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Specific Performance of Land Contracts

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THESIS

SPECIFIC PERFORMANCE OF LAND CONTRACTS

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by

James J. Mahoney

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Cornell University

1895

C O N T E N T S

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DEFINITION.

Specific performance is an equitable remedy which compels the performance of a contract in the precise terms agreed upon, or such a substantial performance as will do justice between the parties.(1)

The courts of the common law afford, upon the refusal of a party to a legal contract to perform or carry out his part, redress to the other party, to the contract by giving him damages for the loss or injury suffered by reason of the failure to carry out the contract as entered into. But as between man and man it is clear that the contract should be carried out in the way it was originally intended to be; and as the giving of damages in lieu of the exact performance of the contract has, in many cases, proved grossly inadequate, the court of equity invented the equitable doctrine of specific performance.

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(1) Waterman, Spec. Perf. Sec. 1.

ORIGIN AND EXTENT OF REMEDY.

This beneficent remedy is one of the oldest exercised by the court of chancery. It would appear to be a remedy of purely English invention. The more competent authorities unite in saying, that in no other country has any similar remedy been known to exist. The most probable source of the doctrine seems to have been the ecclesiastical or canon law. The authorities are not agreed as to when the first traces of its jurisdiction appeared in our law. Some hold that it first appeared in the reign of Richard II. and to have been a case in relation to the sale of land.(1) Be this as it may, there is no doubt but that the earliest cases in the English law, where specific performance has been decreed, are to be found in the reports of the time of Edward III., where the Chancellor decreed the strict performance of a marriage settlement,(2) and of Edward IV., where an agreement to build a house was strictly enforced.(3) There are also a number of cases of specific performance reported in

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(1) Fry on Spec. Per., Sec. 19.
(3) Pomeroy, Eq. Jur. Sec. 35 N. 2.
(3) Story, Eq. Jur., Sec. 716.

the reports of Elizabeth's reign.

It was about the time of Queen Elizabeth's reign that the memorable conflict between the chancellors and common law judges forst arose.

The conflict was over the question of their respective jurisdictions. The chancellors insisted upon the right of equity to restrain certain legal actions, or rather to stay certain legal judgments, and the common law judges insisted that equity had no right to interfere

This fight for supremacy, which was one of the bitterest of its kind, continued until about the year 1610, when Lord Coke made his famous but unsuccessful fight on behalf of the law courts, and against the equity tribunals. This contest between Lord Coke and Lord Ellesmere, as to the power of equity to restrain the execution of a common law judgment obtained by fraud, settl d the long drawn out and bitter fight between the champions of equity and law. Nevertheless from this time forward we find equity exercising the right to enforce specific performance without question. (1)

There have been numerous attempts to classify the

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(1) Article of Professor Ames, I Green Bag, 26.

actions in which equity will enforce specific performance, and it would appear, with but little success. For if the contract possess the essentials which a court of equity demands, the contract will be specifically enforced whatever the nature of the subject matter. Assuming the contract to contain all the requisites of a court of equity, the only question remaining is, would an action for damages afford a full and adequate remedy? If the answer to the question be in tha affirmative the court will refuse to decree specific performance. Thus it is proper to say adequacy or inadequacy of the legal remedy is the real test as to whether or not the remedy will be granted.

By their very nature contracts for the purchase and sale of land, are not to be satisfied by money damages. Therefore it follows that a contract for the sale or purchase of realty will be enforced as a matter of course, if it is fair and certain in its terms, and based upon a valuable consideration. The court will in any such case compel the grantor to execute the conveyance, and the grantee to pay the agreed value of the property.

THE ESSENTIALS OF AN ENFORCEABLE CONTRACT

Mutuality. The prime essential of an enforceable contract is mutuality of the obligation. A contract to be specifically enforced must be such that it might, after being entered into, have been enforced by either of the parties against the other. If one party be incapable of performance, or under no obligation to perform, he cannot enforce the contract as against the other party. This rule, as is clearly apparent, would prevent the specific enforcement of an unilateral contract.(1) But this rule, like all general rules, has it numerous but well defined exceptions. An optional contract, which by its terms gives one of the parties an option to purchase or not to purchase within a given time, is not so devoid of mutuality as to prevent its enforcement, provided there be a sufficient consideration to support the contract.(2) The right of insisting on the lack of mutuality as a defence may be waived by the subsequent conduct of the party against whom otherwise the contract could have been

