

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC 16/2012

[2014] SCSC

DANIEL PULCIANI

Plaintiff Versus

TREE SWORD [PTY] LTD

First Defendant

BUGGY & JEEP RENTALS [PTY] LTD

Second Defendant

Heard: 16 January 2014
Counsel: Lucy Pool for plaintiff
Serge Rouillon for defendant
Delivered: 21 February 2014

JUDGMENT

Egonda-Ntende CJ

[1] The plaintiff brings this action in contract and in the alternative for unjust enrichment against the defendants. The plaintiff is an Italian national living in Seychelles. He contends that he invested the sum of €54,000.00 in the first defendant which was used to purchase Parcels T2395 and T1752 by the first defendant. The said sum of money was paid directly to the seller of the land and another person on the instructions of the first

defendant. A promise of sale agreement in relation to this agreement was executed by the first defendant and the seller Mrs May Christiansen dated 29th May 2007.

- [2] It is further contended that the first defendant acted as Nominee for the Plaintiff under a Nominee Services Agreement executed on 30 March 2007. It was a term of the nominee service agreement that the plaintiff would be consulted at all times in regard to his investment in the company. In breach of the said agreement the first defendant without consulting him, or obtaining his permission and consent, sold the said parcels of land to the second defendant in July 2010.
- [3] The plaintiff objected to the registration of the said transfer unless the first defendant paid back to him the said €54,000.00, the purchase price of the said parcels of land and now claims the refund of the same in these proceedings.
- [4] In the alternative the plaintiff asserts that the defendants have been unjustly enriched and should be ordered to refund the said sum of €54,000.00 to the plaintiff, including interest and costs.
- [5] Save the fact of transfer of land to or acquisition of land by the first defendant the defendants denied paragraphs 1 to 6 of the plaint, in their entirety, putting the plaintiff to strict proof of the existence of the said agreements for promise of sale and nominee services agreement. The defendants opposed the alternate claim under unjust enrichment as untenable in law.
- [6] At the trial the plaintiff called one witness and do did the defendants. The facts as can be gathered from the evidence are that the first defendant is the registered proprietor of the Parcels T2395 and T1752. The said parcels of land were purchased from Mrs May Christiansen. The purchase price was paid by the plaintiff through a third party by transferring money to 2 different accounts, one of which was controlled by Mr Serge Rouillon, the attorney at law for the defendants. In a promise of sale agreement that was admitted in evidence the plaintiff together with 2 other persons were named as the financiers for the purchase of land between the first defendant and Mrs May Christiansen.
- [7] Mr Serge Rouilliion was the conveyancing attorney in this transaction and witnessed the promise of sale agreement. The directors of the first defendant included Mrs Lisa

Roullion, the wife of Mr Serge Roullion, according to the records from the company registry. Mr Ghezzi testified that the directors of the first defendant are now Betty Michel, his girlfriend and Mr David Esparon.

- [8]** There was a nominee services agreement between the first defendant and the plaintiff which the plaintiff had contended had been breached in that he was not consulted by the first defendant as it ought to have done before the sale of the land parcels aforementioned to the defendant no.2. This agreement was not admitted in evidence as it had not complied with section 25 of the Stamp Duty Act.
- [9]** It appears that the three persons, including the plaintiff, who were the financial backers of the first defendant in the purchase of land developed some differences. The plaintiff claims to have contributed all the money for the purchase of land. DW1, Mr Paolo Ghezzi testified that his parents had remitted funds to the third party controlled by the plaintiff who had transferred funds for the purchase of the land. Nevertheless those differences are not really in issue in this action. Neither Mr Ghezzi nor Mr Andrea Colucci have sought to intervene in this action.
- [10]** What is in issue is whether the plaintiff can recover from the first defendant the purchase price for the two parcels of land which he has shown to have paid to the seller of the land to the first defendant? He seeks to do by claiming a breach of contract and in the alternative by way of unjust enrichment.
- [11]** There is no contract between the first defendant and the plaintiff in relation to Parcels T2395 and T1752. The promise of sale between the seller, first defendant and the plaintiff and his friends creates no obligations between the plaintiff and his 2 friends and the first defendant. All it does is to serve as written evidence to show that the plaintiff and his friends were the financial backers of the first defendant in the purchase of parcels of land aforesaid.
- [12]** The nominee services agreement was not admitted in evidence and its terms are not known save what is alleged in the plaint. The Plaintiff was put to strict proof of its existence as a legally enforceable agreement and he has not succeeded in doing so. The action in contract fails.

