

CASES ON EQUITABLE REMEDIES

SPECIFIC PERFORMANCE

Nutbrown v Thornton (1804) 10 Ves 159

Specific performance was ordered of a contract to supply machinery which could not be readily obtained elsewhere.

Cohen v Roche [1927] 1 KB 169

The court refused specific performance to a buyer of a set of Hepplewhite chairs saying that they were 'ordinary articles of commerce and of no special value or interest'. Note: the buyer was contracting with a view to resale and for personal use.

Beswick v Beswick [1968] AC 58

A nephew promised his Uncle to pay an annuity to his Aunty in consideration of the Uncle transferring the goodwill of the business to the nephew. The Aunty was not a party to the contract. The court held that it could be specifically enforced by the Uncle's personal representative (the Aunty) against the nephew. Damages would have been purely nominal as the promisee or his estate had suffered no loss. The nephew would have been unjustly enriched by being allowed to retain the entire benefit of the uncle's performance without performing his own promise.

Walters v Morgan (1861)

The defendant agreed to grant the plaintiff a mining lease over land he had just bought. Specific performance was refused as the plaintiff had produced a draft lease and induced the defendant to sign the agreement in ignorance of the value of the property. The plaintiff had hurried the defendant into signing the lease before he knew the value of the property.

Lamare v Dixon (1873) LR 6 HL 414

The plaintiff induced the defendant to agree to take a lease of cellars by orally promising they would be made dry. The promise had no effect as a misrepresentation as it related to the future. The court refused the plaintiff specific performance since he had made no attempt to perform his promise.

Patel v Ali [1984] 1 All ER 978

The vendor and her husband were co-owners of the house they contracted to sell in 1979. The husband's bankruptcy caused delay in completion. After the contract the vendor got bone cancer, had a leg amputated and later gave birth to her second and third children. The purchaser obtained specific performance, against which the vendor appealed on grounds of hardship. She spoke little English and relied on friends and relatives for help, hence it would be hardship to leave the house and move away. It was held that the court could in a proper case refuse specific performance on the grounds of hardship subsequent to the contract, even if not caused by the plaintiff and not related to the subject matter. On the facts, there would be hardship amounting to injustice, therefore damages were awarded.

***Wolverhampton Corp v Emmons* [1901] 1 KB 515**

The plaintiff acquired land for an improvement scheme and sold part of it to the defendant, who covenanted to demolish houses on it and build new ones. The demolition was carried out and plans for new houses approved. The defendant then refused to continue. It was held that specific performance would be ordered since the defendant's obligations were precisely defined by the plans, and damages would be inadequate because the defendant had possession of the site, and the plaintiff could not get the work done by employing another contractor.

***Ryan v Mutual Tontine Assoc* [1893] 1 Ch 116**

A lease of a service flat provided that the lessors should provide a porter who was to be 'constantly in attendance'. It was held that this undertaking could not be specifically enforced. It would require 'that constant superintendence by the court which the court has always in such cases declined to give'.

***Posner v Scott-Lewis* [1987] 3 All ER 513**

The court granted an application for specific performance of a lessor's covenant to employ a resident porter for certain duties. The court distinguished *Ryan v Mutual Tontine*, where supervision of the execution of the undertaking had been required. Here neither personal services, nor a continuous series of acts, were required, but merely the execution of an agreement containing provisions for such services.

***Co-Op Insurance v Argyll Stores* [1997] 3 All ER 297**

The defendants leased a shopping unit for 35 years and covenanted to use it as a supermarket and keep it open during the usual hours of business. The defendant gave notice to the plaintiffs of their intention to close the supermarket, which had made a substantial loss the previous trading year.

The House of Lords held that a covenant in a lease of retail premises to keep open for trade during the usual hours of business was not, other than in exceptional circumstances, specifically enforceable, since it was the settled practice of the court not to make an order requiring a person to carry on a business. That practice was based on sound sense, as such an order required constant supervision, was only enforceable by the quasi-criminal procedure of punishment for contempt and might cause injustice by allowing the plaintiff to enrich himself at the defendant's expense if the defendant was forced to run a business at a loss.

INJUNCTION

***Page One Records v Britton* [1968] 1 WLR 157**

The Troggs, a pop group, contracted to appoint the plaintiff as their sole agent and manager for five years, and agreed not to act themselves in such capacity and not to appoint any other person for that time. They fell out with the manager and wanted to replace him. The plaintiff sought an injunction. It was held that an injunction must be refused because to grant it would, in effect, compel The Troggs to continue to employ the plaintiff, and thus would amount to enforcing the performance of a contract for personal services.

***Lumley v Wagner* (1852)**

The defendant contracted to sing for the plaintiff in his theatre for three months and, at the same time, not to sing elsewhere during this time without the plaintiff's consent. A third party, Gye, offered the defendant a larger sum to sing for him. The court stated that they had no power to make the

defendant sing or encourage her to sing at the plaintiff's theatre. However, the court could persuade her to do so by preventing her singing elsewhere by imposing an injunction to that effect.

Warner Bros v Nelson [1937] 1 KB 209

The defendant, an actress, agreed (1) to act for the plaintiff and, at the same time, (2) not to act or sing for anybody else for two years without the plaintiff's written consent, and (3) no other employment could be taken up during this period without the plaintiff's consent. It was held that the defendant could be restrained by injunction from breaking the second undertaking. She would not be forced to act for the plaintiff because she could earn a living by doing other work.

DAMAGES IN LIEU OR IN ADDITION

Grant v Dawkins [1973] 1 WLR 1406

The vendor's title to land was subject to an encumbrance which amounted to a breach of contract. It was held that the plaintiff could get specific performance of what title the defendant had, plus damages based on the cost of discharging the encumbrance.