

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

CIVIL ACTION NO. HBC 196 OF 2017

BETWEEN : **RANGANNA NAICKER** aka **AZAD** of Rarawai, Ba, Cultivator.

PLAINTIFF

A N D : **AMI CHAND KARAN** aka **AMI CHAND** aka **AMICHAND**
KARAN as Executor and Trustee of the **Estate of Dhan Raji** aka
Puna Devi aka **Punia** of Ba.

FIRST DEFENDANT

A N D : **THE DIRECTOR OF LANDS**

SECOND DEFENDANT

Appearances : Mr V. Chandra for the plaintiff
Mr N. Padarath with Ms S. Shafique for the first defendant
Mr J. Mainavolau for the second defendant

Date of Trial : 11 and 12 February and 22 March 2019

Date of Written

Submissions : 24 April 2019 (plaintiff), 13 May 2019 (defendants)

Date of Judgment : 04 October 2019

J U D G M E N T

Introduction

[01] The plaintiff brings this action for, among other things, specific performance of an agreement between the parties whereby the defendant agreed to transfer a piece of land to the plaintiff.

- [02] The first defendant filed his statement of defence and denied the plaintiff's claim and puts the plaintiff to strict proof thereof. He has specifically pleaded section 13 of the State Lands Act and says that there is no written consent given by the Director of Lands, the second defendant.
- [03] The second defendant filed their statement of defence and states that by their letter dated 26 April 2017, they informed the plaintiff that his application for consent to transfer the subject property was incorrect and that he needed to submit the correct documents in order for them to properly consider the application.
- [04] At the trial, the parties gave evidence and called their witnesses and filed their respective closing submissions.

Facts

- [05] The facts according to the plaintiff are as follows.
1. By an agreement between the plaintiff and the first defendant, the plaintiff agreed to purchase all that piece of land on Crown Lease No. 7583 legally described as Lot 4 on Plan BA2357 pt of Rarawai & Vunisamaloa formerly CT 7822 (Farm 1592) in the Tikina of Ba in the Province of Ba containing an area of 14 acres 27 perches ("*the Property*") for a consideration sum of \$20,000.00.
 2. The agreement between the parties was made partly orally and partly by conduct and/or writing, and through meeting held at the first defendant's property at Namosau in or about 2007, between the plaintiff and the first defendant wherein the first defendant owed the plaintiff \$15,000.00 in loan, failing to repay requested the plaintiff to purchase the property for a consideration sum of \$20,000.00, which the plaintiff agreed to, and the first defendant agreed to transfer the property to the plaintiff either by way of transfer or by way of a new lease being issued under the name of the plaintiff.

3. The plaintiff made the final payment of \$5,000.00 to the first defendant on 30 May 2012.
4. In the meantime, the lease of the property expired. A new lease was issued over the property now being legally described as Lot 1 – BDSW 1443 Balance Lot 4 BA 357 Rarawai and Vunisamaloa – (Pt. of) – formerly CT 7822 with an area of 5.6350 ha (“*the new lease*”) in favour of the defendant as the Executor and Trustee of the Estate of Dhan Raji aka Puna Devi aka Punia (“*the Estate*”).
5. After the new lease was issued, the first defendant refused to transfer the new lease to the plaintiff. The plaintiff seeks specific performance of the agreement.

The principles on specific performance

- [06] An order for **specific performance** requires the performance of the obligation of a party to a contract. It is an equitable remedy and is not available as of right. An order for **specific performance** is an equitable remedy awarded at the court’s discretion where a legal remedy would be inadequate.
- [07] **Specific performance** is asked for most often in claims for enforcement of agreements relating to land.
- [08] The claimant must show that he is ready, willing and able to perform his part of the obligation or contract.
- [09] In the ordinary run of cases where damages may be said to be an adequate remedy, **specific performance** will not be awarded. In many contracts for sale of goods, it is possible to purchase substitute goods in the market, and therefore damages, to cover the cost of obtaining substitute performance, will be adequate remedy (*Societe des Industries Matallurgiques SA vThe Bronx Engineering Co. Ltd* [1975] 1Lloyd’s Rep 465).

