

NO. 9067 EQUITY.

Graysen H. Staley

In the Circuit Court for Frederick

VS.

County, sitting as a Court of

Agnes V. Coblentz.

Equity.

OPINION AND DECREE OF COURT.

On May 12, 1913, the defendant, Mrs. Agnes V. Coblentz, wife of Thomas C. Coblentz, entered into an agreement in writing with the plaintiff Graysen H. Staley, for the purchase by her from him of a lot of land and improvements, situated at Braddock Heights in this County, for the sum of \$3500.00, part of which (\$200.00) was to be paid in cash and the residue (\$3300.00) on or before August 15, 1913.

Soon after the signing of the contract the defendant and her family moved into and occupied the dwelling house or bungalow on the lot in question and remained therein possession and occupancy all the summer of 1913, vacating it some time during the month of September in that year.

The Plaintiff stated in his testimony that he had always been ready and willing to comply with the terms of the contract of sale, but that the defendant, although she had been given an extension of time for the payment of the balance due of the purchase money, from August 15th to September 1st, had failed to comply with the terms of the contract and had refused so to do.

The original Bill of Complaint in this case was accordingly filed September 26, 1913 and an amended Bill December 13, 1913, praying for specific performance of the contract of sale on the part of the defendant.

The defendant by her answer relies upon two defenses--

First--That the Plaintiff at the time of the sale to her of the property in question under the specific contract of sale, verbally promised and agreed with her to secure a tenant for the property and that he did not secure such tenant.

Second--That there are certain restrictions, limitations and reservations in the Plaintiff's deed for the property which run with the land and render it impossible for him to give a title free and clear of incumbrances.

I will deal with both of these defenses in their order. First--as to the promise to secure a tenant for the property. As to this, both Mr. and Mrs. Coblentz testify that the Plaintiff "guaranteed" to get defendant a tenant, while Mr. Staley the Plaintiff, testifies that he only promised to get them a tenant if he could and that he believed he could.

Of course any misrepresentation of a material fact is a good defense to a suit for specific performance. But the misrepresentation must be of a material fact and not a mere promise or statement of intention,

36 Cyc., 601.

And where the misrepresentation relates merely to some incidental, subordinate or collateral feature, the Court may decree specific performance with an abatement of price or other form of compensation to the defendant.

Pomeroy Spec. Per., sec. 217.

And where the misrepresentation is not a material fact but a mere promise to do something in the future, there is no such misrepresentation as will avoid the contract or furnish a good defense in action for specific performance,