

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 19/2016

[2018] SCSC 31

MAXIME MARIE

Plaintiff

versus

MARIE-THERESE BONIFACE

Defendant

Heard: 17 January 2018
Counsel: Mr. Charles Lucas for plaintiff
Mr. Clifford Andre for defendant

Delivered: 17 January 2018

JUDGMENT

Pillay, J

[1] The Plaintiff seeks an order from the Court declaring that:

- i) the Plaintiff is entitled to specific performance of transfer of Title PR4486;
- ii) the Defendant execute the transfer deed for Title PR4486 or in the alternative to order the Registrar of Land to register the Plaintiff as registered proprietor of Title PR4486;

- iii) the Defendant pays the Plaintiff SCR50, 000/- damages and SCR5, 000/- monthly from the date that Title was conveyed to her until such date that Title is conveyed to the Plaintiff plus interest and costs of this suit.
- [2] The Defendant was duly served with summons and filed defence dated 29th July 2016. However on the date of hearing she failed to appear. Counsel stated to Court that the Defendant had gone away because of certain health trouble but failed to produce any documentation resulting in the case being heard *ex parte* against her.
- [3] The Plaintiff testified that he has known the Defendant for about 10 to 15 years. In April 2013 the Defendant approached him regarding payments for a house from SHDC on plot PR4486 at Cote D'Or Praslin. She showed him a document from SHDC which the Defendant produced as PE1. The house was SCR 300, 000/- which the Defendant could not pay and it reached SCR347, 284/- with interest. The Defendant asked the Plaintiff for help to pay the sum. The Defendant transferred the money from his bank account to the Defendant's bank on an agreement that the Plaintiff would be buying the house from the Defendant.
- [4] The Plaintiff produced a promise of sale between himself and the Defendant dated 9th April 2013 whereby the Plaintiff agreed to pay the Defendant the sum of SCR 347, 284.83 by way of bank transfer and the Defendant was to use same to pay off the outstanding loan account at the office of Housing Finance Company the successor of Seychelles Housing Development Corporation. Clause 3 of the Promise of Sale is that the Defendant would appoint the Plaintiff as Specific Attorney under the Land Registration Act so that the Plaintiff could assume and exercise all of the Defendant's rights in PR4486 until any Restrictions are lifted.
- [5] I note that as per PE2 the Plaintiff transferred the sum of SCR347, 284.83 to the Defendant Marie Therese Boniface on 12th April 2013.
- [6] The Plaintiff also produced the Transfer of Title PR4486 from PMC to the Defendant as PE4. The transfer of the land was effected on 22nd March 2015.

- [7] It was the Plaintiff's evidence that when he asked the Defendant to come to Mahe to effect the transfer of money she agreed with open heart but when he asked her to come for the transfer of the property she refused.
- [8] The Plaintiff further claimed that as a result of the Defendant's actions it caused him to have heart problems and hypertension. According to him before the incident he was a normal person. However he produced no medical regarding either condition.
- [9] He also is claiming SCR5, 000/- as rent that she is collecting from the house. However there was no evidence that the Defendant is renting out the house.
- [10] Having perused the evidence I am satisfied that there is no basis for the claim for emotional distress and nor is there basis for the claim for rent.
- [11] As regards the prayer that the Defendant effect specific performance in accordance with the promise of sale the Plaintiff had already paid to the Defendant the full purchase price of the land.
- [12] According to the case of **Varnier v Alcindor SCA 28/2000, LC 216** in order to establish an action in specific performance, the Plaintiff must prove the contract and its breach.
- [13] The question for the Court is whether or not there is a valid contract between the Plaintiff and Defendant and if there is indeed a valid contract is the Defendant in breach of that contract.
- [14] Before ordering specific performance, the court must be satisfied that the agreement is certain – **Willies v Societe d'Exploitation Hoteliere (1979) SLR 144.**
- [15] I take note of Article 1134 of the Civil Code which reads thus:

“Agreements lawfully concluded shall have the force of law for those who have entered into them. They shall not be revoked except by mutual consent or for causes which the law authorises. They shall be performed in good faith”.

[16] On the evidence it is clear the parties agreed to the sale of the property for the sum of SCR347, 284.83 being the amount that the Defendant owed to the housing company. The Plaintiff was to transfer the money to the Defendant who was then to pay the housing company. The Defendant was to thereafter transfer all her rights to the Plaintiff or transfer the property to the Plaintiff completely in the event the housing company did not place any restrictions upon transfer to the Defendant.

[17] The Plaintiff discharged his part of the deal and paid over the money to the Defendant through bank transfer. The Defendant obviously paid the money over to the housing company since the property was transferred to her on 22nd March 2015.

[18] However the Defendant then failed or refused to transfer the property or her interests in the property to the Plaintiff as agreed.

[19] The parties having entered into an agreement and the Plaintiff having performed his obligations under the agreement the Defendant cannot unilaterally withdraw from the agreement without performing her obligations.

[20] I find that the Plaintiff is entitled to specific performance of the agreement.

[21] On the basis of the above I therefore, enter judgment in favour of the Plaintiff and against the Defendant as follows:

- (i) I declare that the Plaintiff is entitled to get the parcel of land title PR 4486 transferred onto him by the Defendant;
- (ii) I order the Defendant to execute the transfer deed transferring title PR 4486 to the Plaintiff, within the period of 6 weeks from the date hereof or in default the Defendant shall pay the entire costs of this action to the Plaintiff;
- (iii) If the Defendant fails or neglects to execute the transfer deed within the period stipulated in paragraph (ii) above, I direct the Registrar of Land to register the Plaintiff Maxime Marie of Baie Ste Anne Praslin, as owner of title PR4486 in the relevant Land Register, upon payment of the necessary stamp duty and registration charges;
- (iv) I award no damages to the Plaintiff;

- (v) I make no order as to costs except in case of default by the Defendants as stipulated in paragraph (ii) above.

Signed, dated and delivered at Ile du Port on 17 January 2018

L. Pillay, J
Judge of the Supreme Court