

**Alcindor v Varnier  
(2000) SLR 35**

Charles Lucas for the plaintiff  
Philippe Boulle for the defendant

*Appeal by the defendant was dismissed on 19 April 2002 in CA 28 of 2000.*

**Judgment delivered on 13 November 2000 by:**

**PERERA AC J:** This is an action for specific performance of an alleged agreement to sell. The defendant is the owner of titles H.583 and H.714 at Arise Etoile, Mahe. The plaintiff commenced occupation of the house thereon as a lessee paying a monthly rental of R300. The plaintiff avers that on 11 December 1986, he was registered as a provisional statutory tenant in respect of those premises and that on 29 November 1993 he was registered as the statutory tenant under the Tenants' Rights Act 1981. It is further averred that in November 1993, the defendant who was residing abroad, "agreed to sell" the premises, through her representative in Seychelles, Mrs Jeanne Beaudouin, for a consideration of R.80,000. That sum constituted the valuation made in the proceedings for declaration of the statutory tenancy. The plaintiff further avers that he obtained a loan of R80,000 from the Seychelles Housing Development Corporation (SHDC) and made an initial deposit of R20,000 for the purchase of the property, and continued to pay 1200 monthly repayments.

The plaintiff further avers that pending the transfer of the property, and on the basis of the defendant's acceptance, he carried out certain improvements, such as rock-blasting, landscaping, construction of a vehicular access, tile laying, sewerage, toilet and house repairs and maintenance. It is further averred that he continued to pay R800 per month as rent for the premises pending the completion of the procedure under the Tenant's Rights Act, and hence prays that such payments from January 1994 be considered as part payment towards the sale price. The plaintiff also claims R25,000 as moral damages.

The defendant, in her statement of defence avers that "nobody was empowered to bind her into any agreement to sell her property," and that she had "no personal knowledge of the price proposed for the property and did not authorise anyone to accept on her behalf." It is further averred that at all material times the plaintiff considered himself a tenant and that in Rent Board Case no. 72/94 wherein she applied for the fixing of rent, the plaintiff did not aver that he was the owner of the premises or that there was an agreement to sell it to him for R80,000 in those proceedings.

It must here be stated that, at the end of the plaintiffs case, Mr Boulle, counsel for the defendant made a submission of no case to answer. According to the practice of this court, he was called upon to elect between standing on his submission or calling evidence. He elected to call no evidence if his submission failed.

The main contention was based on the averment in paragraph 3 of the plaint that the defendant "agreed to sell" the property "for the consideration" of R80,000 which represents its value as per the assessment carried out by expert Quantity Surveyor at the instance of the Tenants' Rights Registrar. He submitted that the plaintiff has pleaded a civil contract of sale and hence although in terms of article 1589 of the Civil Code, a sale is complete when the two parties have mutually agreed on the "thing" and the "price" there was no agreement on the "price," and accordingly the plaintiff cannot seek specific performance as pleaded in the plaint.

Mr Lucas counsel for the plaintiff submitted that the "agreement to sell" pleaded, is the "consent" of the defendant to sell the property to the plaintiff, as evidenced by the letters sent by her, and on the basis of the evidence of Mrs Beaudouin, her representative in Seychelles.

By a letter dated 2 November 1982 (PI) the defendant writing from France, informed the plaintiff

As we talked about you had decided to buy my house, and so I've been waiting for your decision. As it had never come, I'm informing you that my nephew who will be married soon has asked me for the house and he would like to have it in three month's time to be able to start some installation.

Similar letters were sent by the defendant to the plaintiff on July 1983 and 3 May 1994. There is therefore evidence that there was an agreement between parties regarding the sale of the property to the Plaintiff, and that there was also agreement on the "thing". But what of the price? The plaintiff testified that in 1982, the agreed price was R120,000, but he could not obtain a government loan as there was no access road to the property. Hence he made an application under the Tenants' Rights Act which came into operation in 1982, to purchase the property as a statutory tenant. The defendant raised no objections which could have been raised in terms of section 13(1) of the Act, read with schedule 2 thereof.

