

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 240 OF 2007**

**BETWEEN** : **RONALD RAKESH NAND** of Tomuka, Lautoka, Wholesaler.  
**PLAINTIFF**

**AND** : **SUNITA MANI** as Sole Administratrix and Executor in the Estate of  
**CHELLAMMA** aka **PUSHPA** of Lomolomo, Lautoka, Domestic  
Duties.  
**DEFENDANT**

**Appearances** : Ms J. Naidu for the plaintiff  
: Ms S. Ravai for the defendant

**Date of Trial** : 06 May 2019

**Date of Judgment** : 20 June 2019

## **J U D G M E N T**

### **Introduction**

[01] The plaintiff issued a writ of summons accompanied by a statement of claim against the defendant claiming among other things specific performance of the agreement Chellamma, the original defendant made with the plaintiff for the sale of a portion of her property (Lot 3).

[02] Pending the action, the original defendant passed away. As a result, on 19 February 2015 the defendant, the daughter of the original defendant was substituted in place of the original defendant.

### **Background**

[03] The background facts as stated in the statement of claim are as follows.

[04] A Chellamma, the original the defendant (now the defendant, her daughter) was the registered lessee of all that piece and parcel of the land described as Lot 18

ND 5040 in the Tikina of Vuda, Province of Ba and comprised in Crown Lease Number, "CL 5619"LD 4/7/2462" (*the land*). She got the land subdivided and a surveyor plan was drawn up and approved demarcating three separate lots namely Lot 1, Lot 2 and Lot 3.

[05] On 3 April 2006, the defendant agreed to sell and the plaintiff agreed to purchase Lot 3 of the land for the total purchase price of \$12,000.00 (*the agreement*). The purchase price was as follows:

- a. The sum of \$2,000.00 as a deposit upon the grant of consent by the Director of Lands to the agreement; and
- b. The balance sum of \$10,000.00 upon the defendant producing the original duplicate registered 99 year lease of the land (Lot 3) together with a registerable transfer of the land in favour of the plaintiff.

[06] On 2 May 2006, the Director of Lands formally consented to the agreement. The plaintiff paid the sum of \$2,000.00 to the defendant as agreed upon the grant of the consent.

[07] The survey of the land was approved on 10 November 2006.

[08] Thereafter, the defendant in breach of the agreement refused to transfer the land to the plaintiff.

[09] Clause 15(b) of the said Agreement provides that the plaintiff may sue for specific performance of the agreement if the defendant was in default in the performance or observance of any stipulation or agreement on the defendant's part contained for a space of 14 days.

[10] The plaintiff now sues for the specific performance of the agreement in invoking cl. 15 (b) of the agreement.

## **Defendant's case**

[11] The defendant filed a statement of defence and states: The agreement was drawn up by the plaintiff's solicitors. It was made in English and was not explained to her in Hindustani to know and understand its meaning and effect. The plaintiff gave \$50.00 to a Lands Department Officer through someone who was there as to expedite the granting of consent. The purported consent was signed by another Lands Department Officer who is not "S. Singh" on 2 May 2006. She did not enter into a sale and purchase agreement with the plaintiff and the purported consent was fraudulently acquired. She counterclaimed a sum of \$2,680.00.

[12] The plaintiff filed his reply to defence and defence to the counterclaim and stated that the defendant is estopped from denying the agreement as she had acted upon it.

## **Agreed facts**

[13] According to the Amended Minutes of the Pre Trial Conference ('AMPTC'), the following facts have been recorded as admission as between the parties:

1. *The defendant is the registered lessee of all that piece and parcel of land described as Lot 18 ND 5040 in the Tikina of Vuda, Province of Ba and comprised in Crown Lease Number CL 5619 LD 4/7/2462.*
2. *The defendant engaged the services of P K Bamola, registered Surveyor for the purpose of subdivision and a survey plan has been drawn up and approved demarcating three separate lots on the said land, namely Lot 1, Lot 2 and Lot 3.*
3. *A Sale and Purchase Agreement to purchase Lot 3 was drawn up and dated 3 April 2006 between the plaintiff as Purchaser and defendant as Vendor.*

