

SUPREME COURT OF ALABAMA

1631 Second Avenue North, L.L.C. v. Raine

963 So. 2d 71 (Ala. 2007) · No. 1051463 · Decided February 9, 2007

SUMMARY

The Supreme Court of Alabama affirmed summary judgment against a purchaser seeking damages and specific performance pro tanto from sellers who owned only part of the property described in the contract. The court held that the trial court did not commit palpable error in declining to order partial specific performance, considering the potential cotenancy with strangers and other contractual circumstances. The opinion discusses the equitable nature and discretionary availability of specific performance pro tanto.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Per curiam; Cobb, C.J.; Woodall, J.; Smith, J.; Parker, J.
JURISDICTION	Alabama
DECIDED	February 9, 2007
DOCKET	1051463
DISPOSITION	affirmed
PROCEDURAL POSTURE	The purchaser appealed a certified final summary judgment entered in favor of the sellers and intervenor LeerCorp on the purchaser's claim for specific performance pro tanto. The claim for damages remained pending below.
STANDARD OF REVIEW	A trial court's decision whether to grant specific performance is reviewed for palpable error because the remedy rests largely in the trial court's discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	1631 Second Avenue North, L.L.C. v. Sam Raine III, Antoinette Raine

TOPICS

- specific performance real estate
- equitable relief
- remedies
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court committed palpable error by declining to order specific performance pro tanto of the purchaser's contract against the sellers' partial interests in the property.
2. Whether the potential creation of a cotenancy between the purchaser and property owners who were strangers to it could be considered in deciding whether specific performance pro tanto was equitable.

HOLDINGS

1. Specific performance is not available as a matter of right; its grant depends on equitable consideration of the particular circumstances and rests largely in the trial court's discretion.
2. The trial court may consider the potential creation of a cotenancy between the purchaser and strangers to the transaction when deciding whether to grant specific performance pro tanto.

KEY QUOTATIONS

"The decision to grant specific performance rests largely in the discretion of the trial judge." (74)

"Neither party to a contract is entitled to specific performance as a matter of right," but "whether relief shall be granted depends upon an equitable consideration of the particular circumstances of each case." (75)

FACTUAL BACKGROUND

1631 Second Avenue North contracted to purchase the Cabana Hotel for \$1.1 million, but the contract identified the seller as the nonexistent entity Cabana Hotel Group and was signed only by Sam Raine III and Antoinette Raine, who owned only portions of the property. The property also had substantial delinquent taxes and title issues, and the other owners of portions of the hotel and related property did not sign the contract. After the sellers entered a later contract with LeerCorp, the purchaser sought to enforce its agreement against the interests owned by the Raines, which would have created a cotenancy with strangers to the purchaser.

PROCEDURAL HISTORY

1631 Second Avenue North sued Sam Raine III and Antoinette Raine seeking damages and specific performance pro tanto of a contract to purchase the Cabana Hotel. LeerCorp intervened after entering a later contract to purchase the hotel, and the parties filed competing summary-judgment motions. The trial court entered summary judgment for the Raines and LeerCorp, denied the purchaser's motion, and certified its ruling on specific performance pro tanto as final and appealable. The Supreme Court of Alabama affirmed.

DISPOSITION

affirmed

CASES CITED

- *Saliba v. Brackin*, 260 Ala. 103, 69 So. 2d 267 (1953)

- Stringfellow Materials, Inc. v. Lee, 438 So. 2d 1387 (Ala. 1983)
- Dendy v. Anchor Constr. Co., 294 Ala. 120, 313 So. 2d 164 (1975)
- Lee v. Crane, 270 Ala. 651, 120 So. 2d 702 (1960)
- Carlisle v. Carlisle, 77 Ala. 339 (1884)
- Pearce v. Third Avenue Improvement Co., 221 Ala. 209, 128 So. 396 (1930)

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