

512
McHUGH & HAMILTON, ET AL,
COMPLAINANTS.

VS.

HATTIE VEGLIACICH,
RESPONDENT.

: IN THE CIRCUIT COURT OF BALDWIN
: COUNTY,
: A L A B A M A.
: IN EQUITY.
:

TO THE HONORABLE JOHN D. LEIGH, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Your Orators, J.E.McHugh and Henry C.Hamilton, as partners doing business under the name and style of McHugh & Hamilton, and W.G.McConnell, complainants, bring this their bill of complaint against Hattie Vegliacich, respondent, and your Orators complain and say:

FIRST.

That complainants, J.E.McHugh and Henry C.Hamilton, reside in Mobile, Mobile County, Alabama, and each of them is over the age of twenty-one years; that complainant, W.G.McConnell, resides in Fairhope, Baldwin County, Alabama, and is over the age of twenty-one years; that the respondent, Hattie Vegliacich, resides in Mobile, Mobile County, Alabama, and is over the age of twenty-one years.

SECOND.

That the respondent, Hattie Vegliacich, owns at this time, and during all of the time herein referred to has owned, X that certain real estate located in the County of Baldwin, and State of Alabama, more particularly described as Lot No. Two of the Caleb Dana Subdivision, being a part of Fractional Section Six, of Township Seven South, of Range Two East, of the St. Stephens Meridian, all as more fully shown by a plat thereof made by John Peebles, C.S., on February 5th., 1861, which plat is recorded in the office of the Judge of the Probate Court of Baldwin County, Alabama, in Record Book No. "X", at pages 702-703.

THIRD.

That on, to-wit, the 19th. day of May, 1925, the respondent, Hattie Vegliacich, entered into a written contract and agreement with the complainants, McHugh & Hamilton, by the terms

of which she appointed McHugh & Hamilton her exclusive agents to make sale of the real estate described in the second paragraph hereof, at the price of \$4,500.00 cash; that under the terms of the said contract the said Hattie Vegliacich agreed to pay a cash commission of five per cent of the price obtained to the said McHugh & Hamilton, and the said agreement contained a provision to the effect that the same should continue in force for one month from the date thereof, the said Hattie Vegliacich agreeing to furnish a complete and merchantable abstract down to the date of sale, and the said Hattie Vegliacich further agreeing to make a good title and to give a warranty deed in the event the said McHugh & Hamilton secured a purchaser for the said property, taxes, rents and insurance to be pro rated to the date of delivery of the deed.

FOURTH.

Your Orators further show unto your Honor that subsequent to the execution and delivery to the complainants, McHugh & Hamilton, of the said contract of May 19th., 1925, and within the period of one month from that date, the said McHugh & Hamilton offered and contracted in their own name to sell the said property hereinabove described to the complainant, W.G. McConnell, at and for the price of \$4,500.00, and complainant, W.G. McConnell, accepted said offer and paid the said sum into the hands of the complainants, McHugh & Hamilton, in cash, and complainants, McHugh & Hamilton, thereupon demanded of the respondent, Hattie Vegliacich, a complete and merchantable abstract down to the date of sale, and the said abstract of title was furnished by the said Hattie Vegliacich and was accepted by complainants, and complainants, McHugh & Hamilton, advised the said respondent, Hattie Vegliacich, that they were ready, able and willing to complete the purchase of said property by paying to her the sum of forty-five hundred dollars upon receipt of a warranty deed from her covering the above described property and have requested the said deed to be made to the complainant, W.G. McConnell, as grantee, and the said respondent, Hattie Vegliacich, has refused and failed and still refuses to give to complainants, or either of them, a

✓

warranty deed covering the said property.

FIFTH.

Your Orators further show that subsequent to the execution and delivery of the contract between complainants, McHugh & Hamilton, and the respondent, Hattie Vegliacich, hereinabove referred to, and subsequent to the sale of said property thereunder by the said McHugh & Hamilton to the complainant, W.G. McConnell, the complainants, relying on the good faith and credit of the respondent's said promise to make a deed covering the said property, and believing that she would carry out that promise according to the terms and provisions of her said written contract to convey said property, contracted to sell the said property to a purchaser at a considerable profit and obligated themselves to furnish a good title to the said purchaser, and they now show that they are unable to carry out this promise without a deed from the respondent, Hattie Vegliacich, as promised in her said contract. Complainants further show that their said purchaser is now ready, able and willing to take said property and pay the purchase price therefor provided a good title can be delivered, but will not accept the said property without a deed from the respondent, and unless a good and sufficient title is tendered within a reasonable time he may not carry out his promise to purchase, in which case complainants will lose large sums of money and may become liable to their said purchaser in a considerable amount for breach of their contract to convey. Complainants further show that they are informed and believe, and upon such information and belief state, that the respondent, Hattie Vegliacich, has no property other than the property hereinabove described, and that, disregarding complainants' right in the premises, she is trying to sell said property to other purchasers and in event she succeeds in disposing of the same, she will probably be unable to respond in damages to complainants for damage sustained by them arising by reason of respondent's breach of her said contract.

SIXTH.

Your Orators further show unto your Honor that this

Honorable Court has jurisdiction to compel the carrying out of said contract of sale by the said Hattie Vegliacich, and your Orators submit that under the facts hereinabove set forth they are entitled to a specific performance by the said Hattie Vegliacich of the said contract of sale, and your Orators now show unto your Honor that they are able, ready and willing to complete the purchase of said property under the terms of contract between respondent and McHugh & Hamilton hereinabove referred to, and they hereby offer to pay over to the said Hattie Vegliacich the said sum of \$4,500.00 upon delivery of said warranty deed to complainants, or either or all of them, and in event your Honor should deem it necessary or proper that Orators pay into court the said sum of \$4,500.00 your Orators are able, ready and willing to make such payment into the registry of this Court.

