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DONLEY BETI -v- PETER AUFIU

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 170 of 1990

Hearing: 25 April 1991

Judgment: 9 May 1991

J. Muria for the Plaintiff

A. Nori for the Defendant

WARD CJ: The plaintiff claims specific performance of an agreement to sell a property 191-036-9, Lot 780 for \$70,000 or damages in lieu.

The facts are brief. The plaintiff told the Court that, having seen an advertisement inviting tenders for the property, he put in an offer of \$70,000. On 3rd July, the defendant hand delivered a letter to him saying that a higher offer had failed and accepting the plaintiff's offer of \$70,000. He said he would wait 20 days from the date of the letter. The plaintiff telephoned him and accepted.

He then approached National Provident Fund the next day for a loan. At that time it was pointed out the loan exceeded his ability to repay and he talked of finding two other people to share the purchase. He says he mentioned the names of those people and the application was in all three names. I accept such a discussion took place but I note the loan application is in one name only.

In fact, the loan application was rejected by the Manager of the Housing Loan Scheme by a decision on 5th July. A letter was sent to the plaintiff on 13th July rejecting his loan application because the property had already been sold. The plaintiff denies receiving that letter until 24th July.

On 17th July he heard from the defendant that the property had been sold to a third party and he then wrote a letter to the defendant referring to the conversation of 3rd July and confirming his acceptance.

There is little dispute. It was put to the plaintiff that he agreed to buy the property on 3rd July subject to the availability of a loan. The plaintiff denied that

and, as the defendant did not give evidence, I accept that answer.

The Manager of the Housing Loan Scheme gave evidence and there appears to be some conflict between his version of events and that of the plaintiff.

I do not think it is necessary to resolve those differences.

On the facts before me it is clear there was an agreement evidenced in writing by the defendant to sell the property to the plaintiff for \$70,000. The plaintiff accepted within the time allowed by the defendant. In that time it appears the defendant sold the property to a third party in breach of that agreement.

I give judgment for the plaintiff.

The plaintiff asks for specific performance of the agreement. That is not an order this court can make as a third party has bona fide acquired at least equitable rights to the property in question.

The Court has not had sufficient evidence to assess damages and I shall hear from counsel.

(F.G.R. Ward)
CHIEF JUSTICE