## **Discussion**

[14] The plaintiff has issued these proceedings against the defendant to enforce the agreement entered into between the parties for the sale of the property then owned by the defendant's mother. By that agreement, the defendant's mother agreed to sell a portion of her property (Lot 3) to the plaintiff for a consideration sum of \$12,000.00. The agreement was drafted by the common solicitors, Gordon

& Company. A sum of \$2,000.00 was to be paid by the plaintiff to the defendant upon obtaining the consent of the Director of Lands. The consent was obtained and the plaintiff paid \$2,000.00 to the defendant in accordance with the agreement. Chellamma and Sunita Mani had acknowledged receipt of \$2,000.00 on 3 May 2006 ('PE-6') The balance sum of \$10,000.00 was payable upon the defendant producing original duplicate registered 99-year lease of the property in favour of the defendant.

[15] At the trial, only the plaintiff and the defendant gave evidence. The plaintiff tendered agreed bundle of documents consisting 11 documents.

[16] The defendant's mother, Chellamma aka Pushpa (*'the original defendant'*) passed away on 30 April 2013, testate. Her daughter, Sunita Mani obtained a probate to administer her mother's properties. This has resulted in the substitution of Sunita Mani in place of the original plaintiff.

[17] There is a default clause in the agreement ('PE-3') under cl. 15. This provides:

*"15. IF the Vendor shall make default in the performance or observance of any stipulation or agreement on the Vendor's part herein contained and if such default shall continue for the space of fourteen (14) days from the due date then and in such case the Purchaser without prejudice to any other remedies available to him may at his option exercise all or any of the following remedies namely:*

*(a) May rescind this contract of sale and thereupon all monies theretofore paid or under the terms of sale applied in reductions of the purchase money shall be refunded to the Purchaser without deduction.*

*(b) May sue for specific performance of this agreement."*

[18] There is a similar default clause in the agreement under cl.14 in favour of the vendor, the defendant. However, the defendant did not ever invoke that clause. The defendant never complained of breach of the agreement by the plaintiff.

[19] Since the defendant refused, despite several requests, to perform the agreement, the plaintiff seeks an order against the defendant for specific performance. The defendant said the agreement was not explained to her in Hindustani language.

*Explanation of the agreement in Hindustani language*

- [20] The defendant's evidence was that the terms of the agreement were not explained to her mother in Hindustani language by the common solicitors. The defendant admitted in evidence that she is somewhat educated and she can understand English to some extent. She said she was present when her mother signed the agreement at the office of Gordon & Company. The agreement was signed on 3 April 2006.
- [21] The consent for the agreement was given on 2 May 2006. The application for consent was made by Gordon & Company on 5 April 2006 ('PE-5').
- [22] The defendant refuses to perform the agreement on the ground that the common solicitors failed to explain the content of the agreement to her mother in Hindustani language.
- [23] After signing the agreement, the defendants went to the land office to expedite the required consent, caused the land subdivided and got the subdivision approved ('PE-2') and accepted the deposit of \$2,000.00 from the plaintiff. All of these establish that the agreement had been performed, in part.
- [24] The defendant had raised some issues with Gordon & Company in relation to the agreement. Gordon & Company then advised the defendant to seek an independent opinion. Then the defendant went to Vijay Naidu Associates ('VNA').
- [25] VNA, the defendant's new solicitors wrote a letter dated 24 November 2006 ('PE-7') to the Land Department, Lautoka inquiring the status of the defendant's lease, wherein VNA specifically refers to their client Chellamma aka Pushpa, who desires to sell Lot 3 out of the land (Crown Land lot 18 ND 5040 LD 4/7/2462) as subdivided and she has already entered into a Sale and Purchase Agreement with one Ronal Rakesh Nand (the plaintiff) and has applied for new lease and consent to transfer.
- [26] The letter written by VNA to the Land Department acknowledges the agreement. There is no complaint that the agreement was not explained to the defendant by Gordon & Company.

