

THE HIGH COURT

1985 No.2465P

BETWEEN

BALLYOWEN CASTLE HOMES LIMITED

Plaintiff

v

MARGARET COLLINS

Defendant

J U D G M E N T

Delivered by The Honourable Mr Justice Ronan Keane

on 26th June 1986

Mary P. O'Donoghue
Registrar

There are only two issues in this case, the first issue being whether there was an oral agreement for the sale of the land at Mr Reynolds' office on March 11, 1985, and, secondly, if so whether there was a sufficient note or memorandum of the agreement to satisfy the requirements of the Statute of Frauds.

In relation to the first matter, there seems to me to be singularly little dispute as to the material facts because on March 12 there was no doubt that Mrs Collins agreed to sell the land, the subject matter of the proceedings, to Mr Kennedy for the sum of £150,000.

The parties also accepted at that meeting in March that the agreement which had thus been concluded would be embodied in a formal contract in writing prepared by the solicitors acting for the parties and that this agreement would provide for a deposit of 10 per cent payable on the exchange of executed formal contracts.

It has been settled by a long series of authorities that the fact that parties decide to embody an oral agreement already arrived at in a formal written contract does not thereby postpone the incidence of legal liability. Whatever else Mr Gartlan may have intended to convey when he used the phrase "binding contract", he could not have intended to convey, because it would not have been in his power to alter the state of affairs, that the parties themselves had not already entered into a concluded oral agreement for the sale of the land.

What Mr Gartlan could not know at the time he was talking to Mr Reynolds was whether a sufficient note or memorandum of that agreement existed to satisfy the requirements of the Statute of Frauds, and that might not be the situation until such time as a formal contract was signed and executed by the parties. But the distinction which has to be borne in mind is between the oral agreement itself, which does not depend on anything in writing, and the note or memorandum of it which the Statute of Frauds requires to render the contract legally enforceable.

I am satisfied, and there is no doubt on the evidence, that at the meeting in Mr Reynolds' office there was an oral agreement for the sale of the land.

The land was known; the parties agreed the price; there were no special terms of difficulty. The closing date was agreed to be December 1 because the land was let in conacre and would not be available until then, and that would not have mattered very much in relation to development land like this. There was a question of a derelict house which was occupied and it was not suggested that the man occupying it had any right to remain there indefinitely, and Mrs Collins did not anticipate any problems in that regard. There was agreement on a deposit of 10 per cent to be paid when the contracts were executed so all the relevant terms were agreed.

The parties also agreed that there should be a formal contract; that the actual terms agreed should be embodied and enshrined in a written contract which usually takes the form of a printed contract approved of by the Incorporated Law Society and which deals with the minutiae of conveyancing which could not rapidly be detailed in a meeting such as the one that took place and which would be more appropriately dealt with in the formal document.

As the authorities demonstrate, the mere fact that the parties agreed to embody an agreement already arrived at in such a form does not mean that they have not thereby agreed or that they have made their agreement conditional upon a formal contract in writing.

I am satisfied that there was nothing in the evidence to indicate that the parties intended the agreement arrived at that afternoon to be conditional upon a formal contract being entered into. It was not suggested in evidence that that was said at the meeting; that anybody said that "nothing is binding" or that "nothing is going to be of legal effect until the contract has been entered into". The parties had an agreement and their solicitors properly wanted it in legal form and they were happy about that. Nor was the agreement conditional on the payment of a deposit. On the contrary, the evidence is that while Mr Reynolds stipulated that there should be in the ordinary way a deposit paid when the agreement was being executed, nobody said that the agreement was not binding until the deposit was paid.

Precise significance has been attached by the law to "subject to contract" in this context and it was certainly the law for a long time that the use of those words in any purported note of the

agreement rendered the agreement itself unenforceable. Again, it is important to remember that it did not mean that there had not been such an agreement but it meant that there was no note or memorandum because the note or memorandum must be consistent with the existence of a concluded agreement between the parties. It was for that reason that solicitors, auctioneers and estate agents were in the habit of heading letters and documents "Subject to Contract", which was written by Mr Stanley. That was done in order to protect their clients against subsequently being sued on an oral agreement. There can be uncertainty in oral agreements and that is why the Statute of Frauds is there in the case of the sale of land. Solicitors and estate agents protected their clients by using the phrase "subject to contract" when they were confirming details and asking the solicitor for the other side to forward the contract. Nothing of that sort arises in this case. There is no suggestion that anybody used the words "subject to contract" in that sense.

The evidence establishes clearly that the parties envisaged that the agreement arrived at would be embodied in a formal document but that is far from saying that their obligations were conditional on such a contract being entered into.

So far as the first issue is concerned, I am satisfied that there was an oral agreement for the sale of the land at that price and that all essential terms had been agreed; that all that remained to be done was to put the agreement in a formal document; that the obligations to buy the land and sell the land were not conditional on the execution of that document.