[13] I now turn to the alternate action for unjust enrichment. This has been brought in the alternative to the claim for breach of contract. This is permissible. What is not tenable is to pursue a claim for breach of contract as a claim for unjust enrichment.

[14] Article 1381-1 of the Civil Code of Seychelles states,

‘If a person suffers some detriment without lawful cause and another is correspondingly enriched without lawful cause, the former shall be able to recover what is due to him to the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that detriment has not been caused by the fault of the person suffering it.’

[15] As propounded in available case law [See Octave Arrissol v Stephen Dodin SCA 6 of 2003 & Antonio Fostel v Magdalena Ah-Tave and Anor [1985] SLR 113] an action for unjust enrichment has five elements that must be demonstrated if it is to succeed. Firstly there must be an economic benefit added to the patrimony of one party. Secondly there must be a corresponding impoverishment of the other party. Thirdly there must be a causal link between the enrichment and the impoverishment. Fourthly the plaintiff should not have any other remedy in contract; quasi contract; delict or quasi-delict. And lastly there must be an absence of lawful cause or justification.

[16] In the defendant’s answer to the claim apart from a vigorous denial that the plaintiff paid the said purchase price the first defendant has not asserted its own version of facts as to how the purchase price was paid. There is no other version, on the pleadings, as to how this money was paid other than the version put forward by the plaintiff. The defendants had no intention therefore it could be surmised to offer an alternate version as to how the purchase price for the land was paid. Nor would they be allowed to prove one, not having put one forward on their pleadings.

[17] After a review of the evidence of the plaintiff in this regard I am amply satisfied that it has been established without question that the plaintiff paid for purchase price for the parcels that were transferred to the first defendant. To that extent there was an enrichment of the first defendant and a corresponding impoverishment of the plaintiff. The enrichment is linked to the impoverishment. There was no existing obligation for this

money to be paid. The only element that remains to be answered is whether the plaintiff does not have another remedy in contract.

[18] This issue has given some difficulty especially in light of the fact that the nominee services agreement which was alleged to have been breached was never admitted into evidence and thus cannot be examined to determine if the plaintiff has a possible remedy under that agreement. However I note from the pleadings, especially by the defendant that the existence of this agreement was denied by the defendants. The total repudiation of this agreement is made in paragraphs 4,5 and 6 of the defendants' written statement of defence.

[19] The first defendant has not, as it is obliged to have done under section 75 of the Seychelles Code of Civil Procedure, stated, 'a clear and distinct statement of material facts on which the defendant relies to meet the claim.' Nevertheless there was a vigorous denial to the existence and legal efficacy of the nominee services agreement. And in the end this denial has not been surmounted by the plaintiff. In the circumstances I am prepared to conclude that the plaintiff had no remedy in contract or quasi contract which is what the first defendant in effect contended in paragraphs 4, 5 and 6 of the defendants' written statement of defence. If such a remedy existed it would be logical for the first defendant to set it up as a defence to the action for unjust enrichment. It has not done so.

[20] In the result I am satisfied that the plaintiff has proved the alternate action of unjust enrichment and I order the first defendant to pay back to the plaintiff the sum of €54,000.00 or its equivalent in Seychelles Rupees with interest at the legal rate from the date of filing this suit till payment in full with costs.

[21] I dismiss the action against the second defendant as it has no merit.

Signed, dated and delivered at Ile du Port on the 21st day of February 2014

F M S Egonda-Ntende
Chief Justice