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(1) Lense v. Deitz, 43 Iowa, 205. Duvall v. Meyers, 2 Md. 401; TenEyck v. Manning, 27 At. 900.
(2) Waters v. Rew, 29 At. 590; Newell's App., 100 Pa. St. 513.

enforced; nor is the absence of mutuality a defence, where the party not bound by the contract, has performed his part of the agreement. (1) The fact that a grantor has not the title to the whole of the property he agreed to sell, will not prevent the specific enforcement of the contract, on the ground of a lack of mutuality. (2) The grantee in such a case is entitled to a conveyance of such estate as the grantor may have together with compensation for the damages suffered by reason of the failure of the grantor to perform according to his agreement. (3) But the right to compensation will be denied, where the party asking it, had notice at the time the contract was made, that the grantor was agreeing to convey more land than he could show title to. Such a rule it would seem is neither unfair nor burdensome to the grantee. (4)

Certainty. It is laid down as an elementary principle of equity jurisprudence that a contrat will not be specifically enforced unless it is certain in its terms

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(1) Merrill v. Goodyear, 1 DeG. F.& J. 452.
(2) Bigler v. Baker, 58 N. W. 1025.
(3) Mertlock v. Buller, 10 Vesey, 315.
(4) Peeler v. Levy, 26 N. J. Eq. 330.

or can be made certain by reference to such extrinsic facts as may, within the rulesof equity, be referred to for the purpose of ascertaining its meaning.(1) If the contract be in any way obscure or unintelligible, and there be no legal way of ascertaining the intent of the parties, it must fail.

Specific performance being one of the most drastic remedies known to the equity tribunals, a case must be made out with much greater certainty than would be necessary in an action purely legal; and this has been said to be so, although the uncertainty complained of, may have beenc aused by an obstacle interposed by the defendant.(2) Though equity thus strongly insists upon a contract being clear and certain in its terms, it has regard to the substance of an agreement and the object and intention of the parties; and it will not permit nonessential terms to be set up as a reason for refusing to fulfil the contract.

Description. The subject matter of the contract must be so definitely described that it may be known

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(1(Shakespeare v. Markham, 72 N. Y. 405.
(2) Stanton v. Miller, 58 N. Y. 200.

with certainty what the purchaser imagines himself to be contracting for and that the court may be able to ascertain what it is. (1) It is not essential that the descripption in the written contract should be given with such particularity and certainty as to make a resort to extrinsic evidence necessary. If the designation is so definite that the purchaser knows exactly what he is buying, and the seller what he is selling, and the property is so described that the court can, with the aid of extrinsic evidence, apply the description to the exact property intended to be sold it is sufficient. (2) Certain- to a common interest, is it would appear, all that is required. Thus where the court is able to ascertain, from the face of the contract, that the whole interest of the grantor, was intended to be conveyed, it may go outside of the contract to find out the actual extent of that interest. (3)

<u>Fairness</u>. The contract must be fair and honest, and any trace of unfairness or fraud will render its en-

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(1) Conway v. Wright, 58 N. Y. 200; Hamilton v. Harvey, 2 Ill. 439.
(2) Bacon v. Leshie, 31 Pac. 1033; Kyle v. Rhodes, 15 So. 40.
(3) Bagsdale v. May, 65 Texas. 255.

forcement impossible. The power of the court of equity to enforce the specific performance of a contract should be exercised under the sound discretion of the court, with an eye to the substantial justice of the case; and where a contract is unfair and destitute of all equity, the court will leave the parties to their remedy at law. And if such remedy has been lost, for any reason, they must abide the consequences. (1)

In an action by the vendor for the specific performance of a contract for the sale of land, the vendee may defeat a decree by showing that the vendor falsely represented that the property was clear of tax liens, for although the contract calls only for a quit-claim deed, the concelament of a material fact by the plaintiff will defeat his claim to specific enforcement. (2) The case of Margrave v. Muir, 57 N. Y. 155, was an attempt by the vendee to enforce a contract to convey lands. The contract was to sell for $800, whereas the land was worth $2000, on account of its rise in value. The plaintiff lived near the lot and knew its value. Thus while the plaintiff did not make any misrepresentations, he concealed

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(1) King v. Hamilton, 4 Peters, 311.
(2) King v. Knapp, 59 N. Y. 412.

