

**IN THE SUPREME COURT OF SEYCHELLES**

**PERCY VIDOT  
EMMANUEL VIDOT  
DANIELLA PILLAY**

Vs

**EMMANUELLE FIGARO**

*Civil Side No: 92 of 2007*

=====  
*Mr. Elizabeth for the plaintiffs  
Mr. Camille for the defendant*

**Judgment**

**Renaud, J**

This Plaintiff arose out of a Promise of Sale of Immovable Property which the Promisor apparently failed to honour.

The Plaintiffs who are the Promisees are now asking this Court to make the following orders:

- (a) Declare that there has been a sale of title No.V8229 from the Defendant to the Plaintiffs in law since the parties had agreed on the price and the property had been identified.

Further and in the alternative:

(b) Give judgment in favour of the Plaintiffs in the sum of SR220,185.00 together with interest and cost.

### **Disputed Facts**

The Plaintiffs averred that they are and were at all material time businessmen and businesswomen and the Defendant was the owner of Title No.V8229 situated at Labourdonnais, Victoria, Mahe.

The Defendant denied these allegations and averred that he is or was not the owner of Title V8229.

The Plaintiffs averred that they paid the said deposit to the Defendant on the 18<sup>th</sup> December, 2006 by Seychelles Savings Bank cheque N0.0725513, which sum the Defendant duly acknowledged and accepted. The Plaintiffs also paid the sum of SR20,185.00 as filing fees, legal fees, Notarial fees and stamp duty.

The Plaintiffs averred that the Defendant agreed to file an application for appointment of Executor of the estate of his late wife, Guerlice Mercia Figaro, prior to the date of transfer of the said property, and the Plaintiffs agreed to pay all the legal cost associated with the said application for appointment of Executor as agreed.

The Plaintiffs further averred that the Defendant was appointed Executor of the estate of his late wife on the 7<sup>th</sup> February 2007.

The Plaintiffs also averred that in breach of the said promise to sell the said property to them and despite several requests the Defendant has failed, refused or neglected to transfer the said property to them or at all.

The Defendant made a general denial of the above stated allegations of the Plaintiffs.

**Article 75 of the Seychelles Code of Civil Procedure** states that –

*“The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere denial of the plaintiff’s claim is not sufficient. Material facts alleged in the plaint must be distinctly denied **or they will be taken to be admitted.**”*(Emphasis added)

The material averments of the Plaintiffs which have not been traversed or denied by the Defendant are therefore taken as admitted.

The Plaintiffs claimed that by reason of the matters pleaded, they have suffered loss and damage which they particularized as follows:

- (a) Deposit paid by Plaintiffs to Defendant - SR100,000.00
- (b) Legal cost, filing Fees, Notarial fees - SR 20,000.00  
and Stamp Duty paid by Plaintiffs for and  
on behalf of the Defendant

**Total - SR120,000.00**

The Defendant severally denied each and every allegations, figure or sum set out in the above particulars of loss and damage as alleged by the Plaintiffs.

The Plaintiffs averred that the Defendant is liable to pay the Plaintiffs a further sum of SR100,000.00 in law.

The Defendant also denied this allegation and averred that if, which is not admitted, he is obliged to pay any sum to the Plaintiffs, that sum is limited to SR100,000.00 in terms of the alleged Promise of Sale.

### **Plea in Limine Litis**

The Defendant entered a *Plea in limine Litis* as follows:

*“The Promise of Sale of Parcel V8229 is invalid in that the promisor had no capacity to sign it as he had, at the material time, not been appointed as Executor of his late wife’s estate.”*

### **The issues**

Is the Promise of Sale of Parcel V8229 valid in law?

Has there been a Sale of Title No. V8229 in terms of Article 1583 or 1589 of the CCsey?

Are the Plaintiffs entitled to be registered as owners of Title No. V8229 or in the alternative, to the sum of SR220,185.00 in terms of Article 1590 of CCsey?

## **Findings**

It is not in dispute that on the **18<sup>th</sup> December, 2006** the Defendant signed a Promise of Sale whereby the Defendant agreed to sell and the Plaintiffs agreed to buy Title V8229 for the sum of SR1,000,000.00.

It was, *inter alia*, a term of the said Promise of Sale that the Plaintiffs pay the Defendant the sum of SR100,000.00 as deposit and the balance of SR900,000.00 to be paid by 30<sup>th</sup> March, 2007.

