

Civil Action No. HBC 280 of 2005 :Shami Raj v Angela Devi Prasad, Narendra Prasad and Registrar of Titles

In the High Court Fiji at Suva

Civil Jurisdiction

Civil Action No. HBC 280 of 2005

Between: Shami Roshni Raj

Plaintiff

And: Angela Devi Prasad & Narendra Prasad

First defendant

And: The Registrar of Titles

Second defendant

Appearances: Ms S. Devan for the plaintiff

The defendants absent and unrepresented

Date of hearing: 10th February,2011

Judgment

1. *Course of Proceedings*

- a) This matter was heard on 10th February, 2011. At the close of hearing, the plaintiff was ordered to file closing submissions on 4th March,2011.
- b) On 8th March,2011, Ms R. Karen represented the plaintiff. She sought a further date to file submissions. I made order that closing submissions be filed on 22 September,2011.
- c) On 19th October, 2011,I had this case called over. Ms Devan counsel for the plaintiff sought 14 days to withdraw as solicitors for the plaintiff. The matter was to be called on 2nd November, 2011.
- d) On 2nd November, 2011, Ms Devan stated that she will file submissions on that day.
- e) Thereafter, the file was unfortunately misplaced. When the matter was brought to my attention by the Registry, I had the matter called over on 30th January,2015.
- f) On 30th January,2015,Ms Devan stated that would obtain instructions from the plaintiff, if she wishes to proceed with this matter, her firm is in contact with the plaintiff. Alternatively, the plaintiff's solicitors would withdraw as solicitors. Ms Devan stated that the plaintiff is not pursuing a judgment of the Master granting an interim payment to the

plaintiff in this case, in view of the heavy costs involved of enforcing a judgment in New Zealand, where the defendants were resident

- g) On 6th February,2015,Ms Ghandi, counsel for the plaintiff on that occasion stated that her firm was unable to contact their client and have no instructions to file submissions.
- h) Accordingly, I proceed to deliver judgment.

2. *The statement of claim*

The statement of claim recites that the plaintiff had executed a sale and purchase agreement with the first defendants in April,2004,to purchase the property of the first defendants comprised of CT 29353, Lot 13 on DP no 7502. The plaintiff paid the deposit of NZ\$ 40,000 in terms of the agreement and a further sum of NZ\$ 40,000. The plaintiff alleges that the first defendants repudiated the agreement and sold the property to a third party for \$ 132,500. The plaintiff pleads that the first defendants have been unjustly enriched. The plaintiff claims general damages for breach of contract, a refund of the monies paid and costs.

3. *The statement of defence*

The first defendants, in their statement of defence admits that the plaintiff paid the initial deposit of NZ\$ 40,000 and the further sum of NZ\$ 40,000. The first defendants state that they rescinded the sale and purchase agreement, as the plaintiff defaulted in settlement of the balance purchase price. The first defendants forfeited the monies paid, in accordance with the agreement. The plaintiff was occupying the property at a rental of \$ 600 a month, and did not pay rent from 1st January,2004. In their counterclaim, the first defendants claim a sum of \$10,800 as arrears of rent.

4. *The hearing*

The plaintiff,(PW1) gave evidence in support of her claim. She said that she entered into a sale and purchase agreement with the first defendants, to purchase a property. She produced the sale and purchase agreement. She paid a deposit of NZ \$ 40,000 and a further sum of NZ\$ 40,000. Subsequently, she discovered that the first defendant had sold the property for NZ\$ 132,500 to a third party, by transfer document No 566405 of 7th June, 2005.

PW2,(Shanti Prasad, the husband of PW1) in his evidence, said that he borrowed money, to pay the purchase price to the first defendant. He was finding it difficult to repay the loan. He sent the deposit of NZ \$ 40,000 and an additional sum of NZ \$ 40,000 to the first defendants. PW1 and PW2 had stayed in the property (the subject matter of the agreement). They were asked to move out. Thereafter, they have been paying rent for six years. In Lautoka, they paid a sum of \$ 1500 for the period 1 January,2006, to December,2009. Presently, they are paying \$ 500 a month from December,2009, to-date. He has incurred legal fees of NZ 6916.58 to engage counsel in New Zealand, to enforce the judgment of the Master granting the plaintiff, an interim payment of \$ 45000. In support, he produced an email written to him by the solicitors for the plaintiff.

5. The determination

- a. In April,2004, the plaintiff and the first defendants executed a sale and purchase agreement, in terms of which the first defendants agreed to sell their property comprised in CT 2953 to the plaintiff, for a sum of NZ \$ 100,000.
- b. Clause 3 of the sale and purchase agreement. provides for the settlement date to be agreed to by the parties, “*but not later than 6 weeks from the date of execution of this Agreement*”.
- c. The plaintiff, in her evidence stated that the first defendants defaulted in the performance of the contract and sold the property to a third party 566405 on 7th June, 2005, for NZ\$ 132,500. I note that this transfer has been registered on the title.
- d. It follows that the first defendant are in breach of contract. The repudiation of a contract for the sale of land constitutes a breach of contract giving rise to a claim for damages, to a party who has suffered damages.
- e. **Mcgregor on Damages**,(17th Ed,2003) at page 772 states that the “*normal measure of damages is the contract price less the market price at the contractual time fixed for completion*” (footnotes omitted)
- f. **Mcgregor**(*op.cit*, pg 773) states further that there is a difference of opinion as to how the market price is to be ascertained, and concludes that “*the resale price be taken as strong evidence of the market value*”.

- g. Clause 6 states that a purchaser may sue for special and general damages, if a vendor defaults in the performance of the agreement.
 - h. In my judgment, the plaintiff is entitled to a sum of NZ\$ 32,500, as general damages, (being the resale price of NZ\$ 132,500 less the contract price of NZ \$100,000).
 - i. PW2, in his evidence said that the plaintiff had to pay rent consequent to the breach and fees to solicitors in New Zealand, to enforce the judgment of the Master granting her interim relief.
 - j. The plaintiff has neither pleaded nor particularized (nor proved) these items of special damages she claims to have suffered, as a result of the breach. It follows that she is not entitled to special damages.
6. In my judgment, the plaintiff is entitled to claim a sum \$ NZ\$ 32,500, as general damages. The plaintiff is also entitled to a return of the sum of NZ\$ 80,000 paid as advance.
7. **Orders**
- (a) The first defendants shall pay the plaintiff a sum of NZ\$ 112,500.
 - (b) The first defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 2000.

27th February, 2015



A.L.B. Brito-Mutunayagam
Judge