

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 39 /2015**

**[2017] SCSC**

---

Jean Claude Larue

Plaintiff

Versus

Georgette Philomena Hertel

First Defendant

Property Management Corporation

Second Defendant

---

Heard: 24 March 2017, 16 June 2017, 28 June 2017,

Counsel: Mr. Joel Camille for plaintiff  
Mr. Anthony Derjacques for first defendant  
Ms. Alexandra Madeleine for second defendant.

Delivered: 18 September 2017

---

**JUDGMENT**

---

**M. TWOMEY, CJ**

**[1]** The Plaintiff and First Defendant had a common law relationship and during their concubinage concluded an agreement with the Second Defendant, a housing loan entity, for the purchase of a three bedroomed house at Ex Moulinie Estate, Baie Ste Anne, Praslin.

- [2] In pursuance of the agreement a loan of SR303, 930 was disbursed in the Plaintiff's and First Defendant's names. The Plaintiff avers that he alone made the repayments for the loan by deductions from his monthly salary in the sum of R1200.
- [3] He was subsequently ordered out of the property on 7 February 2014 and the Second Defendant has remained in sole occupation and enjoyment of the house since.
- [4] He avers that he has therefore been impoverished and the First Defendant enriched at his expense.
- [5] The First Defendant has filed an Amended Statement of Defence in which she makes a general denial of the Plaintiff's claim and adds that no purchase agreement was ever concluded. She adds that she is in occupation of the house because of an order of the Family Tribunal and that she contributes to the same and that she requires the house for herself and her child.
- [6] The Second Defendant did not file a defence and stated in open court that it would abide by any decision of the court.
- [7] In his testimony, Jean Claude Larue stated that he was a police officer of about ten years. He met the First Defendant when he came to Mahé and had a relationship with her. They dated and she visited him at his place at Anse La Blague, Praslin. He had made an application for a house in Praslin in 2008 or 2009 or even earlier but in any case before meeting her.
- [8] Eventually he was allocated a house on Praslin and the First Defendant came to live with him together with her daughter. He admitted that both he and the First Defendant had signed the purchase agreement from Seychelles Housing Development Corporation. Subsequently another daughter of the First Defendant came to live with them on condition she would vacate the house once she turned 18.
- [9] In 2014 he was evicted from the house by the Family Tribunal. He had paid for the house on his own. The First Defendant had made no payments. It was his testimony that she made little or no contributions as she did not work for any substantial amount of time until he left the house.

- [10] The First Defendant also testified. She is married to one Roland Hertel with whom she has five children. She left her husband to be with the Plaintiff. She admitted that she was not in employment when she first moved to Praslin. Subsequently she worked for Emerald Cove Hotel for about a year.
- [11] She admitted that the Plaintiff made all the payments for the housing loan. She stated that she had worked but had no records to prove the same. She agreed that together with her two daughters, they were the sole persons benefitting from the house. She had purchased tiles for the house but until the present time had never paid the loans on the house.
- [12] Ms Gretel Simara testified on behalf of the Second Defendant. She confirmed that housing assistance was requested by the Plaintiff on 11 June 2004, an approval letter issued on 25 August 2004 and a purchase agreement signed by the Plaintiff and first Defendant on 4 September 2004. Seychelles Housing Development Corporation had later been reincorporated as the Property Management Corporation.
- [13] She also produced an Authority Letter from them signed by the Plaintiff to the Paymaster to the Police Department authorising them to deduct SR1287 monthly from the Plaintiff's salary for the housing loan repayments.
- [14] This amount continues to be paid even if the Plaintiff is no longer occupying the house. The statement of account as of 1 May 2017 shows that from a loan amount of SR303,930.00, the sum of SR 118,301.68 has been paid by the Plaintiff by deductions from his salary.
- [15] Mr. Derjacques for the Defendant relying on Article 632 of the Civil Code has submitted that the First Defendant is entitled to the *habitation* of the house.
- [16] What is clear from the evidence is that neither party owns the house at Baie Sainte Anne, Praslin. It is the property of the Property Management Corporation, who operate a home ownership scheme. It is common knowledge that once the money owed to them is paid off the property is then transferred to the purchasers (see Exhibit D2, specifically the agreement dated 4 September 2004).