- [27] By letter dated 25 November 2006 written to Gordon & Company ('PE-8'), VNA, as Solicitor for the Vendor (the defendant) requested Gordon & Company to forward all future correspondence and proceeds of sale regarding the sale of the property to them (VNA). There also the agreement has been acknowledged and no complaint of explanation of the agreement in Hindustani language.
- [28] The plaintiff in evidence confirmed that the agreement was explained to the defendant in Hindustani language before she signed it.
- [29] The defendant did not take any action to rescind the agreement on the ground that it was not explained to her in Hindustani language until the plaintiff issued these proceedings.
- [30] Surprisingly, the defendant, for the first time, has taken up the position that the agreement was not explained to her in Hindustani language, and therefore she is not obliged to perform it. This position has been taken by the defendant conveniently after the plaintiff served the writ of summons on her, and after performing of the agreement, in part. I would, therefore, reject the defendant's evidence that the terms of the agreement were not explained to her (her mother) in Hindustani language. This translates that the defendant understood the meaning, effect and nature of the agreement.

*Consent issue*

- [31] Another defence pleaded by the defendant for refusing to perform the agreement is that the consent was not proper as it was signed by another person as a result of the plaintiff paying someone \$50.00.
- [32] It appears that the defendant was in need of money desperately. The evidence before the court is that the defendant went to the Land Department with the plaintiff, borrowed \$50.00 from the plaintiff and gave it to someone to get the consent signed. In fact, it was the defendant who gave \$50.00 to expedite the consent. In the absence of an officer, another officer acting for the absenting officer may sign the consent. It is the Land Department's internal arrangement. The consent was signed by a different officer is not a ground to disregard the consent. There was no complaint that the consent was a forged one until the

plaintiff filed this action. Therefore, I would reject the defendant's defence that the consent was not signed by the proper officer as baseless.

*Specific performance*

[33] There is a valid agreement. It has been performed, in part. The property is still available. The plaintiff is willing to perform his part of obligation under the agreement. He is ready to pay the balance consideration sum of \$10,000.00 to the defendant.

[34] The plaintiff claims for enforcement of the agreement relating to land as a remedy for breach of an obligation on the part of the defendant. Under clause 15 of the agreement, the plaintiff is entitled to make an application to court for specific performance of the agreement if the default on the part of the vendor, the defendant continues for a space of 14 days from the due date. The default had continued for more than 14 days and the defendant has refused to perform the agreement.

[35] In order to obtain an order for specific performance, the plaintiff must show that he is ready, willing and able to perform his part of the obligation on the agreement.

[36] On the evidence, I am satisfied that the plaintiff is ready, willing and able to perform his part of the obligation of the agreement. Therefore, I make an order for specific performance of the agreement against the defendant. Accordingly, the defendant will perform the agreement upon the payment of \$10,000.00 by the plaintiff.

*Counterclaim*

[37] The defendant counterclaims a sum of \$2,680.00. However, the defendant failed to lead sufficient evidence in respect of the counterclaim. I would, therefore, dismiss the counterclaim.

*Costs*

[38] The plaintiff is after this land since 2006. The defendant unnecessarily refused to perform the agreement.

[39] There was consent judgment in this matter. It was set aside in an action brought by the defendant (HBC 23 of 2018). Setting aside was allowed subject to costs of \$2,500.00 payable by the defendant (plaintiff in that case). The cost order was reserved and not paid to date.

[40] As a winning party, the plaintiff is entitled to costs of these proceedings. I take all into my account and assess the costs at \$6,000.00, which include the reserved costs, payable by the defendant to the plaintiff. The costs may be deducted from the balance sum payable by the plaintiff to the defendant.

### Conclusion

[41] For the reasons set out above, I conclude that the plaintiff is entitled to an order for enforcement of the sale and purchase agreement ('PE-3). Further, I would order the defendant to pay the summarily assessed costs of \$6,000.00 to the plaintiff, which may be offset against the balance consideration sum of \$10,000.00 payable by the plaintiff.

1. There shall be an order against the defendant for specific performance of the sale and purchase agreement entered into between the parties on 3 April 2006, upon payment of the balance consideration sum of \$10,000.00.
2. The defendant shall also pay to the plaintiff the summarily assessed costs of \$6,000.00, which is to be deducted from the balance consideration sum of \$10,000.00 payable to the defendant by the plaintiff.

*H.M. Mohamed Ajmeer*  
20/6/19

M. H. Mohamed Ajmeer



At Lautoka

20 June 2019

Solicitors:

For the plaintiff: Jyoti Legal, Barristers & Solicitors

For the defendant: Fazilat Shah Legal, Barristers 7 Solicitors