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PLEADING AND PRACTICE

Partial Specific Performance and the Rights of Third Parties

It is a well established general rule that when one enters into a contract for the sale of land and agrees to convey an estate greater in quantity or quality than that which he has, the vendee may compel the vendor to convey that interest which he does have with an abatement in purchase price for any deficiency. The rule, however, is subject to an important limitation, for, although as a general rule such partial performance will be granted, the granting or denial in any particular action rests solely within the courts' discretion guided by established tests and sound principles of equity.

The existence of this limitation upon the right to partial specific performance raises a significant question. Under what circumstances will a court of equity feel compelled to exercise its discretionary powers to deny such performance? Although it must be immediately recognized that, "no positive rule can be laid down by which the action of the court can be determined in all cases," the recent decision of The Supreme Court of Appeals of Virginia in the case of Hawks v. Sparks indicates important tests which may be applied by the courts. The facts of the case were substantially as follows: By virtue of conveyance, Charlie R. Sparks held a life estate in a tract of land, remainder to his heirs, subject to a contingent life estate in C. O. Sparks, his brother, if the latter should survive Charlie R. Sparks.

Charlie R. Sparks, his wife and C. O. Sparks executed a contract in which they agreed to sell the tract to J. E. Hawks. Before the transaction was completed doubt developed as to whether the parties could convey good title since the children of Sparks, contingent remainderman, were not subject to the provisions of

the contract. As a result Hawks neglected to complete the trans-
action and indicated no interest in partial performance for five
years.

While affirming the general rule stated above, the court de-
nied partial performance of the contract on three bases: (1) The
petitioner delayed unreasonably in asserting his right, (2) the
agreement of the parties contemplated the sale of the entire
estate and nothing less, and (3) if the decree were granted, the
petitioner, standing in no special parental relationship, would
share the interest with the infants and heirs and thus be in a posi-
tion to force a partition sale detrimental to their interests.

Concerning the first two bases of denial the court followed
rulings in previous cases. It has long been held in Virginia that
the party who desires specific performance must be eager to
assert, his right and willingness to perform his part of the bar-
gain, not backward and indifferent. Also unmolested is the
courts ruling in Raney v. Barnes Lumber Corporation, which
held that when the parties do not contemplate the conveyance of
less than the entire estate specific performance will be denied.

Of most interest in the principal decision is the third basis
of denial, for it appears the court expanded upon the bases of
denial to which it previously adhered. It seems that a Virginia
court has never before indicated that injury to third parties is an
element, or test to be considered with reference to the granting
or refusal of partial performance. Nor does it appear that the
question of third parties' rights has previously been placed square-
ly before the court. It would thus seem that a new test has been
formulated for application in cases calling for partial specific
performance of land contracts.

Although only the Virginia Court can determine the validity
of the above conclusion it is possible to turn to other jurisdic-
tions for perspective. In the leading case of Pauley v. Hadlock, the
court denied partial performance when a

5 Dunsmore v. Lyle, supra note 2, at 393.
6 Raney v. Barnes Lumber Corp., supra note 2, at 969; For recent Alabama
decision following see, Jones v. McGivern, 147 So.2d 813, Ala. (1962).
father attempted to convey an estate in which his minor children had an interest, because the decree would compromise the rights of the children. This case was in turn cited by the Appellate Court of the District of Columbia, in the case of *Thalis v. Wurdeman*, in ruling that a decree would not be granted when the rights of third parties were unduly injured. It is significant to note that in these cases injury to a third party constituted a sufficient basis to warrant denial. More recently the Oregon Court in *Van Horn Construction Co. v. Joy*, indicated its acceptance of the rule. Though all jurisdictions have not recognized injury to third parties as a factor for consideration in reaching a decision as to a bill for partial performance, it does seem to be the developing rule.

In the opinion of this writer, it would appear the Virginia Court has adopted the rule expressed in other jurisdictions and as a general proposition would deny partial specific performance where third parties would be injured by an affirmative decree. There seems to be no reason to establish any qualifications of the rule, beyond the necessary detriment to the third party. In any event there is a strong indication the view of the Virginia Court is at least tending toward the rule established in other jurisdictions and the ruling in the case of *Hawks v. Sparks* should prove a useful guide in considering requests for partial specific performance in the future.

S. M.

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8 *Thalis v. Wurdeman*, 121 F.2d 70 CDC (1941).
10 *Jones v. McGivern*, supra Note 6, Rights of Third Parties not considered in denial.