1928

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Recommended Citation

Cox, Henry (1928) "Specific Performance of Contracts to Sell Land," Kentucky Law Journal: Vol. 16 : Iss. 4 , Article 6. Available at: https://uknowledge.uky.edu/klj/vol16/iss4/6

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SPECIFIC PERFORMANCE OF CONTRACTS TO SELL LAND

Various explanations have been seized on by the courts, in an endeavor to explain why a court of equity will in nearly every instance grant specific performance of a contract for the sale of land. Of these the explanation offered by Sir John Leach\(^1\) is often quoted by the courts and has a strong influence in directing the courts to decree specific performance. This explanation is that specific performance is given, not because of the real value of the land, but because the damages at law, which would be calculated upon the general money value of the land, may not be a complete remedy to the purchaser, to whom the land may have a peculiar and special value. It is taken for granted that damages would be inadequate, and specific performance is perforctorily granted. There is probably more historical accuracy in the reason given by Justice Peterson, to the effect that, "Equity adopts this principle, not because land is fertile, or rich in minerals, but because it is land, a favorite and favored subject in England and every country of Anglo-Saxon origin."\(^2\)

Whatever the explanation may be, it is generally undisputed that where land or any interest in land is the subject matter of an agreement, equity has jurisdiction to enforce specific performance, and it does not depend upon the inadequacy of the legal remedy in the particular case. It is as much a matter of course for the courts of equity to decree specific performance of a contract for the conveyance of real estate, which is in its nature unobjectionable, as it is for courts of law to give damages for its breach.\(^3\)

This is the generally accepted rule throughout the jurisdictions of this country. However, it has not been universally applied. In a case where the complainant (vendee) set up that he had contracted to convey the land in question to a third party for a certain price, and asked a conveyance from the defendant (vendor) who was solvent, for the purpose of making the conveyance to such third party, the bill showed that the vendee’s legal remedy was adequate, and was dismissed. Such was the

\(^1\)Adderly v. Dixon, 57 Eng. Reprint 239.
\(^2\)Kitchen v. Herring, 42 N. C. 190.
\(^3\)Clarke v. Cagle, 141 Ga. 703, 82 S. E. 21, 21 L. R. A. 1915A 367.
holding in Hazelton v. Miller, a District of Columbia case which was affirmed by the Supreme Court. To the rule applied in this case to this particular situation, there are exceptions and authority to say, that even if a contract is made concerning land merely for the purpose of transferring it to a third party, that equity will give specific performance. If the rights of the third party (purchaser of the vendee) are omitted for the sake of the contention, such a decision clearly gives specific relief because the subject matter is land. The vendee has no other interest than the realization of a profit from its sale. The land has no particular value to him. Damages could satisfy the same as delivery over the land itself. Yet such relief in the particular case has been allowed. But in South Carolina, the court has held that a contract for the sale of land will not be specifically enforced, where practically no earnest money has been paid, and the object of the purchaser in desiring enforcement was merely to speculate.

Pomeroy, in concluding his discussion of the specific performance of land contracts, says in part, 'Land is often, especially in this country, bought and held simply as merchandise, for mere purposes of pecuniary profit, possessing no interest in the eyes of the purchaser and owner, other than its market value. The jurisdiction, however, extends to these cases. The rule having once been established is now universally applied. The actual motives and designs of the purchaser are never inquired into, for it is assumed in every instance that damages are inadequate relief for the breach of a land contract.'

In the foregoing statement, the holding in Hazelton v. Miller and the few cases that follow that case are entirely ignored. Pomeroy, perhaps intended that any bearing that these exceptional cases would have on the law as it is generally accepted in this country would be too negligible for consideration. Clark, in his treatise of the subject, criticizes the holding in Hazelton v. Miller very severely. He says, 'In Hazelton v. Miller it was