The second issue that arises is whether or not there was a sufficient note or memorandum of the agreement so arrived at. The note or memorandum relied on consists of three letters written by Siteland Management Limited, Mr Stanley's company. It is not in dispute that these letters set out the material terms of the contract arrived at in Mr Reynolds' office. The only point taken in relation to that note or memorandum is that Mr Stanley or his company had no authority to write such a memorandum.

The Statute of Frauds requires the note or memorandum relied on by the parties to be signed by the party to be charged therewith. In this

case that is Mrs Collins or her agent. In order to succeed, as Mr Dempsey said, the Plaintiff must be in a position to prove that Mr Stanley's company was the agent of Mrs Collins, that is to say that he had her express or implied authority to sign such a memorandum. There is a general aspect of this matter to which I should draw attention. In this case it is not a question of whether Mr Stanley was authorised to conclude an agreement because he did not conclude any agreement. The evidence is clear on that aspect. Mr Stanley did not conclude any contract on behalf of Mrs Collins or on Mr Kennedy's behalf. The agreement was concluded by the parties themselves. The evidence is one way on this aspect of the case. It would seem that others present, certainly Mr Stanley and Mr Kennedy, may have chipped in from time to time, but it is established by the evidence that the two parties to the contract were the ones making the bargain.

This is not a case in which the Court has to consider whether an agent has or has not been authorised to conclude a particular contract. I just mention that because it is important, bearing in mind Mr Stanley's role in this matter. In relation to this aspect of the case, the case has taken a rather strange course. When the case was opened by Counsel for the Plaintiff he indicated that his evidence would be that Mr Stanley had this company, Siteland Management Limited; that it did various things; that one of the things it did was to act effectively as an estate agent; that Mr Stanley had called to Mrs Collins; that she had appointed him her agent or had given him the sale of the land on a particular basis as to commission; that Mr Stanley had introduced a purchaser and the deal was completed in Mr Reynolds' office; that Mr Stanley had been acting throughout as Mrs Collins' agent and that the memorandum, therefore, was properly signed by him on her behalf, recording the deal she had entered into as a result of his introduction.

Mr Stanley gave evidence to that effect, except in considerably more detail, and it is unnecessary to review all his evidence down to the minutiae. What is material is that he said he had gone out effectively looking for a client who had land to sell. He made no bones about the fact that in the present state of the property market there is a desperate hunger among people in that business to find people with land which they are willing to sell; that in slack times it is

difficult to get people to put their land up for sale with the expectation of a good price.

It is against that background that Mr Stanley, who made no bones about it, went searching for a client. He said he ascertained that Mrs Collins was the owner of the land which was for sale; that he went to see her and introduced himself as the proprietor of Siteland Management Limited, or as an estate agent, and made it clear what his interest was and gave her his card which described him inaccurately as an auctioneer because he had no licence. On his account, Mrs Collins could have been in no doubt that he was an estate agent and that he was anxious to get the sale of her land. He says that having established that she had land for sale - he knew where the land was - she asked him what he thought it was worth. Mr Stanley was more inclined to find out what Mrs Collins thought the land was worth and she said she had been offered £150,000 for the land. He said that after more talk Mrs Collins told him she had the land with Ganly Craigie and that they were proposing to charge three-and-a-half per cent commission and £1,200 expenses, and that he (Mr Stanley) offered to sell the land for half that amount. Mr Stanley was offering to undercut the auctioneers whom Mrs Collins had instructed and he said that Mrs Collins said that that seemed fair, that she indicated her acceptance that it seemed a reasonable arrangement.

After some more discussion it was agreed between them that Mrs Collins should ring her solicitor with a view to setting up an appointment, perhaps in a week or a fortnight, Mr Stanley thought, and that the intention of setting up this meeting in a week or a fortnight was to enable Mr Stanley to produce a purchaser for the land.

I should have mentioned that Mr Stanley also said that during this conversation Mrs Collins expressed dissatisfaction with the offer she had of £150,000 because she discovered it was not being made by the people purporting to make it but was being made on behalf of a building firm. This led Mr Stanley to think that Mrs Collins would probably be disposed to sell the land at £150,000 if she had a purchaser who was straightforward. This is all Mr Stanley's evidence.

It was against that background, according to Mr Stanley, that

Mrs Collins rang her solicitor with a view to making an appointment for a date which would enable Mr Stanley to find a purchaser willing to deal with Mrs Collins at the sort of figure she had in mind and who would go to Mr Reynolds' office so that the deal could be completed. Mr Stanley said that Mrs Collins rang her solicitor and that she told him the meeting would take place on the following Monday. As this was done on a Friday, Mr Stanley was alarmed at the deadline he was now presented with because he felt that in order to keep Mrs Collins as a client he would have to produce a purchaser for the land at £150,000 on the Monday.

