

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 478
CS 65/2017

PROPERTY MANAGEMENT CORPORATION
(rep. by Samantha Aglae)

Plaintiff

and

GEORGINA FLORA SIMEON
(rep. by John Renaud)

1st Defendant

CYRIL CHRISTINA SIMEON
(rep. by John Renaud)

2nd Defendant

JEANINE SIMEON
(rep. by Divino Sabino)

3rd Defendant

Neutral Citation: *Property Management Corporation v Georgina Floria Simeon and Ors* (CS 65/2017) [2019] SCSC 30th May 2019).

Before: Vidot J

Summary: Articles 1376 and 1379 of the Civil Code; Person receiving immovable property in error, obligation to make restitution

Heard: 19th November 2018 and 25th February 2019

Delivered: 30th May 2019

JUDGMENT

VIDOT J

Background

- [1] This is a suit prosecuted in terms with Articles 1376 and 1379 of the Civil Code of Seychelles. This concerns land title H6481 which the Plaintiff is seeking its restitution of to the Plaintiff by the second Defendant due to an error that happened when it was first transferred to the first Defendant. The first Defendant subsequently transferred the land title to the second Defendant, her son. The first and second Defendants occupy a unit of a detached house found on the land parcel. The land was to be subdivided and a parcel transferred to the 3rd Defendant.
- [2] Property Management Corporation (PMC) was the owner of the land parcel. On it they built semi detached houses one of which was allocated to the 1st Defendant and the other to the 3rd Defendant. Each of these 2 defendants occupied their unit and was paying PMC for the same with a view that their individual unit and land would be transferred to them. However, allegedly by mistake the entire parcel was transferred to the first Defendant. PMC then tried to contact the first defendant regarding that mistake and for them to undertake steps to subdivide the land parcel and transfer to the first and 3rd Defendant their individual plots. The first Defendant would not agree to the same and the second Defendant to whom the first Defendant transferred the land was categorically opposed to the subdivision. He claims that the mistake was not caused by the first Defendant and there he is under no obligation to allow for the subdivision. In the meanwhile the first Defendant made her last payment to PMC in 24th September 2007 whilst the 3rd Defendant completed payment for her unit and her land in July 2007.

Evidence

- [3] So H6481 contained 2 semi-detached houses; one occupied by the first Defendant and her family and the other by the 3rd Defendant and her family. Mrs. Simara of the PMC testified that the transfer of the land was made by mistake. She stated that the 1st Defendant was making payment for her unit with PMC. She even got a reduction on the payment from PMC as part of the homeownership scheme. The other semi detached house was being paid by the 3rd Defendant, as per exhibit P2. Like the 1st Defendant, the second defendant made payment in full and got a reduction in the price too. However, the

first Defendant refused to have the mistake rectified. So, Mrs. Simara testified that as a result the 3rd Defendant and her husband paid for the property but someone else obtained title.

- [4] Mr. Percy Renaud, Land Surveyor working for PMC gave evidence that he was asked to do the survey on the land parcel and therefore rectified the mistake. However, despite having drawn the necessary survey plan (exhibit P3(1),(2) and (3), it has not been possible to have the said registered as there is objection from the first and second Defendants.
- [5] Mrs. Jeannine Simeon, the 3rd Defendant deponed that she has been residing on the land she now resides for more than 27 years. She was placed on the property by the PMC. She received a semi-detached house and was given the keys by PMC. She had to pay a loan to PMC and her husband facilitated that by payment from his salary. Payment has been completed. Since, that was the case, therefore she expected the land and the house to be transferred to her.
- [6] Mr. Georges Simeon, husband of the third Defendant is the brother of the 1st Defendant. He had lived on the land parcel for over 30 years. First there was an old house in which he lived which was demolished by PMC and the duplexes were built. They were shown the house by PMC and accepted the same. He paid off the loan. He understood that the house would eventually be his and his family. He did work to improve the house and surroundings and therefore he now expects the house to be his and his family.
- [7] The second Defendant admitted that when his mother transferred the land title to him he was well aware that there was a problem. He did not want his mother the first Defendant to deal with the problem thus the transfer to him as per exhibit P5. His mother only paid the loan for her unit as the other unit was always occupied by the 3rd Defendant and her family. He was aware of the improvement made to the property by the 3rd Defendant. He stated that the Government can buy back the property on which the duplexes are found.

Analysis

- [8] From the evidence adduced there was an error in the transferring of the land to the first Defendant. The land title was erroneously transferred as a whole solely to the first Defendant. It is abundantly clear that, that was not the intention of PMC. Both the first and third Defendants occupied a semi-detached house on the land and both had paid a loan to eventually be the owner of the house they each occupied and obviously the land attached to it. Mrs. Simara gave evidence that it was an error. Even when cross-examined by Counsel for the first and second Defendants, she was asked “.... *can you explain to court how the mistake occurred that the land was sold to someone rather than 2 persons?*” There was no objection to that question and the answer was not contradicted. That is an express acknowledgement that there was an error that occurred. The 2nd Defendant despite every effort to play around with words admitted that there was a mistake. Mrs Simara made it clear that it was not the intention of PMC to sell parcel H6481 in entirety to the first Defendant.
- [9] Article 1376 of the Code provides that “*a person who, in error or knowingly, receives what is not due to him, shall be bound to make restitution to the person whom he has improperly obtained.*” It is interesting to note that PMC approached both the first and second Defendants to rectify the mistake, but they refused. The 2nd Defendant suggested that the Government needed to buy back the land parcel. That was said by the 2nd Defendant with an air of arrogance and a sense of bad faith. However I note that the 1st Defendant did not testify. That means that she did not contradict the evidence of the Plaintiff that she was advised of the error and neither did she contradict the evidence of the 3rd Defendant. Nonetheless, irrespective of whether or not the error was known to her, Article 1376, as submitted by Counsel for the 3rd Defendant, places an objective element in addition to a subjective one, in that a person who in error or knowingly receives what is not due to him, is bound to make restitution.
- [10] Article 1379 states that a person who unduly receives immovable property shall “*be bound to make restitution in kind, if it is still in existence, or of its value has perished or deteriorated through his fault, he shall be liable for its incidental loss if he receives it in bad faith.*” The first and second Defendants being fully conscious of the mistake has to make restitution. It was clear to the first Defendant that the entire land parcel was not due

to her and she did not deny that. The land parcel was transferred to the 2nd Defendant and he knew full well about the mistake. That transfer was done out of bad faith and that was abundantly clear through the evidence of the 2nd Defendant. Therefore, he cannot now retain the land. He has to make restitution so that the mistake be rectified. The land shall then be divided into 2 plots whereby he shall receive his plot on which stands his house and the 3rd Defendant the plot on which stands her house.

[11] Therefore, I hereby enter judgment in favour of the Plaintiff and make the following order;

- (a) The sale of land title H6481 between the first and second Defendants is declared null and void and the sale between the Plaintiff and the first Defendant is equally null and void and therefore both sales are hereby cancelled;
- (b) That the first Defendant permits the PMC, without any interference or restrictions whatsoever to conduct a subdivision of the said land title; and
- (c) Once the division is carried out, the 2 land parcels shall be allocated to the 2nd and 3rd Defendants, with each being allocated that part on which their respective is located.

[12] I make no order as to cost as the same was not prayed for.

Signed, dated and delivered at Ile du Port on 30th May 2019


Vidot J