- [17] Insofar as *habitation* is concerned, the principles cannot be entertained as the Code specifically provides that *habitation* must be created by title or by the will of the parties (see Articles 579 and 625). There is no title under the Land Registration Act produced by the parties nor any agreement granting the *habitation*. Nor can the parties who are mere purchasers grant habitation rights to each other.
- [18] A *droit d'habitation* is a restrictive form of usufruct. The *numerus clausus* rule would operate to exclude the grant of a separate right other than those provided by law.
- [19] Hence, the *habitation* right can only be given by the owner (Property Management Corporation) and there is no exclusive *habitation* right granted to either party. That submission therefore cannot be sustained.
- [20] Both Counsel have also referred the court to precedents on unjust enrichment:
- [21] Article 1381 (1) of the Civil Code provides:
- “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.”*
- [22] It is trite that an action *de in rem verso* or in unjust enrichment is maintainable so as long as all the five conditions specified in Article 1381-1 are fulfilled: an enrichment, a corresponding impoverishment, a connection between the enrichment and the impoverishment, the absence of lawful cause, no other remedy being available (see *Dodin v Arrisol* 2003) SLR 197.
- [23] In the circumstances of this particular case, the conditions of the provisions of Article 1381 (1) are met. The Plaintiff has been evicted from the home albeit because of his acts towards the First Defendant as borne out by the Family Tribunal Proceedings but has had

deductions for the loan repayment deducted from his salary through the non-cancellation of the same by the Second Defendant.

[24] The First Defendant has been enriched as she remained in the house for which the Plaintiff has been paying. Similarly the Second Defendant has been enriched in that they have received payment for a property for which the Plaintiff has had no benefit since his eviction.

[25] There is also no other remedy available to the Plaintiff. He has prayed for an order that he is declared the sole owner of the property.

[26] However, that is not an order that can be granted in the circumstances as neither he nor the First Defendant are the owners of the property in question. Ultimately, that is a decision for the Second Defendant based on their estimation as to which party should have exclusive possession of the house given the ability of the Plaintiff to continue making the loan repayments to the house.

[27] There is a difficulty in calculating the value of the impoverishment of the Plaintiff because he did benefit from the use of the house for period of time when he was living there. However it was his expectation that he would own it one day. I find it difficult to calculate damages for this and any sum awarded is bound to be arbitrary.

[28] From the time he was evicted (7 February 2014) until the end of September 2017 he made SR51, 600 (SR1200 x 43 months) in contributions to the Second Defendant while the First Defendant had exclusive use and enjoyment of the house. He is entitled to this sum back together with a legal interest rate of 4% and any other sum at the same interest until the deductions from his salary stops.

[29] I also award him a further SR30, 000 for his impoverishment resulting from his expectation of being the owner of the house which will now not happen unless he is given exclusive possession of the same for which he continues to make payment.

[30] In the circumstances, I order that the Defendants jointly and severally pay the Plaintiff the sum of SR81, 600 and any other sums that continues to be deducted from his salary with interests and the costs of this suit forthwith.

[31] I would like to add that the Agreement signed by the parties on 4 September 2004 has a clause 11 (ii) which has not been adduced in evidence in its entirety and therefore cannot benefit from an interpretation by this court.

[32] However, as an alternative to this court's order, the Second Defendant is free to decide whether it would like to rescind the agreement with the parties. If it does so and enters into a fresh agreement with the Plaintiff exclusively and he also occupies the house exclusively, the money paid by the Plaintiff will not need to be repaid.

Signed, dated and delivered at Ile du Port on 18 September 2017.

**M. TWOMEY**  
Chief Justice