his behalf, but in my view added nothing to the case for the plaintiff.

The defendant also testified telling her side of what transpired between herself and the plaintiff. The defendant's evidence is by and large similar as that of the plaintiff's.

Defendant's Evidence

The defendant's evidence was to the effect that she is the aunt of the plaintiff. In 1974 she "got a piece of land at No. 3305 Partridge Street, Belize City from him at a price of \$500.00 and got a receipt for it." She then began building on the property and completed it in 1976. In 1980 she learnt through a phone call that the D.F.C. was selling her house. The plaintiff confirmed the information telling explaining to her that the reason for this is that he owed money to the D.F.C. In 1981 the defendant paid the loan to D.F.C. which amount was \$19,365.20. The plaintiff then entered into a mortgage with the defendant under the mortgage agreement, the plaintiff

was to pay \$300.00 per month with plaintiff paying \$240.00 from his pocket and \$60.00 from the rental of the house.

After the plaintiff transferred the property to defendant she renovated the workshop in December 1987 into a living and dining area at a cost of \$4,517.80 and she began renting it for \$175.00 per month. This was not the same portion which was rented for \$60.00 though it was a part of it. The defendant also put some sand filling into the yard. As the plaintiff was not making his payment of \$240.00 it was agreed between the plaintiff and the defendant that the property be sold to pay the loan on the mortgage and if there was extra money was to go to the plaintiff.

The plaintiff got the property valued by one Mr. Robateau who placed a value of \$11,300.00 on it. Mr. Eckert Lewis valued the building as it stood for \$9,200.00 and placed a market value on it of \$26,800.00.

According to the plaintiff's evidence at the time of this action in 1989 the plaintiff had only paid the defendant \$6,100.00 when in 1982-83 it was agreed that the place should be rented and defendant get the proceeds of it, as she received \$60.00 per month. This was up to November, 1987. In December 1987 the rent was increased to \$175.00 after the building was repaired. In January to February 1996 the defendant did not collect any money because she was sorry for the tenant.

From the evidence of both the plaintiff and the defendant, it is apparent that the only issue in this case is that though the plaintiff had agreed with the defendant to have the premises sold, the defendant has failed to do so. The plaintiff is therefore making the following claims:

1. Damages for breach and partly oral and partly written contract made on or about the 30th day of September, 1986, between the plaintiff and the defendant.
2. Possession of a concrete house situated on Lot 3305 situated on Patridge Street, Belize City.
3. Alternatively, the sum of \$25,716.02 being the fair amount due and payable by the defendant to the plaintiff in respect of the said concrete house.
4. Alternatively, an order for the valuation of the said house, its sale and for the payment of the proceeds of sale or of such portion thereof as the court consider just to be paid over to the plaintiff.
5. An account of all money, rent paid to the defendant in respect of the said house.
6. An inquiry of the balance of the said money remaining in the defendant's hands or under her control after giving her credit for all money properly expended by her for on behalf of the

plaintiff.

7. A declaration that the defendant is liable to make good all sums received by her as trustee or agent of the plaintiff and not duly accounted for with interest thereon at the rate of ten percent per annum from the respective dates received hereof until the same be made good.
8. An order that the defendant do pay to the plaintiff such sums that may be found due upon taking the said account and making the said inquiry including interest thereon as aforesaid.
9. All further proper accounts, inquiries and directions.
10. Damages for breach of contract.
11. Costs.