

MOSES N. AGBAGE, Appellant, v. ELSIE R. BROWN, Appellee

**APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.**

Argued November 27, 1978. Decided December 15, 1978.

1 Specific performance of a contract will not be decreed unless the terms are sufficiently clear so
that the court can determine the rights and obligations of the parties.

2 A court will not decree specific performance of a contract in favor of a plaintiff who does not
come into court with clean hands.

This was an action for specific performance of a contract for renewal of a lease of premises for a period of 15 years. Judgment was rendered against appellant in 1977. At the time of hearing of the appeal before the Supreme Court, almost five years later, appellant was still occupying the premises. No rental had been paid since the expiration of the lease in 1974. Meanwhile the appellee had died, and her children had been substituted.

The Supreme Court found that the parties had not reached an agreement on the terms and condition of the option for renewal, and that it was therefore unenforceable. The Court also found that appellant did not come into court with clean hands, principally because he was seriously delinquent in payment of rent. The judgment of the Circuit Court was therefore *affirmed*.

John A. Dennis for appellant. *J. C. N. Howard* for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

The trial record in this case reveals that the appellant and appellee entered into a lease agreement for a portion of lot No. 11-5 situated on Carey Street in the City of Monrovia for a period of fifteen years certain, beginning June 1, 1959, and ending on May 31, 1974, at an annual rental of \$300, with an option period of five years, terms and conditions to be agreed upon.

On June 17, 1974, seventeen days after the expiration of the fifteen-year period, and while still on the premises, the appellant wrote the appellee indicating his desire to remain on the premises by taking advantage of the option period. Eight days later, the appellee replied denying the request because "of the most unpleasant and trying experiences that I have for greater portion of your tenancy, had to patiently and prayerfully tolerate." What these experiences were are not known, but the same letter dated June 25, 1974, and proffered by the appellant shows that while the appellant was requesting the option period he had not paid the rental due for the previous year. In fact he was still occupying the premises after the fifteen-year period had expired, even though terms and conditions governing the option period had not been negotiated.

Ten months after this exchange of correspondence, the appellant brought an action of specific performance against the appellee to compel her to grant the option, the terms and conditions of which had never been agreed upon. Judgment was rendered against the appellant by Judge James L. Brathwaite, presiding in the Civil Law Court for the Sixth Judicial Circuit, sitting in its December 1977 Term. It is this judgment which the appellant seeks to have this Court review. In the meantime, almost

five years later, the appellant continues to occupy the premises, not having paid any rental since the fifteen-year period expired in 1974; the appellee has since died, and has been substituted for by her children after the filing and granting of a motion for substitution of party.

Having thoroughly reviewed the certified record, read the briefs, and listened to the arguments of the parties, it is this Court's considered opinion that the judgment should be affirmed for the following reasons.

An option clause which provides for renewal of lease on terms and conditions to be agreed upon by the parties is uncertain and hence unenforceable. *Mirza v. Crusoe*, 14 LLR 95 (1960). In the instant case, the parties not having reached any agreement with respect to terms and conditions of the option, the lease agreement lacks certainty and therefore it cannot be enforced by a court of equity. *Reeves-Gibson v. Johnson*, 15 LLR 612 (1964). In order for specific performance to be decreed, the terms of the contract must be sufficiently clear so as to enable the court to determine with reasonable certainty the duty of each party and the conditions under which performance is due. *King-Gibson v. Carter*, 20 LLR 618 (1972).

Furthermore, he who comes into equity must come with clean hands. The facts reveal that the appellant's conduct was inequitable. The appellant's late payment of his rent during the certiorari period, in one instance one year overdue, his unbecoming conduct, which he never denied, toward the appellee, an elderly lady, and his continuous occupation of the premises without compensating the appellee for nearly five years show clearly that he did not act fairly in his dealings with the appellee. Under the circumstances, this Court cannot be expected to aid a plaintiff whose own conduct in connection with a matter had been unjust, marked by a want of good faith, and thus had violated established principles of equity and righteous dealing which a court of equity is bound to uphold. A court of equity is a court of conscience, and it will stay its hand and withhold its aid whenever he who seeks equity has not done equity.

In view of the foregoing the judgment of the lower court is affirmed with costs against the appellant; and the Clerk of this Court is hereby ordered to send a mandate down to the court below ordering it to resume jurisdiction over this matter, evict the appellant from the premises, and put the appellee in possession of same. And it is hereby so ordered.

Judgment affirmed.