The plaintiff testified that the tenancy was negotiated with Mrs Jeanne Beaudouin, the sister of the defendant, who represented her in Seychelles. The monthly rent of R800 was paid on a standing order on his account at the Barclays Bank (exhibit P2). The Tenants' Rights Act, gave a lessee who had continuously occupied premises for a period of 5 years or more, security of tenure of those premises, and the right to purchase those premises, including the surrounding land. The plaintiff made the application under section 11 of that Act. In terms of the said Act, the application had to be published in a local newspaper. Schedule 3 of the Act provided the grounds on which an owner could object. However no such objection being raised, he was registered as a "Provisional Statutory Tenant" on 11 December 1986. Subsequently on 29 November 1993, he was registered as the Statutory Tenant, and a certificate in terms of section 23 of the Act was issued to him (exhibit PI). This is considered as the "final registration," and by virtue of section 23(3) the date of such registration would be

the original date of the provisional registration, that is 11 December 1986, in the present case. In terms of section 31 of the Act, the Statutory Tenant had to apply to the Registrar of Tenants' Rights within 5 years of the date of registration stating that he wished to purchase the premises from the statutory landlord, and that he and the statutory landlord had agreed on the purchase price. But where the Registrar is of opinion that the purchase price agreed is not fair and reasonable or that such price is not acceptable to the SHDC for a tenant's mortgage, the SHDC would appoint a valuer to assess the "statutory value" In the present case however, a valuation was done and assessed at R80,000 and the Ministry of Community Development approved a loan of R80,000 for the plaintiff to purchase the house and land Parcel H. 583 (exhibit P1), on 15 December 1993. The plaintiff thereupon paid the SHDC, a deposit of R20,000 "for the purchase of property H.584/H.714 at Ma Constance" *exhibit (P4)*. He thereafter continued to pay R1,200 per month, and also R800 per month as rent.

Section 34 of the Act provides that when the "Statutory value" has been finalised, "the Statutory Tenant may purchase the Registered premises from the Statutory landlord by the completion of all the following steps:

- (a) The statutory landlord granting a transfer of the registered, premises to the statutory tenant...
- (b) The statutory tenant:
  - (i) granting a tenant's mortgage over the registered premises in favour of the corporation; and
  - (ii) paying the statutory landlord any amount which the statutory value exceeds the maximum mortgage amount, and
- (c) The Seychelles Housing Development Corporation (on behalf of the Government):
  - (i) paying to the statutory landlord one-twentieth of the statutory value or the maximum mortgage amount, whichever is lessor, and
  - (ii) delivering to the statutory landlord a bond in terms of section 39 for the remainder of the statutory value or of the maximum mortgage amount, whichever is the lessor, and
- (d) if the registered premises are already subject to a mortgage, the steps specified in paragraph 1 of the schedule 8.

The Tenants Rights Act 1981 was repealed by Act no 7 of 1992. However applications received by the Registrar of Tenants' Rights before 13 April 1992 and pending on that date continues to be dealt with under the Act as if it had not been repealed. In the present, case, the application of the Plaintiff was made before the specified date and was pending on that date.

Section 34(3) of the Act provides that:

The statutory tenancy and any other lease of or agreement to lease the registered premises, together with any obligation thereunder, terminate on purchase under this Section.

Hence the plaintiff is still a statutory tenant. In paragraph 6 of the plaint, the plaintiff avers that:

Despite various requests by the plaintiff and the Registrar of Tenants' Rights, the defendant has failed to complete the transfer and has failed to collect the "consideration from the office of SHDC. The plaintiff avers that the defendant's acceptance of the offer was binding in contract and she is obliged in law to perform the contract and execute the transfer

Hence what is being sought to be specifically performed is section 34(1)(a) of the Act, as statutory valuation has been finalized.

The plaintiff produced a letter dated 23 August 1994 (P6) whereby the Registrar of Tenants' Rights requested him to attend the office on 1 September 1994, "to complete the transfer of the registered premises under section 34 of the Tenants' Rights Act." He testified that on that day, the defendant's son, Mr Rassin Sinon, who had been in France during the time the application was being processed before the Registrar, came and objected stating that Mrs Beaudouin did not have any authority to execute the transfer. Hence the transfer did not take place.