his knowledge of the recent rise in the value of the land, and took advantage of the defendant's iggnorance, and thus got from her a contract to convey to him the lot for but little more than one third of its value. "Such a contract, it is believed, has never been enforced in a court of equity in this country. When a contract for the sale of land is fair and just and free from legal objections, it is a matter of course for courts of equity to specifically enforce it; but they will not decree specific performance in cases of fraud or mistake, or of hard and unconscionable bargains, or when the decree would produce injustice, or would be unequitable under all the circumstances." (1)

Where a contract is sought to be enforced in equity the defence of undue influence will be a potent one. A promise to pay the debt of an intended husband given in writing under threats of his imprisonment and the prevention of the marriage, will not be enforced in equity, even though the promissor afterwards pays part, thus appearing to satisfy the promise, if it appears that such subsequent payment was made under the influence of fear.

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(1) Margrave v. Muir, 57 N. Y. 155.

The fact that the creditor forbore to sue the original debt and to arrest the debtors, and that the woman thereby obtained a husband and a title, would not prevent the woman setting up the defence, when the creditor seeks to enforce the contract in equity.(1)

Where an ignorant woman is induced, without a clear knowledge of what she is doing, to agree to convey the homstead, her promise will not be specifically enforced, although her husband may have bound himself by the contract.(2)

Hardship. It is thoroughly well settled that a court of equity will not decree the specific performance of a contract, the result of which would be to impose a great hardship on either of the parties to the contract; and this true although the party seeking performance be entirely free from misconduct of any kind.(3)

The oppression or hardship which this doctrine has reference to may result from the unequal or unconscionable provisions of the contract itself, or from external facts, events or conditions which control the situa-

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(1) Ram v. Von Zeidlitz, 32 Mass/ 164.
(2) Bird v. Logan, 35 Kan. 228.
(3) Fry on Spec. Per. Sec. 397.

tion or relations of the parties, with respect to the performance of the contract. Further, the specific enforcement of the contract in equity always rests in the sound discretion of the court, and where upon a review of all the circumstances of a particular case it is clear that it will produce hardship and injustice to either of the parties, they may left to their remedies at law. In such cases equity is not under a duty to decree performance, even though the contract be clearly established.(1)

As a general rule the question in all such cases is, was the contract at the time it was entered into a fair and reasonable one? If such was the fact the parties are to be considered as having taken upon themselves the risk of any change of circumstances producing a hardship, and threfore any such change will not prevent a decree of specific performance.(2) But though that be the general rule still the exceptions are so many as to leave but little substance to it. Therefore we find many cases in the books where it clearly appears that subsequent events may occur, or circumstances so change, as to render

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(1) Marr v. Shaw, 51 Fed. Rep. 834.
(2) Willard v. Tayhoe, 18 Wall. 557; Niom v. Vaughn, 40 Mich. 356.

the contract, at the time of suit, so oppressive that the courts of equity refuse to enforce them.

These exceptional cases must of course be decided each upon its own facts, there being no general rule which can be safely applied to all cases. Thus, for example, where a contract was consummated during the time of great speculative enterprise and activity, in contemplation of the establishment of a successful and paying industry on land donated by a land company, but after a partial performance in good faith by such company a collapse occurred which renders it improbable that the venture would be successful or benefit either party, and a completion of the contract would absorb all the assetts of the otherwise solvent land company, it was held the court would not decree specific performance, as it would operate too oppressively on the land company.(1)

Inadequacy of consideration. Early English Courts of Chancery refused to compel the specif performance of any contract, where in the estimation of the court, there was an inadequate consideration to support the agreement.(2)

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(1) Piano Co. v. Riverton Co., 55 Fed. Rep. 190.
(2) Fry, Spec. Perf., Sec. 423.

This too though the contract was in every other respect fair, honest and aboveboard. They held that mere inadequacy of consideration made the contract unfair and oppressive. "

New York's great equity judge, Chancellor Kent, made an earnest and powerful attempt to graft the same principle into our equity jurisprudence.(1) But the Court of Errors, by a vote of ten to fourteen reversed the decision of the learned chancellor. Suydam, Senator, who wrote the prevailingopinion said:"To establish this doctrine in the State of New York, would, to my mind, be sanctioning a principle, which would lead to a very injurious result. Every member of this court must be well aware how much property is held by contract, that the value of real estate is fluctuating; and that there, most generally, exists an honest differenceof opinion in regard to any bargain, as to its being beneficial or not. To say, when all is fair and the parties deal on equal terms, that a court of equity will not interfere, does not appear to me to be supportedby authority - - - - -