Wherefore, the premises considered, your Orators respectfully pray the Court as follows:

PRAYER FOR PROCESS.

That the said Hattie Vegliacich be made a party defendant to this bill of complaint and that she be brought into court by personal service and in all respects as required by law and by the practice of this Honorable Court.

PRAYER FOR RELIEF.

That upon the hearing of this cause, it be ordered, adjudged and decreed by the Court that your Orators are entitled to have a specific performance by the said respondent of the contract of sale hereinabove referred to, and that an appropriate decree be entered, ordering and commanding the said Hattie Vegliacich to forthwith execute and deliver to your Orators upon payment of said sum of \$4,500.00, a warranty deed covering the property hereinabove described, or that upon her failure to execute and deliver said deed to your Orators, a deed conveying all her interest in said property hereinabove described to your Orators be executed and delivered to complainants or to whichever of them your Honor will direct, by the Register of this Court for and in the name of the said Hattie Vegliacich. Complainants further

pray that your Honor will order a reference to ascertain what damages complainants suffered by reason of the said respondent's failure and refusal to carry out her promise to make such deed, and will enter a money decree against her for such sum as is so found to be due.

Your Orators pray for all such other, further and general relief as they may be equitably entitled to, the premises considered.

And Orators will ever pray, etc.

Aterens, Dr Coney, Dr Zood, Zooder, Turner,
W. C. Miller & Co.
Solicitors for Complainant.

FOOT NOTE:

The above named respondent is required to answer each paragraph of the foregoing bill of complaint numbered from First to Sixth, both inclusive, but not under oath, the benefit whereof is hereby expressly waived.

Aterens, Dr Coney, Dr Zood, Zooder, Turner,
W. C. Miller & Co.
Solicitors for Complainant.

McHUGH & HAMILTON,
ET AL,
COMPLAINANTS

-VS-

HATTIE VEGLIACICH,
RESPONDENT

IN THE CIRCUIT COURT OF BALDWIN COUNTY
ALABAMA. IN EQUITY

Now comes the Respondent and for answer to the Bill of Complaint exhibited against her in this cause answering says:

1. For answer to the first paragraph of the Bill of Complaint, Respondent admits the allegations thereof.
2. Answering the second paragraph the Respondent admits the allegations thereof.
3. Answering the third paragraph of the Bill of Complaint the Respondent says: The Respondent denies that she entered into a written contract on May 29th, 1925, or at any other time, with the complainants, McHugh and Hamilton, by the terms of which she appointed McHugh and Hamilton her exclusive agents to make sale of the real estate described in said Bill of Complaint. She further denies that she has ever made any contracts with said McHugh and Hamilton for the sale of any real estate owned by her, but, on the other hand alleges that said written contract and agreement set out in the third paragraph of said Bill of Complaint was not signed by her, or by any one authorized by her, in writing; that she did not execute the said written contract or agreement or authorize in writing any one to execute the same; that said McHugh and Hamilton were not appointed by her by an instrument in writing as her agents to make sale of any real estate owned by the said Respondent and the said McHugh and Hamilton were not authorized by the Respondent to make sale of any real estate owned by this Respondent.
4. Answering the fourth paragraph of said Bill this Respondent says that she is not informed as to whether McHugh and Hamilton offered or contracted in their own name to sell the property herein above described and therefore she denies the allegations of the said paragraph. This Respondent further alleges in this respect that the said McHugh and Hamilton were not authorized by her in writing to sell said property to the Complainant, W. G. McConnell, or to any one else for her. The Respondent further

admits that she has refused and still refuses to give to the Complainants, or to either of them, a warranty deed covering the said property; that the said Respondent made no agreement in writing with said Complainants, or either of them, whereby she was bound to sell and convey the said property at the price set out in said paragraph, or at any other price, and that the said McHugh and Hamilton were not authorized in writing to make any sale of any property for this Respondent.

5. Answering the fifth paragraph of said Complaint this Respondent denies the allegations thereof and demands strict proof of the same in so far as the same may be material.

6. Answering the sixth paragraph of said Bill this Respondent says that while this Court has jurisdiction to compel specific performance of valid and legal contracts for the sale of real estate yet she respectfully submits that the purported contract of sale set out in said Bill was no contract with this Respondent in as much as the said contract involves the sale and conveyance of real estate and in order to be valid and binding upon her, the said contract must be in writing, signed by her, or by her agent duly authorized to execute the same for her, which authority must also be in writing; that this Respondent has executed no contract in her own name, nor has she authorized any one in writing to execute a contract in her name, for the sale of the real estate described in said bill; that no part of the purchase money as alleged in the said contract has been paid to this Respondent, nor has this Respondent placed any one in possession of said property; that this Respondent is still in possession, holds and claims the said property as owner thereof, without obligation of any sort to convey the same to anyone.

WHEREFORE Respondent having fully answered this Bill of Complaint prays to be hence dismissed with her reasonable costs in this behalf expended.

L. A. and Chamberlain
SOLICITORS FOR RESPONDENT.

Hattie Vegliacich
RESPONDENT

STATE OF ALABAMA
COUNTY OF MOBILE

Before me, *Quinn E. Hamann*, a Notary Public
in and for said State and County, personally appeared Hattie Vegliacich,

who being by me first duly sworn deposes and says: that she is the Respondent in the above entitled cause; that she has read the answers hereinabove set out to the Bill of Complaint exhibited against her in this cause; that the allegations of said answers are true.

Hattie V. Branch

Subscribed and sworn to before me,
this the 9th day of September 1925.

James E. Lawrence
NOTARY PUBLIC MOBILE COUNTY ALABAMA.