

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 457
CS 97/2017

In the matter between:

THE ESTATE OF EMILE BRISTOL

Plaintiff

BRISTOL HEREIN REPRESENTED

BY CHERYL BRISTOL

(rep. by Mr. Bernard Georges)

and

RONNIA THELCIA KING

Defendant

(rep. by Mr. Joel Camille)

Neutral Citation: The Estate of Emile Bristol v Ronnia King (CS 97/2017) [2019] SCSC 457 (5 June 2019)

Before: Pillay J

Summary: Contract – Fraud – Payment of Consideration

Heard: 13th December 2018

Delivered: 5th June 2019

ORDER

Case dismissed since on a finding that there was a fraud, the contract is void as result of which consideration cannot be paid

JUDGMENT

PILLAY J

[1] The Plaintiff prays this Court for a judgment against the Defendant in the sum of SCR 500, 000.00.

- [2] The late Emile Bristol was the owner of parcel S7677 and the Defendant was the concubine of the Deceased. The deceased passed away on 22nd August 2014 and Cheryl Bristol was appointed the executrix of his estate.
- [3] The Plaintiff averred that prior to his death, the deceased had been hospitalised and his health had deteriorated to the point that he was unable to perform his daily activities. He was suffering from acute mental confusion that minimised his ability to take the right decisions.
- [4] On 19th August 2014, whilst in hospital and in a state of acute mental confusion, the deceased marked the Instrument of Transfer by way of his thumb print to transfer the said parcel 7677 to the Defendant for an alleged consideration of SCR 500, 000.00.
- [5] The Plaintiff avers that the consideration was never paid.
- [6] The Mr. Georges for the Plaintiff submits that the evidence clearly reveals that the payment of the purchase price as stated in the Instrument never occurred. As such, counsel submitted that the Defendant is bound to refund the Estate of the deceased the price which she never paid.
- [7] It was Mr. Georges' submission that the Plaintiff's case is based in contract.
- [8] On behalf of the Defendant, Mr Camille submitted that it is unclear under which cause of action the Plaintiff seeks to bring the claim. He submitted that the plaintiff seeks or alleges no claim for damages in delict nor does it seek to allege that the Defendant has been unjustly enriched to the detriment of the Plaintiff.
- [9] It was Mr. Camille's submission that the Plaintiff cannot seek what she does with the Plaintiff as it is and that the Plaintiff is bound by the pleadings. Mr. Camille further submitted that even if the Plaintiff was to argue that its case is "based of fraud and mistake the Plaintiff should be dismissed for failure to plead with material particulars the allegations of fraud, as alleged against the Defendant".
- [10] The list of issues to be determined as agreed are:

(1) Was it agreed that the Defendant would pay SCR 500, 000.00 for parcel S7677?

(2) If so was the sum paid?

(3) If not is the Defendant liable to pay that sum to the Plaintiff?

[11] The evidence of Dr Caridad is that she first saw the deceased at North East Point Hospital. The deceased developed a chest infection while at the North East Point Hospital and became lethargic and confused meaning he could not able to give proper answers at times. He was having sleep disorder and lack of proper attention as a result he was diagnosed with having mental confusion. When the deceased chest infection got worse he was transferred to the Victoria Hospital for further management but finally passed away with the same mental confusion.

[12] The Doctor made clear that when the deceased was admitted he was not confused but when his condition got worse he started getting confused. When he was transferred to the Victoria Hospital on 18th November he was in no position to take right decisions. (proceedings 13th December 2018 page 6 of 72)

[13] I note that in cross examination by Mr. Camille the Doctor stated that she could not confirm that the deceased was in a state of confusion on 19th August 2014.

[14] I also note PE1 the medical report which was produced with no objections from the Defence shows that the deceased was transferred to the North East Point Hospital on 1st August 2014. He was subsequently referred to the male medical ward on 18th August 2014 where his condition continued to deteriorate and he passed away on 22nd August 2014.

[15] In my view it is a fair inference from the doctor's evidence that on his re-admission to the Victoria Hospital the deceased mental condition did not improve but got worse.

