

BETI -v- AUFIU

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 170 of 1990

Hearing: 27 June 1991

Ruling on Damages: 4 July 1991

J. Corrin for the Plaintiff

A. Nori for the Defendant

WARD CJ: On 9 May 1991 the plaintiff obtained judgment on a claim for specific performance of a house sale. Specific performance not being possible, it is necessary now to assess damages.

The basis on which such damages are assessed should be such as to put the frustrated purchaser in the same position as if he had bought the property. Thus, if the house has appreciated in value since that time, he should have damages equal to the difference between the agreed purchase price and the present value at the date of assessment. I take the case of *Worth v. Tyler* (1973) 1 All E.R. 897 as authority for that proposition. In addition the Court is entitled to consider a sum of damages to cover actual costs involved and also for an assessed element for frustration and disappointment.

The house itself was advertised for tender early last year and the defendant received an offer of \$75,000 which failed, another from the plaintiff of \$70,000 and he then sold it to a third person for \$65,000.

Two valuations have been prepared for the court. One from Orodani values the property at \$76,000 and one from Khadem at \$61,000. The valuations have been made on a different basis.

Orodani bases his on open market value which means the best price it could be expected to make on the market assuming free negotiations between willing but not anxious vendor and purchaser.

Khadem's has been based on a depreciated estimate of the current cost of

replacement.

I feel the court must look at the value on the basis of what the property would be likely to realise if sold. That will give an estimate of the price the plaintiff will need to pay for a similar property now having failed to obtain the house the subject of this case. Thus I prefer Orodani's valuation but I also have some evidence of the actual sale of this property that may be considered with it.

Clearly it was sufficiently sought after to attract a number of tenders. Equally it is clear the highest tenderer was not able to complete. The plaintiff, despite his hopes, was already finding difficulty in raising a loan although I accept this was largely due to the level of his salary and his evidence was that he still had other alternatives possibly available. In the end it sold for a lower figure than the plaintiff's tender but I do not accept the inference in the affidavit of the defendant that he was obliged to sell for that price to Founaota. He was clearly anxious to sell quickly. Had he not been, this case would not have arisen.

I feel that Orodani's valuation is correct but subject to the market at the moment. There is a shortage of reasonable properties on the market but also a shortage of finance. Thus I do not feel the property would be likely to sell for that price at present and Orodani is too optimistic. I feel that the price the plaintiff offered was a fair value at that time and so the only change is the actual increase in true value in the year since then.

I feel I can only base that on general trends. The inflation rate for last year, May to May was 19.2%. House values do not increase at the same rate and lack of easy finance at present means that properties are appreciating very little. I feel a fair assessment would be to take a quarter of that rate, i.e. 4.8%, which will give an increase in value to the present of \$3360.

As far as damages for frustration and disappointment are concerned, the plaintiff has sworn an affidavit in which he refers to his disappointment at not being able to obtain the house. I accept he was disappointed and has now to look around again. However, I do not feel on the evidence he was going to find finance easy and I notice he does not state he has now arranged finance or, if he has, in what total sum.

I feel in all the circumstances, his disappointment and frustration should be tempered by reality and I award a relatively nominal sum of \$500.

He has had to pay \$25 for the caveat because of the defendant's action and he is entitled to that sum also.

He is also entitled to interest at 5% on the latter two sums. However, as the assessment of the value of the house is to the present time, the damage under that head should not attract interest.

Costs to the plaintiff.

(F.G.R. Ward)
CHIEF JUSTICE