

HOBAN
Henchy J.
Griffin J.
Hederman J.

THE SUPREME COURT

No. 94 of 1980

PATRICK HOBAN

v.

BUTE INVESTMENTS LIMITED, ALLIED
SUPPLIERS (IRELAND) LIMITED (IN LIQUIDATION):
AND JOHN E. COOLICAN, ANNA A. COOLICAN
AND IRENE McVEIGH



Judgment of Henchy J.
delivered the 17th December 1982

New diss.

The contract which the plaintiff seeks to have specifically performed is a written contract dated the 11 May 1976 but which was executed some time later in May 1976. By that contract, Bute Investments Limited ('Bute', the first defendants) agreed with the plaintiff for the purchase by him of the premises in question for £21,000. The plaintiff paid Bute a quarter of that sum (£5,250) as a deposit. Because there was an earlier uncompleted sale of the premises on foot of a written agreement for sale dated the 25 April 1968 between Helen Josephine Coolican and others (whose interest is now represented by 'the Coolicans', the third, fourth

and fifth defendants) and Lipton (Ireland) Ltd. (now 'Allied Suppliers', the second defendants), the contract provided that the Coolicans and Allied Suppliers would join in the conveyance to the plaintiff who, according to the contract, would be a sub-purchaser.

In accordance with the majority judgment of this Court in Tempany v. Hynes 1975 I.R. 101, when the plaintiff paid a quarter of the purchaser money, Bute became trustees for him of a quarter of the legal estate—that is, of course, to the extent that Bute had the legal estate. But, as is clear from the evidence and as was found by the trial judge, Bute had no estate or interest, legal or equitable, in the premises. The whole estate was outstanding in the Coolicans and in Allied Suppliers. Therefore, it is not open to the plaintiff to say that, under the contract with Bute, he acquired any estate or interest in the premises. The most he could have acquired was a right to have the

(3)

contract specifically performed.

Whether it can be said that the plaintiff now has that right depends on whether Bute can require Allied Suppliers and the Coolicans to join in the conveyance. While the Coolicans are willing to abide by any order the Court may make, Allied Suppliers are not thus willing. They reject the suggestion that they are bound, or should be held bound, to assist in the performance of the contract. They insist that, so far as they are concerned, it is a nullity.

Much as I sympathise with the plaintiff, I must hold that the submission made on behalf of Allied Suppliers is correct.

When the plaintiff entered into the contract to purchase from Bute, both Bute and Allied Suppliers were controlled by the same individual. It was then within his power to get Allied Suppliers to join in the conveyance. What he did, however, was to get Allied Suppliers to enter into a contract in May 1976 to sell the premises to Bute for the nominal sum of £1.

(4)

It is agreed that at that time Allied Suppliers were an insolvent company. It is plain, therefore, that the contract whereby Allied Suppliers agreed to sell to Bute for £1 the whole of the beneficial estate in the premises for which the plaintiff was prepared to pay £21,000 was a fraud on the creditors of Allied Suppliers. When, in June 1976, an order of the High Court was made for the winding up of Allied Suppliers and a liquidator was appointed, he repudiated the agreement to sell the premises for £1 to Bute. In those circumstances that agreement must be struck down as being a nullity in the eyes of the law.

Since Bute never had any estate or interest in the premises, the contract to sell to the plaintiff could not be carried out without a valid conveyance from Allied Suppliers. Since the only agreement made by Allied Suppliers to dispose of their estate or interest was a nullity for being a fraud, they are entitled to take the stand that the contract between Bute and the plaintiff is a transaction that they can ignore.

(5)

Unfortunately for the plaintiff, because Bute had no estate or interest in the premises and because Allied Suppliers, the real owners, have not lawfully bound themselves to cooperate in the sale and are not now prepared to do so, as is their right, the plaintiff cannot be held to have acquired either any estate or interest in the premises or any right to have Bute's contract to sell to him specifically performed.

For those reasons I would disallow this appeal by the plaintiff against the dismissal of his claim for specific performance.

Approved
S.H.
11-1-83