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(1) Seymour v. Delaney, 3 Johns Ch. 222.

and I , for one, cannot consent to its introduction into our equity."[1] The law is now thoroughly well settled; and mere inadequacy of considerationis no defence to an action for specific performance, unless it is so great as to shock the moral senses of an indifferent man or the contract be tainted with fraud.[2]

<u>Title.</u> ~~He~~ It is one of the cardinal principles of equity that every purchaser of land is entitled to a marketable title, free from incumbrances and defects, unless he expressly stipulates to accept a defective title;[3] and such a marketable title is one which is free from reasonable doubt. A doubt exists where there is uncertainty as to some fact appearing in the course of the deduction of title, which affects the value of the lnad or interferes with it s sale.[4] If, however, the existence of the alleged fact, which is claimed or supposed to constitute a defect in or a cloud upon the title, is ~~with~~ the mere possibility of an outstanding right it is but a - very improbable or remote contingency, the court may, in

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(1) Seymour v. Delaney, 3 Cowen, 445.
(2) Viele v. Ry. Co. 21 Barb. 383.
(3) DeLevan v. Duncan, 49 N. Y. 485.
Vought v. Williams, 120 N. Y. 253.

exercise of a sound discretion, compel the purchaser to complete his contract.(1) But it seems that a court will not compel the purchaser to complete his contract, where the vendor's title depends upon a doubtful question of law, and others having rights dependent upon the same question are not parties to the action.(2) A clear title by adverse possession is such a title as the court of equity will compel a vendee to accept.(3)

Fry on Specific Performance (Sec. 870) says :"It is not easy to give any perfect classification of the doubts which would - - - - - prevail with the court, but the following attempt may not be useless. The court would it is conceived, consider the title doubtful in the following cases:

(1) Where the probability of litigation ensuing against the purchaser in respect of the matter in doubt, is considerable. The court, to use a favorite expression, will not compel thepurchaser to buy a law suit.

(2) Where there has been a decision by a court of

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(1) Cambrelling v. Porter, 125 N. Y. 610.
(2) Abbott v. James, 111 N. Y. 673; Chesman v. Cummings, 142 Mass. 68.
(3) Schriver v. Schriver, 86 N.Y. 581.

co-ordinate jurisdiction adverse to the title, or the principle on which the title rests, though the court thinks the decision wrong.

(3) Where there has been a decision in favor of the title which the court thinks wrong.

(4) Where the title depends upon the construction and legal operation of some ill-expressed and inartificial instrument, and the court holds the conclusion it arrives at to be open to reasonable doubt in some other court.

(5) Where the title rests upon a presumption of fact of such a kind that if the question of fact were before a jury, it would be the duty of th judge not to give a clear direction in favor of the fact, but to leave the jury to draw their own conclusion from the evidence.

(6) Where circumstances amount to a presumptive (though not necessarily conclusive) evidence of a fact fatal to the title; as that the exercise of a power under which the vendor claims was a fraud upon the power."

A title which avoids all of the above mentioned objections will, it is thought, be held a thoroughly marketable one and therefore capable of being forced upon

an unwilling purchaser.

Price. A court of equity will not decree the specific performance of a contract which involves the payment of a price, until the price to be paid shall be settled. The price must be ascertained before the decree can be given. When the contract specifies a particular mode of ascertaining the price which is essential, the contract is conditional until the ascertainemnt, and is absolute only when the pricehas beens ettled. If there be default in ascertaining the price the contract remains imperfect and incapable of being enforced. A contract for the sale of land, at a price to be agr4ed upon by the parties, will never be enforced in equity, for the reason that a further bargain must be made by the parties before the court can decree what the vendor shall receive for his land. But where the parties have agreed that the land is to be conveyed, at a fair valuation, without designating anyparticular method for ascertaining the price, the court may, without making the contract as certain the price according to the standard fixed by the contract and enforce the agreement. But if a contract specifies a mode of ascertaining the price, that mode

must be pursued. Where the value is to be settled by valuers to be selected by the parties, or by an umpire to be named by the valuers and such valuers will not act, or cannot agree as to the valuation or the umpire, the court will not interfere; nor can it compel the parties to act.(1)

Capacity of Parties. Both parties to the suit must have the legal capacity to contract. The defendant may always set up his own want of capacity and it would seem that as the remedial right must be mutual, he may also rely upon the want of capacity in the plaintiff. Though married wome were under many disabilities under the old law, which were partially removed in practise by the equity courts, still as now by force of the reform legislation in almost all of the states, they are placed ona par with men in all matters of contract, the difference no longer exists. Therefore we mayproperly say that one, who is competent in the eyes of the legal tribunal to contract, is now competent in the eyes of the equity tribubal,. Or in other words that the legal rules of capacity to contract apply in all cases of specific per formance.