The averment of the plaintiff that the defendant agreed to the sale of the property for R80,000, was the "statutory value" assessed by the SHDC valuer.

This alleged agreement on the price is based on the fact that no objections were raised by the defendant nor her representative, and that no application was made to the Minister to appoint an independent arbitrator under paragraph (3) of schedule 6 of the Act. Hence the plaint is based on a breach of a statutory obligation by the defendant to transfer the property.

Mr Jacques Leveille an assistant accountant of the SHDC produced a statement of the plaintiff's loan account (exhibit (15)). He stated that the loan of R80,000 was approved by the Ministry and forwarded to the SHDC for payment on the basis of a minute made by the Registrar of Tenants' Rights that both parties had agreed on the statutory valuation of R80,000. He corroborated the plaintiff and stated that the plaintiff paid R20,000 as a deposit for the purchase of the land, and a receipt was issued on 2 February 1994 (exhibit P4). He stated that the Ministry would not have approved the loan unless the statutory valuation had been finalized and the registered premises was ready for sale.

Miss Phillis Pothin, the Registrar of Tenants' Rights corroborated the plaintiff and stated that the defendant, visited her office about three times regarding the application, whenever she came to Seychelles. She stated that after a statutory valuation, both parties were informed of the valuation price. Thereafter, there being no application for

a re-valuation from the defendant or her representative, the application was sent to the SHDC for preparing the transfer documents. She further stated that Mrs Beaudouin enquired from her as to when the payment would be made. She also stated that she never received any objections from the defendant or her representative, Mrs Beaudouin, as regards the processing of the application at any stage. Miss Pothin further stated that when the SHDC was preparing the transfer documents, Mrs Beaudouin told her that the defendant did not intend to sell the premises. Hence at present, the transfer has not been effected, and no payments have been made to the defendant.

Mrs Beaudouin testified that the defendant's sister, who was residing in France, had instructed her to represent her in all matters connected with the application of the plaintiff to purchase the property through the Registrar of Tenants' Rights. She went to the Registrar's office with the plaintiff and signed the necessary documents on the defendant's behalf. She kept the defendant informed of the progress of the proceedings. When the Registrar informed her that the statutory valuation was R80,000, she informed the defendant. She wrote back and informed her that she agreed with the price, and was awaiting payment. She thereafter informed the Registrar, who made an entry on the record. Mr Leveille, the assistant accountant of the SHDC who brought the file to court, and Miss Pothin corroborated the entry recording the agreement of both parties testified as to the statutory valuation of R80,000.

Mrs Beaudouin further testified that she ceased to represent the defendant when her son Rassin Sinon came to Seychelles and told her that his mother did not want her to sign the transfer deed. The plaintiff also produced a copy of an application dated 10 August 1994 (P96) filed by the defendant before the Rent Board, seeking to evict him on the ground that the house was reasonably required for the use of the owner. But by that time the plaintiff had obtained security of tenure as a statutory tenant.

Mr Boulle's submission of a no case to answer is based primarily on the contention that there was no agreement on the price, and hence there was no contract of sale for the plaintiff to seek specific performance by transfer of the property. He was therefore considering the plaint as one based on a civil contract. The plaintiff admitted that the original price demanded by the defendant was R120,000. He agreed with that price, but could not obtain a government loan for that amount. Thereafter, the agreement of both parties, the defendant to sell, and the plaintiff to purchase the property, continued with the plaintiff pursuing an application under the Tenants' Rights Act. On the basis of the evidence, the defendant acquiesced with that procedure. Under that Act, section 32(1) provides that the Statutory Tenant may inform the Registrar in writing that he and the statutory landlord "have agreed on the purchase price of the registered premises". Whether that was done is riot in evidence. However it is in evidence that a valuation was done by the SHDC in terms of section 33 of the Act, and that the statutory value was intimated to both parties. It is not entirely correct that the Statutory Landlord cannot agree or disagree with such valuation, which would in effect be the "sale price" of the property.