The evidence

Plaintiff's evidence

- [10] At the trial, the plaintiff called 4 witnesses namely, Mr Yogesh Navin Chand ('PW1'), Ms Sabeen Lata ('PW2'), Mr Ranganna Naicker, the plaintiff himself ('PW3') Ms Ecelina ('PW4').
- [11] PW1 who is a Commissioner of Oaths in his evidence states:
- a) *The plaintiff and the first defendant came to him to have the letter drafted and executed ('P1').*
 - b) *He drafted the letter as they wanted and explained the contents to them and they both signed it.*
- [12] Under cross examination he confirmed that the letter was given to the plaintiff and the first defendant and thereafter the letter was explained in the Hindustani language before both of them signed.
- [13] PW2 is a JP. Her evidence was that:
- a) *She had authority as a JP to witness transfer documents up until 2014.*
 - b) *She went through the transfer document with the plaintiff and the first defendant. Both of them understood the contents of the document and signed voluntarily. There was no pressure on them to sign the transfer document ('P2').*
- [14] During cross examination, PW2 was firm that the plaintiff and the first defendant came with the transfer document and they both signed it voluntarily having understood and have agreed to the contents of the document. She said she was simply discharging her duty as a JP.
- [15] PW3 worked at the Lands Department's Lautoka office during the material time and dealt with the lease when it was lodged with the Lands Department. She in her evidence states:

- a) They (plaintiff and first defendant) came to see her in 2012 regarding the transfer of the Lease.
- b) The consent application was accepted by the Lands Department and relevant fees were paid.
- c) She received all the documents from the plaintiff, checked all the documents and sent the documents to the Divisional Officer for further processing.
- d) At the time of lodgment, there was nothing wrong with the consent and transfer documents.

[16] In cross examination she confirmed that the witnessing portion of the consent document was not proper and the Lands Department wrote a letter to the plaintiff requesting him to change the description of the lease on the documentation in 2017 ('P16'). The Lands Department did not deny consent. It was still under process and required parties to resubmit amended transfer and consent application to reflect the new description of the lease.

[17] The plaintiff's ('PW4') evidence was that:

- a) The transfer document was signed in Ms Lata's ('PW2') shop located in Ba Town.
- b) He met Mr Yogesh ('PW1') and he and the first defendant got the letter drafted in his office.
- c) He has been residing on the property since 2010 and worked on it for quite some time. Since 2010 to 2015 he worked on the farm and removed weeds. It cost him approximately \$60,000.00 in labour and machinery.
- d) He wanted to build a chicken shed on the property but could not do so because the lease had not been transferred to him and bank loan was not given.
- e) He also spent around \$5,000.00 on EIA but does not have a receipt to confirm the same.
- f) Because of the damages caused by Cyclone Winston, he purchased new corrugated irons, timbers for the damaged house, and replaced damaged walls and got them painted.
- g) He put foundation on the property and erected a new kitchen which cost him around \$15,000.00, believing that the lease will be transferred to him.

- h) The first defendant did not object to any extensions to the property. The first defendant said: *'the property is yours and you can do whatever you want with it'*.

First defendant

[18] The first defendant ('1DW1'), without given oral evidence, only relied on the affidavit that was filed against the injunction application filed by the plaintiff. He confirmed his affidavit sworn on 27 November 2017, and said will rely on that affidavit for the purpose of this trial.

[19] Under cross-examination, the first defendant states:

- a) He agreed that Ms Lata witnessed the signatures.
- b) He denied signing P2, the transfer document. He only signed the transmission by death document.
- c) He agreed to the suggestion that the transmission by death was not disclosed to any of the parties.
- d) When asked where the document was, he said: *'it is in his bag which he brought to court.'*
- e) He denied signing P1.
- f) He confirmed that he was a school teacher and he can read and write English.
- g) He confirmed and agreed with all the last three paragraphs of P14, confirmed signing it. The last 3 paragraphs of P14 reads:

"Due to some unfavourable situation and circumstances, which bothered me greatly, I as the executor sold the lease to Mr. Ranganna Naicker.

Mr. Ranganna Naicker had been visiting the Crown Land Office, knocking on every door to have the lease transferred to his name.

Sir it is my humble request to you to please liaise on our behalf to have the lease 7583 transferred to Mr Ranganna Naicker."

- h) He confirmed that the plaintiff has been on the property since 2012, had no knowledge of the renovations to the property after cyclone Winston.
- i) He also confirmed that he has not been to the subject property at all for quite some time.
- j) He said he visited the Lands Department and informed them not to deal with the plaintiff in relation to the property.

Second defendant's evidence

- [20] The second defendant is a nominal defendant in this case. They called one witness, i.e. Mr Laisenia Kidianaceva ('2DW1'), an Assistant Estate Officer at the Lands Department. He states in his evidence that:
- a) The Divisional Lands Manager grants consents after inspection.
 - b) He confirmed that both parties were advised to amend the description of land in the transfer and consent documents for further processing.
 - c) He said consent has not been granted to date.

[21] Under cross examination by the plaintiff, 2DW1 states that: the transfer and consent documents were correctly lodged in 2012. There were no issues with the nature of the consent when it was lodged. The consent and transfer document will not be accepted by the Lands Department without the signatures of both parties. He said these proceedings had been initiated because the first defendant did not wish to or refused to sign the amended transfer and consent documents.

