

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FILED

APR 30 1981

CLERK, U. S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

CURTIS L. RUDOLPH,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 75-0540-R
)
CAMERON-BROWN COMPANY,)
)
Defendant.)

MEMORANDUM AND ORDER

The defendant Cameron-Brown Company has moved this court for summary judgment in its favor on Count I of the Amended Complaint. Both the plaintiff and the defendant submitted briefs and oral argument was heard on April 23, 1981. Having had the benefit of the briefs and arguments of counsel, the court is of the opinion that the motion should be sustained.

On February 10, 1975 the plaintiff Rudolph filed a suit in the Circuit Court of Stafford County against Urban Development Company. Rudolph sought specific performance of a contract between Urban, the seller, and him, the buyer, for the sale of 42 townhouse lots located in Section III of the Olde Forge Subdivision, Stafford County.

Rudolph amended his bill on March 31, 1975 to add Cameron-Brown as a defendant. He alleged that Cameron-Brown had breached an agreement with Urban to release the same 42 lots from its deed of trust lien. Allegedly, Rudolph was a third party beneficiary of an agreement between Cameron-Brown and Urban whereby Cameron-Brown agreed to release its deed of trust lien for \$5,300 per lot, totalling \$222,600. Rudolph prayed that Cameron-Brown be ordered to perform the agreement and for "such other relief as may be equitable, including the reimbursement of reasonable attorney's fees and costs, and such losses and expenses as may be inflicted by Cameron-Brown's wanton disregard of its indisputable obligations. . . ."

On June 25, 1976 in open court, counsel for Rudolph stated his intention to abandon the claim for specific performance and damages:

THE COURT: Under the terms of the deed of trust are you telling me that once the balance due Cameron-Brown, the full amount due can be ascertained, that Mr. Rudolph will pay Cameron-Brown in full and secure a release of the entire fifty-three lots?

MR. PEARSALL: Yes, Your Honor. But as a safeguard he has to make sure that it is correct.

THE COURT: Are you suggesting then --

MR. PEARSALL: (Interposing) Mr. Leadbetter [the Commissioner] had the advantage of having heard quite a bit of testimony that will be german [sic] to this, relative to the eleven, and we are still talking about the same deed of trust.

THE COURT: You are proposing to abandon all claims to a specific performance alleged in the agreement in 1974?

MR. PEARSALL: After this length of time we would leave that alone.

THE COURT: You are proposing this be referred to Mr. Leadbetter to ascertain upon proper proof the full amount due Cameron-Brown, and upon that determination, and having been held by the Court, Mr. Rudolph will pay that amount in full and secure the release of the deed of trust?

MR. PEARSALL: That is what he wants to do, Your Honor. That is what we are here to ask you to permit him to do.

THE COURT: And that, in your opinion, would resolve the issues raised in this suit?

MR. PEARSALL: Clearly, Your Honor, because that would be performance of the warranty which he gave, which he hoped he would be able to perform long before now....

A July 19, 1976 decree deleted the claim for specific performance. The claim for damages incurred as a result of Cameron-Brown's breach was not expressly deleted by the decree.

The matter was heard during a seven day period by the Commissioner in Chancery. The Commissioner issued a report on October 2, 1979, finding that Cameron-Brown had agreed to release the lien on the 42 lots; that it could

recover no more than \$5,300 per lot under the release agreement; that Rudolph was a third-party beneficiary of the release agreement and had a duty to pay Cameron-Brown \$222,600 to obtain the release.

The Commissioner found that Cameron-Brown had not acted in such an inequitable fashion that it would be proper to relieve Rudolph of the burden of paying \$222,600 for release of the mortgage lien. The Stafford Circuit Court confirmed the Commissioner's report in a final decree dated February 27, 1980.

This action was filed on October 17, 1975, by the plaintiff Rudolph against the defendant Cameron-Brown, seeking relief for, inter alia, damages arising from the breach of the release agreement between Cameron-Brown and Urban. Once again, Rudolph alleges he is a third-party beneficiary of the agreement. Specifically, Count I of the amended complaint seeks damages "inflicted by the aforesaid delays and refusals of performance by Cameron-Brown of its contractual obligation to release said townhouses from its land development mortgage. . ." Amended Complaint, ¶ 62. Thus, in this action, as in the earlier Stafford County proceeding, the same plaintiff seeks relief from the same defendant for breach of the same contract despite final judgment on the merits on the earlier action by the Stafford Circuit Court.

The Supreme Court of Virginia has held that under the doctrine of res judicata, that "no person shall be twice vexed for one and the same cause." Diamond State Iron Company v. Alex K. Rarig Company, 93 Va. 595, 25 S.E. 894, 897 (1896). It has further recognized that:

The doctrine of res adjudicata applies as to all matters which existed at the time of giving the judgment or rendering the decree and which the plaintiff had the opportunity of bringing before the court.

McDaniel v. McDaniel, 175 Va. 402, 408, 9 S.E.2d 360 (1940); Griffin v. Griffin, 183 Va. 443, 32 S.E.2d 700 (1945); Doummar v. Doummar, 210 Va. 189, 169 S.E.2d 454 (1969); Bates v.

Devers, 214 Va. 667, 202 S.E.2d 917 (1974).

Both actions were based upon the same cause of action - the breach of the release agreement. There is but one cause of action for the breach of a contract, one opportunity to litigate it and one judgment available to the plaintiff.

Shepherd v. Richmond Engineering Co., Inc., 184 Va. 802, 36 S.E.2d 531 (1946); Jones v. Morris Plan Bank, 168 Va. 284, 191 S.E. 608 (1937); Hancock v. White Hall Tobacco Warehouse Co., 102 Va. 239, 46 S.E. 288 (1904).

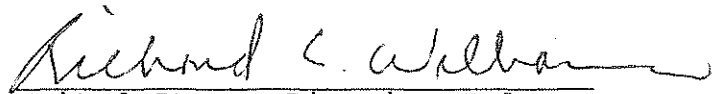
Rudolph clearly could have sought the relief prayed for here in the Stafford Circuit Court. Worrie v. Boze, 198 Va. 533, 95 S.E.2d 192 (1956); Steindler v. Virginia Public Service Co., 163 Va. 462, 175 S.E. 888 (1934); Vaught v. Meador, 99 Va. 569, 39 S.E. 225 (1901); Grubb v. Sharkey, 90 Va. 831, 20 S.E. 784 (1894).

It was at Rudolph's specific request, fifteen months into the state court litigation, that the claim for specific performance was deleted. The claim for "other relief" . . . "inflicted by Cameron-Brown Company's wanton disregard of its indisputable obligations" was never deleted. Amended Bill, ¶ (h). The Circuit Court intended total relief on Rudolph's breach of contract claim when it required that the defendant release its lien on the 42 townhouse lots for \$222,600 and that that amount, deposited with the court by Rudolph, be paid to Cameron-Brown.

The plaintiff has urged the court that his state court action, after he dropped his demand for specific performance, was an in rem proceeding to determine liens on the 42 lots. The instant action, he urges, is an in personam action to determine damages resulting from the breach. Plaintiff argues that by engaging in the semantic niceties of labelling his cause of action "in rem" as opposed to "in personam" that traditional concepts of res judicata become no longer applicable. This court will not allow such playing with words. One claim is one claim, despite the branding on

of labels of questionable applicability. One day in court on one claim is enough. Rudolph's breach of contract claim, alleged in Count I of the amended complaint, is barred by res judicata. Accordingly, it is ORDERED:

1. That the defendant's motion for partial summary judgment is sustained; and
2. Count I of the amended complaint is dismissed.


United States District Judge

Date: April 30, 1981