Paragraph 3 of schedule 6 provides that within 30 days of being informed of the statutory valuation, either the Statutory Tenant or the Statutory Landlord could request the Minister to appoint an independent arbitrator to re-assess the statutory value. No such application was made by either party, and hence it is on that basis that the plaintiff relies on "agreement on the price." Mr Boulle's submission is that, there is not an "agreement", but a presumption of an "agreement," and that in terms of article 1353 of the Civil Code, the court can admit such a presumption only "in cases in which the law admits oral evidence." It is therefore contended that since oral evidence is prohibited under article 1341, such a presumption of an agreement on the price ought not to be drawn. It is therefore his submission that the plaintiff cannot maintain the action and accordingly the defendant has no case to answer.

According to letter dated 23 August 1994, (P6), the transfer of the property was ready on 1 September 1994. The defendant who had decided not to proceed with the transfer sent a letter dated 27 June 1995 (DI) through her lawyer, Mr France Bonte, which is as follows:

I am acting for Mrs Julie Vannier, the owner of the land upon which you are a statutory tenant under the Act.

I am instructed to inform you that my client hereby gives you fifteen days to buy the said land for R160,000, failing which my client would have no alternative but to repossess her property in view of the fact that you have delayed the said purchase for 18 years and with the said delay the property value has increased and my client should not like to loose on the 'market price' as a consequence of your delay.

I have been instructed to write to the Registrar of Tenants' Rights for a certificate waiving and removing the sold property from the Tenants Right's Register so that your statutory tenancy will be considered as having lapsed.

I wait your earliest response and hope that you will purchase the said property within the time given.

This letter indicated a continuous intention, and an agreement to sell the property to the plaintiff. Obviously, the defendant, who did not apply for a re-assessment of the statutory valuation within the prescribed time, was seeking to obtain the agreement of the plaintiff to a price of R160,000. Had he agreed, there was still the possibility of proceeding with the transfer of the property under the Tenants' Rights Act, as section 32(1) permits the purchase of properties on the "agreed price." But the plaintiff did not agree with that price, and stated that the market value may have gone up as he had made several improvements to the premises, including providing an access road. The present action was filed on 24 July 1997.

As I stated above, in the process of a Statutory Tenant purchasing premises under the Tenants' Rights Act, the aspect of "agreement of the price" does not arise as in a civil

contract envisaged in article 1341. The best that either the statutory tenant or the statutory landlord could do is to seek a re-assessment of the statutory valuation, if there was no agreement on the price. Hence the submission of no case to answer fails.

In the present case, there is overwhelming evidence that the defendant herself, and Mrs Beaudouin on her behalf, pursued the Tenants' Rights application of the plaintiff, up to the time when what remained was only the transfer of the property. In those circumstances, the obtaining of any written proof of the obligation does not arise as he was a party to a statutory process which would make him the owner of the property by virtue of his eligibility under the Tenants' Right Act. The element of "price", if not agreed upon under Section 32(1), and is assessed under section 33, and is determined under the Act.

Accordingly, I hold that there has been an agreement for the sale of the property bearing title nos. H. 583 and H. 714 to the plaintiff, in the statutory sense of a finalization of the procedure towards the transfer of the premises to the Statutory Tenant, and hence the defendant is obliged to execute the transfer thereof for the price of R80,000. In terms of section 34(3) the plaintiff is still a Statutory Tenant. Hence prayer (b) of the plaint to treat the payment of rent as part payment of the consideration is not granted, as he is liable to pay rent until the Statutory Tenancy is terminated by purchase. So also prayer (c) for moral damages is not granted in view of article 1153 of the Civil Code as no special damages caused by bad faith has been established.

Judgment is accordingly entered in favour of the plaintiff, together with costs of action.

The caution entered by the plaintiff under the provisions of the Land Registration Act on 8 October 1997 prohibiting any dealings with the land Titles H. 583 and H. 714 will continue to be in force until the transfer is effected to the plaintiff.

**Record: Civil Side No 253 of 1997**