[22] Under cross examination by the first defendant, 2DW1 states that: A Justice of Peace could witness transfer document before 2014. He said the consent form can be returned for amendments, and this does not necessarily mean that the consent has been refused.

Discussion

[23] The plaintiff seeks an order for specific performance of the agreement between the parties. The first defendant obtained a loan of \$15,000.00 from the plaintiff. The first defendant could not repay the loan and he requested the plaintiff to purchase the property for a consideration sum of \$20,000.00. The plaintiff agreed to buy the property for \$20,000.00, and paid the balance \$5000.00 to the first defendant making \$20,000.00 (loan of \$15,000 + \$5,000 = \$20,000).

- [24] In order to complete the transfer, the first defendant signed the transfer documents together with the consent papers. The consent of the Director of Lands, the second defendant was necessary for the transfer because it is a state land.
- [25] The plaintiff has been given consent to institute legal proceedings in respect of the land, by the Director of Lands (P4).

Discussion

- [26] The first defendant signed both the transfer and the consent documents.
- [27] By their joint letter dated 22 July 2013 and signed by both parties, the first defendant requested the Division Surveyor Western to issue the new lease in respect of the Crown Lease No. 14363 – LD 4/1/1730 to the plaintiff and the plaintiff requested to make a new lease under his name (PI). PI reads:

*"P O Box 1166
Ba*

22nd July 2013.

*The Divisional Surveyor Western
Lands Department
LAUTOKA*

Dear Sir

Re: CROWN LEASE NUMBER 14363 – LD 4/1/1730

This is to inform that the above lease is expiring on 1st day of January 2015 and I intend to renew the said land. At present the said land is under estate and there is no one to work in the farm. My Power of Attorney holder Ranganna Naicker is cultivating and managing the said farm so I hereby humbly requests that the new lease to be made under the name of Ranganna Naicker.

Kindly renew the said lease under the name of RANGANNA NAICKER and he will pay all the disbursements for the lease preparation.

Your earliest co-operation will be highly appreciated.

Thanking you.

*Yours faithfully
[sgd]
Ami Chand*

I the undersigned RANGANNA NAICKER do hereby requests to make a new lease under my name and I hereby undertakes to pay all the costs and disbursement for preparation of lease documents.

*[sgd]
Ranganna Naicker*

*Witness [sgd]
Yogesh Navin Chand,
Commissioner for Oaths."*

- [28] The document P1 was witnessed by PW1, a Commissioner for Oaths. PW1 confirmed in his evidence that both parties (the plaintiff and the first defendant) signed in his presence and he witnessed it.
- [29] He also wrote a "to whom it may concern" letter that he wishes to transfer Crown Lease No. 7583 file no: 4-1-1730 farm number 01592 to Ranganna Naicker, the plaintiff (P15). The date in P 15 is not clear.
- [30] Thereafter, the first defendant wrote a letter dated 7 March 2015, to the then Minister regarding the property (Re: Farm 1592, CL 7583, Lot 4, Ba, Ref, File No. 4/1/1730) (P 14). In P 14, the first defendant admits that he has sold the lease to the plaintiff. The relevant part of P 14 reads:-

"....

Due to some unfavourable situations and circumstances, which bothered me greatly, I as the executor sold the lease to Mr. Ranganna Naicker. Mr Ranganna Naicker has been visiting the Crown Land office, knocking on every door to have the lease transferred to his name.

Sir, it is my humble request to you to please liaise on our behalf to have the lease 7583 transferred to Mr. Ranganna Naicker.

Seeking your assistance.

Yours faithfully

-sgd-

Mr. Ami Chand Karan "

- [31] While the application for transfer of the lease was in progress, the lease expired and the first defendant was issued a new lease in its place.
- [32] After the issuance of the new lease, the Director of Lands requested the parties to amend the previously submitted transfer document to reflect the new description of the land as it appears in the new lease issued to the first defendant. The Director of Land's letter of 26 April 2017, written to the plaintiff reads:

*"Mr. Rangana alias Azad
Lane 25
Rarawai
Ba*

*Date: 26/4/2017
LD Ref: 4/1/1730*

Dear Sir

Re: Application for Consent to Transfer – Farm 1592

We refer to your application for consent to transfer dated 31/5/2012 referred.

You are requested to submit the correct application for consent to transfer with the transfer documents for our further processing as the Land description is now known as "LOT 1 – BDSW 1443 BALANCE LOT 4 BA 2357 RARAWAI AND VUNISAMALOA – (PT OF) – FORMERLY CT 7822 with an area of 5.6350ha.

Furthermore the lessee is requested to pay rental dues amounting to \$2,152.75 up to 30/6/2017.