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6 Schmidt v. Whittier, 103 S. E. (S. C.) 553.
7 Pomeroy on Specific Performance of Contracts, (Third Ed. sec. 10).
8 Clark on Principles of Equity, (sec. 43).
held that the fact that the plaintiff purchased, and contracted to
sell the land to a third person, showed that the plaintiff had an
adequate remedy at law, and hence was not entitled to specific
performance. This holding is objectionable, not only because
specific performance in land contracts has become a matter of
right, but also because it deprives the third person of specific
performance; furthermore, it subjects the plaintiff to an action
for damages at the suit of the third person, and while it is pos-
sible that he will be able to collect from the original vendor an
equivalent amount, such a result seems inconsistent with the de-
sire of equity to prevent a multiplicity of suits." Both of these
eminent authorities seem to be fully in sympathy with the view
that where land is the subject matter of the contract, that speci-
fic performance should be decreed. Clark expresses the opinion
that it is doubtful if this holding or any others of like tenor will
be followed. A case following *Hazelton v. Miller* is commented
on in volume eighteen of the Harvard Law Review." The writer
remarked, that the court entirely overlooked the fact that by
refusing plaintiff the relief requested, that was not only expos-
ing him to an action by his purchaser, but was also depriving
the latter of his right to specific performance of his contract.

These criticisms seem well grounded, especially in the last
instance mentioned. Land is what the third party has bargained
for. Damages at law may be entirely unsatisfactory to him, yet
he is forced to accept damages instead of the land because the
party from whom he has purchased is as adequately compensated
with damages as he would be with the land itself. It is doubtful
that the case of *Hazelton v. Miller* extends this far. While the
bill alleged that the vendee had entered into a binding con-
tract with a third party, it did not show that the third party
was asking performance of the contract by the vendee. If the
original vendor and vendee are the only ones involved, then
the court is possibly in a better position to award damages, but
where the third party is demanding specific performance, dam-
ages are not sufficient.

Maine and Pennsylvania are jurisdictions that require an
allegation of inadequacy of remedy at law under provisions of

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*Shafer v. Russell*, 79 Pac. (Utah), 559, 18 Harvard Law Re-
view 625.
a statute. Unless the plaintiff is able to make such allegation, the relief requested is denied.\textsuperscript{10}

In Kentucky, the rule appears to be, although there is no direct language to the effect, that if a contract to convey land is not otherwise objectionable, the court of chancery will decree specific performance, and it is not incumbent upon the party seeking such relief to show that his remedy at law would be inadequate. In the following language of the court, speaking of contracts for the sale of land, it would appear that Kentucky is with the overwhelming weight of authority. "Whether we consider the contract on the part of Beal as executed or not, the ground upon which a court of equity may take jurisdiction of the case, is equally manifest. Considering the contract as unexecuted on the part of Beal, as it is on the part of M'Gee, it would be the peculiar province of a court of equity to decree its specific execution; and it is well settled, that either vendor or vendee may resort to a court of equity for that purpose."\textsuperscript{11} In the case of \textit{Mills v. Metcalf},\textsuperscript{12} the court in reversing the lower court for sustaining a demurrer to plaintiff's plea for specific performance, said, "Where the contract for land has not been performed, though a party complaining might have had an action at law on his covenant, yet he may resort to equity for specific performance, and may shape his bill for specific performance or cancellation of the contract."

Other and later cases\textsuperscript{13} have held, that specific performance of a contract for the sale of real estate does not go as a matter of course; but is withheld or granted according to equity and justice may seem to demand under the circumstances in the case. A first impression of such language would seem to be contrary to the holdings in the earlier cases, but in reality the court only has reference to those cases where it would be manifestly inequitable to decree specific performance, due to some other objectionable feature of the contract, and not because the plaintiff could be compensated in damages.

\textsuperscript{10} Porter \textit{v. Frenchman Bay \& Mt. Land \& Water Co.}, 84 Me. 195, 24 Atl. 814; Kaughman's Appeal, 55 Penn. St. 383.
\textsuperscript{11} M'Gee \textit{v. Bell}, 3 Littell 190.
\textsuperscript{12} 8 Ky. (1 A. K. Marsh) 477.
From these observations, the status of the law today upon this question can not be disputed. Excluding those cases, that are treated more or less as anomalies in the law, it can be safely said that it is the universal rule that specific performance will be given in any contract for the sale of land.

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