It was a further term of that Promise of Sale that the Plaintiffs pay the Defendant's outstanding loan at the Mortgage Finance Company Seychelles Limited and all legal and stamp duty fees associated with the said sale, which sum to be deducted from the purchase price at the time of the transfer of Title V8229.

The Promise of Sale was not registered but that is not a bar to admissibility as the Defendant admitted in his statement of Defence that he indeed entered in such a Promise of Sale. That amounts to a judicial admission in terms of Article 1356 of the CCSeY.

It was, *inter alia*, a term of that Promise of Sale that the Plaintiffs pay the Defendant the sum of SR100,000.00 as deposit and the balance of SR900,000.00 to be paid by 30<sup>th</sup> March, 2007.

It was a further term of that Promise of Sale that the Plaintiffs pay the Defendant's outstanding loan to Mortgage Finance Company Seychelles Limited and all legal

and stamp duty fees associated with the said sale, which sum was to be deducted from the purchase price at the time of the said transfer of Title V8229.

The Plaintiffs paid the deposit of **SR100,000.00** to the Defendant on the 18<sup>th</sup> December, 2006 by Seychelles Savings Bank cheque N0.0725513, which sum the Defendant duly acknowledged and accepted. The Plaintiffs also paid the sum of **SR20,185.00** as filing fees, legal fees, Notarial fees and stamp duty.

Property Title No.V8229 belonged to the Defendant and his late wife Guerlice Mercia Figaro, nee Lesperance who passed away intestate on 19<sup>th</sup> May, 2006. She was survived by the Defendant and their two children, John Wilfred O'Brien Figaro and Virginia Alexandra Figaro.

The Defendant when entering into the Promise of Sale, agreed to file an application for appointment of Executor of the estate of his late wife prior to the date of transfer of TitleV8229, and the Plaintiffs to pay all the legal cost associated with the said application for appointment of Executor.

The Defendant was appointed Executor of the estate of his late wife on the **7<sup>th</sup> February 2007** by the Supreme Court in case CS No. 23 of 2007.

Despite several requests by the Plaintiffs, the Defendant failed, refused or neglected to transfer the said property to them or at all.

### **Conclusion**

The Defendant co-owned Title No.V8229 together with his late wife. His wife having passed away at the time that the Defendant entered into the Promise of Sale,

her half share had devolved on the Defendant and their two children. The co-ownership stood as being three-quarter share for the Defendant and one-eighth share each for his two children.

The Defendant may not have had the legal capacity at the material time to enter into a Promise of Sale in respect of the **entire co-owned** immovable property but he was the effective co-owner of three-quarter of it at the material time. It was on that basis that he entered into the Promise of Sale.

The Defendant entered into a binding Promise of Sale in respect of himself. The Promise of Sale although not registered is valid between the parties. He acted on its terms by accepting deposit stated therein, as such he is bound to honour that promise by delivering the property in issue.

The Defendant created a vice out of which he gained SR100,000.00 from the Plaintiffs and now he wants to use that same vicious action to bar the Plaintiffs to regain their money. The law does not allow a person to make gain or advantage out of a vicious transaction and thereafter use that same vicious transaction in his defence.

As the Defendant will not be able to do so in respect of the entire property in view of the shares of his two children it is my judgment that he is nevertheless not barred from disposing his three-quarter share of the property for three-quarter of the stated price – that is for **SR750,000.00**.

For reasons stated above it is my judgment that the Promise of Sale between the Plaintiffs and the Defendant is valid in law to the extent of the Defendant's three-quarter share in the property in issue namely parcel Title No.V8229.

I hereby grant the Plaintiffs the option to either proceed with the Promise of Sale but in respect of only three-quarter of the property at three-quarter of the stated price of SR1,000,000.00, or, to withdraw from the Promise of Sale.

If the Plaintiffs opted to withdraw from the Promise of Sale, the Defendant shall return to them the sum of **SR100,000.00** deposited, in addition to other expenses amounting to **SR20,185.00**, all with interest calculated from the date these expenses were made.

If on the other hand, the Defendant chooses to opt out of the Promise of Sale he shall pay the Plaintiffs double the amount made as deposit amounting to of **SR200,000.00**. In that case the Defendant shall also pay the other expenses of **SR20,185.00** with interest calculated from the date these expenses were made.

I accordingly enter judgment in favour of the Plaintiffs as against the Defendant on the terms set out above, with costs of this suit.

.....  
B. RENAUD  
**JUDGE**

*Dated this 15, March 2013*