Mr Stanley said he had four possible purchasers in mind for the land. This site was not being bought as agricultural land but was being bought with a view to its development potential. With that in mind Mr Stanley rang Mr Kennedy who expressed interest to the extent that he walked the land with Mr Stanley. They then went to the meeting on the Monday in the circumstances I have described and with the result I have indicated.

That is Mr Stanley's account of what happened. He was cross-examined in detail about the meeting in Mr Reynolds' office, but his account of what he said to Mrs Collins and of what she said to him was not challenged.

When Mrs Collins came to give evidence, while she gave an account of Mr Stanley's interview with her, her account was significantly at variance with what Mr Stanley said. The account Mrs Collins gave of the interview was that, far from appointing Mr Stanley her agent or replacing Ganly Craigie with him as somebody to find a purchaser for the land, she was dealing with him as the partner of somebody else who was to be brought along by Mr Stanley. To some extent, Mrs Collins' account of what happened at that interview with Mr Stanley was corroborated by her son. Obviously, in a matter of such crucial significance as that conversation it is surprising, to put it mildly, that the account given by Mr Stanley in considerable detail should be left unchallenged and that a different version should be produced by the Defendant and her son.

It is sufficient for me to say that I accept Mr Stanley's account of that meeting. I find it inconceivable that he should have

concocted that account when there is not a scintilla of evidence to suggest that Mr Stanley and Mr Kennedy were partners in property development. There is evidence to suggest that on a previous occasion, or that on more than one occasion, Mr Kennedy had been introduced by Mr Stanley as a potential purchaser of land, but there is not an iota of evidence to suggest that they had a business partnership or that they were contemplating buying the land with a view to developing it in partnership.

I am satisfied, as I have already indicated, that the true position was that Mr Stanley was extremely anxious to get a client with a parcel of land to sell at a good price and that he had possible purchasers in mind for any land he might sell. It was against that background that Mr Stanley went to see Mrs Collins and persuaded her to give him the dealing with the land by radically undercutting the other auctioneers.

That seems to me to be consistent with everything else I have heard in the case and it is consistent with what Mr Stanley wrote in the memoranda being relied on. I am satisfied that they were written at a stage before the carpet had been pulled from underneath Mr Kennedy's feet by Mrs Collins accepting a higher offer for the land. At that stage Mr Stanley had no reason at all, in so far as the evidence goes, to suppose there was going to be this remarkable volte face on the part of Mrs Collins because I accept that the letters were probably written before the communication from Mr Reynolds on the Wednesday that his client had changed her mind. It would be crediting Mr Stanley with a Machiavellian degree of foresight to say that he was anticipating a change of mind and that he was trying to put himself forward.

I am satisfied that that did not happen and that on March 11 Mr Stanley was simply recording what had happened at the meeting with Mrs Collins and that he was doing so as her agent.

It has been urged on the Defendant's behalf by Mr Dempsey that Mr Stanley's position was confined in effect to introducing a purchaser assuming he was appointed by Mrs Collins to do so and that therefore he had no authority to write the letters of March 11.

As I have said, I accept Mr Dempsey's proposition that it is absolutely clear and supported by authority that an estate agent merely by virtue of being an estate agent does not thereby have any authority to conclude a contract.

As I have already said, that is not the issue here because manifestly Mr Stanley did not conclude the contract. The issue is whether he had authority to write setting out the details of the transaction. I accept Mr Stanley's account as true and accurate that he had been entrusted on the Friday with the introduction of a purchaser by Mrs Collins; that it was as a result of his introduction that the deal was effected; that it was clearly the understanding between himself and the Defendant that his commission would depend on the purchase going through, on his introducing a purchaser at a price that would be acceptable to Mrs Collins and that it was within his function as such an agent to write to the buyer and to the seller and her solicitor setting out his understanding as her agent of what had been agreed between them. In what other capacity was Mr Stanley writing the letters? He was not a principal in the matter himself.

As I have already said, Mr Stanley communicated to Mr Kennedy the information that this land was there and that he had a client who had authorised him to find a purchaser for it. That did not make him Mr Kennedy's agent. He was still acting on behalf of Mrs Collins in finding a purchaser for the land. Again, one has to ask in what authority was Mr Stanley writing the three letters. He was not writing them as a principal in the matter Mrs Collins had authorised Mr Stanley to find a purchaser for the land at her price and he had found a purchaser at her price. The parties thought they had a deal on the afternoon in question and that it was accurately reflected in the letter and Mr Stanley was doing no more than recording it as her agent.

It follows, therefore, that the Plaintiffs are entitled to a decree for specific performance of the contract.

*Agreed as stated as correct
of my judgment herein.*

I certify the foregoing to be a true and accurate transcript of the shorthand note taken by me.

A. Henry
Official Stenographer

Ben Ken
20/1/1987