Your cooperation on the above matter shall be highly appreciated.

Yours faithfully

(sgd)
V. Rao (Mr)
for Director of Lands

- [33] It was when the plaintiff asked the first defendant to sign the amended transfer documents, he refused to sign. He refused to sign and it has resulted in the institution of this action.
- [34] The first defendant barely denied the allegations in the statement of claim but pleaded S.13 of the State Lands Act.
- [35] Counsel for the first defendant attempted to demonstrate that the dealings between the parties with the State land was invalid as there was no consent of the Director of Lands.
- [36] Section 13 issue does not arise here. The first defendant is not entitled to raise that issue after signing the transfer document with consent to transfer. The consent was never denied by the Director of Lands. The witness called by the second defendant (2DW1) told the Court that the consent was not refused but the parties were requested to submit the correct application for consent to transfer with the transfer documents for further processing.
- [37] The description of the land intended to be transferred to the plaintiff was charged after the issuance of the new lease to the first defendant upon expiration of the previous lease.
- [38] The first defendant even went to the extent of denying to signing of the transfer documents despite the fact that his signature was witnessed by the Commissioner of Oaths. PW1 confirmed in his evidence that the first defendant signed the transfer document in front of him. Further, the first defendant, during cross examination said that he did not understand the contents of the documents as they were in English. Then it was put to him that he is a retired teacher and

that he can read, write and understand English, he admitted that suggestion. The first defendant opted not to give oral evidence. He only relied on his affidavit filed in the interlocutory proceedings. He was hesitant and evasive to cross examination questions. I had the opportunity to observe his manner and behaviors when giving evidence in Court. He did not appear to be a credible witness.

- [39] The plaintiff was a straightforward witness. His evidence was confirmed by the witnesses he called and by the documents adduced. He was extensively cross examined by the first defendant. He was firm in his evidence and answered cross examination questions swiftly and with no hesitation. I would, therefore, accept his evidence.
- [40] On the evidence and on the balance of probability, I find that the first defendant agreed to transfer and transferred the property to the plaintiff for valuable consideration. I also find that the first defendant signed the transfer documents voluntarily. I further find that the first defendant unlawfully refused to sign the amended application for consent to transfer and the transfer documents.
- [41] The evidence demonstrates that the plaintiff had fulfilled his part of the obligation under the agreement.
- [42] The plaintiff seeks an order against the first defendant for specific performance of the agreement.
- [43] The defendant has been on the property since 2010, he has worked on the property and he has done certain renovation on the property after cyclone Winston.
- [44] The property is still available for transfer. The transfer documents were not processed as the first defendant refused to sign the correct transfer documents, taking a U-turn. The current application for consent to transfer documents were requested by the Director of Lands to be submitted for transfer of the lease to the plaintiff as the description of the property was changed after the first defendant got the new lease.

[45] An order for specific performance requires the performances of obligation of a party to a contract. In this case, it is not possible to purchase a substitute land in the market. The property has been unique for the plaintiff. He has been living on the property; he has renovated the lease which is on the property. In the circumstances, damages, in my opinion, would not be adequate remedy for the plaintiff. Therefore, I am prepared to grant an order for specific performance of the agreement between the parties relating to the land.

[46] It appears that the plaintiff did not press for other remedies sought in the statement of claim.

Conclusion

[47] For the reasons I have set out above, I would grant an order for specific performance of the agreement to contract between the parties in relation to property land in dispute. Accordingly, the first defendant shall do everything necessary for the transfer of the lease, which is now known as "*LOT 1 – BDSW 1443 BALANCE LOT 4 BA 2357 RARAWAI AND VUNISAMALOA – (PT. OF) – FORMERLY CT 7822*" with an area of 5.6350ha, to the plaintiff within 2 months from the date of this judgment. I would further order that the first defendant shall pay summarily assessed costs of \$3,000.00 to the plaintiff.

The outcome

1. Specific performance of the contract granted against the first defendant.
2. the first defendant shall do everything necessary for the transfer of the lease, which is now known as "*LOT 1 – BDSW 1443 BALANCE LOT 4 BA 2357 RARAWAI AND VUNISAMALOA – (PT. OF) – FORMERLY CT 7822*" with an area of 5.6350ha, to the plaintiff within 2 months from the date of this judgment.

3. The first defendant shall pay summarily assessed costs of \$3,000.00 to the plaintiff.

H.M. Mohamed Ajmeer

4/10/19

.....
M.H. Mohamed Ajmeer
JUDGE



At Lautoka
04 October 2019

Solicitors:

For the plaintiff: Millbrook Hills Law Partners, Barristers & Solicitors
For the first defendant: Samuel K Ram, Barristers & Solicitors
For the second defendant: Office of the Attorney General