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(1) Woodruffv. Woodruff, 44 N. J. Eq. 349;
Telegraph Co. v. Telephone Co. 30 N. J. Eq.160.

<u>Concluded Contract</u>. Finally, no proceedings in specific performance can be had, unless a contract has actually been concluded, that is unless two persons have agreed upon the same terms and mutually signified their assent to them. If what passed between them was but negotiation or arrangement, no specific performance can be had. The burden of proving a concluded contract is, of course, placed upon the plaintiff.[1]

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(1) Fry, Spec. Perf., Sec. 264.

THE STATUTE OF FRAUDS.

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The Statute of Frauds enacts that: "Every contract for the leasing for a longer period than one year, or for the sale ofany lands, shall be void, unless the contract, or some note or memorandum thereof, bein writing, and be subscribed by the party, by whom the sale or lease is to be made."

This statute, having for its object the prevention of frauds and perjuries, is as binding upon thecourt of equity as upon a court of law; and therefore equity will not relief against the moral wrong of refusing to perform an agreement which the statute forbids the courts to enforce,(1) but equity wil not allow a statute designed to prevent frauds to be made an instrument for committing or aiding them; and it will, therefore, give relief where a fraudulent action will be furthered by sustaining a defence of non-compliance with the statute.(2)

Though this is the general rule, section 10 of the

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(1) Durphy v. Ryan, 116 U. S. 491.
(2) Fry, Spec. Perf., Sec. 562.

New York Statute of frauds distinctly states that: "Nothing in this title contained shall be construed to abridge the powers of courts of equity to compel the specific performance of an agreement in cases of part performance of such agreements." Therefore while courts of law will not take notice of parol contracts for the sale of land, still courts of equity can and will enforce them in the following cases:

(1) Where the defendant admits the agreement and does not plead non-compliance with the statute of frauds, as a bar to a right of action.

(2) When a written agreement has been made impossible by the fraud or other wrong of the party defendant.

(3) Where there has been what is known in equity as a part performance of the contract.

PART PERFORMANCE

The doctrine of part performance is an old and thoroughly established one in both Engalnd and this country, and is enforced with promptness and despatch in most of our state courts.

The acts of part performance must be those of the party seeking performance of the contract, or of those under whom he claims title; but any act which the party to tha contract might have asserted or relied upon may be asserted and relied upon by those claiming under such party.(1) The acts must be such that but for the agreement they would not have been performed, and they must be acts from which the other party derives a benefit or would derive one were he permitted to escape his contract(2) Acts which are merely preparatory to performance are not sufficient to raise the necessary equity.(3) The payment of the whole or any part of the purchase price is not a part performance of the contract within the rules laid down in the equity code.(4) Though it would appear that

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(1) Brown v. Hoag, 35 Minn. 373.
(2) Frame v. Dawson, 14 Vesey, 386.
(3) Durphy v. Ryan, 116 U. S. 496.
(4) Peckham v. Baldi, 49 Mich. 179.

such payment if accompanied by any such acts as the assumption of possession, and the making of improvements, or by any acts difficult to compensate in damages, it would be a sufficient part performance.(1) As has been well said, "The underlying principle upon which courts of equity enforce oral agreements within the statute of frauds on the ground of part performance, is that when one of the parties has been induced to alter the situation on the faith of the oral agreement, to such an extent that a refusal to enforce it would result, not merely in the denial of the rights which the agreement was intended to confer, but in the infliction of an unjust and unconscientious injury and loss upon him, the other party will be held estopped by force of his acts from setting up the statute."

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(1) Bigelow v. Armor Co., 108 U. S. 10.

SUMMARY

Therefore as a summary, we may conclude that if a contract for the conveyance of land is in all respects fair, certain and free from ambiguities, and there are no insurmountable difficulties in the way of a practical enforcement, its performance will be specifically decreed. On the other hand if the contract is unconscionable or ambiguous, or if for any reason the court is of the opinion that the contract is one, which in equity and good conscience, ought not to be specifically enforced, it will decline to interfere and will leave the parties to obtain such redress as a court of law will give them.