[16] The deceased's daughter, Cheryl Bristol, the executrix testified that her father, the deceased, had several bank accounts but there was definitely no sums of SCR 500, 000.00 in any of them, the highest amount in one SCR 9000.00 at Barclays Bank.

- [17] According to Cheryl Bristol her father was still at North East Point Hospital on 19th August 2014 (page 13 of the 13th December 2018 proceedings). However later in cross examination she stated that she had not seen her father on the 19th August 2014.
- [18] She testified that her father was illiterate and but was able to sign his name, his signature. To her knowledge her father had never used his thumb print.
- [19] It was her testimony that on 20th August 2014 her father could barely speak and was making sounds. It got worse on the 21st and 22nd August 2014
- [20] For her part the Defendant insisted that the transfer was effected on 19th August 2014. She testified that the deceased transferred the property to her because he knew he had left so many debts with her. The only debt she described though are hospital debts. The Defendant attempted to produce receipts for payments she said she'd made on behalf of the deceased but those were not allowed since that was not part of her defence.
- [21] According to the Defendant, she discussed with the deceased the amount of money he wanted her to pay (page 49 of the 13th December 2018 proceedings) and then agreed on SCR 500, 000/-. When queried, the Defendant explained that speaking English is a bit difficult for her. In my view English or Creole, if one is being given property as settlement for a debt then one simply calculates the amount of the debt and puts that figure on paper as opposed to discussing how much money should be put on the paper out of thin air.
- [22] With regards to the sale price of the property she could not remember how much she sold it for but could remember off the top of her head that she borrowed SCR 350, 000/- from one Harry Bonte, SCR 20, 000/- from Mr. Brutus and 14, 000/- Mauritian Rupees from one Yannick Leveille. The witness also remembered clearly that the deceased bracelet was sold for 100, 000/- but the buyer only put 75, 000/- on the paper.
- [23] During examination in chief the Defendant stated that she had a good relationship with the deceased children, yet in cross examination when asked if the issue of the transfer was discussed with the children she stated that the children usually do not come to assist their father.

- [24] In addition she testified that she gave two of the deceased children SCR40, 000/- but could not explain why she did not give Cheryl Bristol and the others any money from the sale of the property.
- [25] The Defendant in cross examination accepted that she had not paid the SCR 500, 000/-.
- [26] Mr. Georges submitted that the case of the Plaintiff is based on contract and the Plaintiff is seeking the unpaid consideration. Mr. Georges further submitted that the invalidity of the instrument of transfer, as a result of the mental condition of the deceased and the failure to observe the rules of the Notary's Act, means that nothing in it can be relied upon.
- [27] The Plaintiff relies on mistake or fraud as a result of the mental condition of the deceased to dispute the validity of the transfer document and to explain why the transfer reflected that the money had been paid.
- [28] In **Bason v Bason [2005] SLR 129** the Court found that for fraud to exist, it must be shown that fraudulent contrivances preceded the agreement or were used at the time the contract was entered into and had direct effect on it. The Court defined contrivances as including amongst others exploitation of the other party's weaknesses.
- [29] On the basis of the above I accept the Plaintiff's evidence that the deceased was mentally confused at the time the transfer was made and more likely than not that he had diminished ability to make the right decisions which the Defendant made use of to effect the transfer.
- [30] I also accept that the transfer was not signed before the notary and lacked the necessary attestation contrary to section 60 and section 61 of the Land Registration Act.
- [31] With regards to the Defendant, I did not find her credible other than for her admission that in fact the consideration was not paid. I reject her evidence that the deceased had discussed with her about transferring the property to her as payment for debts incurred by her on his behalf.

[32] However, on a finding that the transfer was effected by way of fraud, which I do find, the contract becomes void meaning that no payment of consideration can be ordered.

[33] I note that the transfer document does not reflect that the consideration was paid. In my view this is where the confusion started. Plaintiff proceeded on the basis that there was a declaration in the transfer that the sum of SCR 500, 000/- had already been paid when there was in fact no such declaration in the transfer document.

[34] In view of the above the Plaintiff's claim is dismissed.

Signed, dated and delivered at Ile du Port on 5th June 2019

Pillay J