

Titles be totally surrendered". In my view, on its face at least, it is an agreement to purchase the property. The purchase price was stated to be \$75,000.00. \$50,000.00 of which was payable immediately. It is accepted that such amount was paid, and the balance of \$20,000.00 was to be payable by instalments over a period commencing January 2003. The defendant then occupied the property and he says he made renovations to it. There is a dispute as to how much if anything the defendant paid to the third party over the ensuing years. The defendant says he has paid the full amount of \$20,000.00 but the third party claims he only paid \$3,470.20, and that by way of a payment of the third party's daughter return air ticket from Solomon Islands to and from Fiji.

4. Then by written agreement dated 26 June 2006, the third party and the defendant agreed that the full purchase price had been paid, that the property be transferred by the third party to the defendant on the condition that the consent of the Solomon Islands Home Finance Limited as mortgagee been given. It was a term of the arrangement that the defendant would take over responsibility for repayment of the mortgage. The third party now says that she did not even read this agreement before signing it, that she did not receive any independent advice, and that there was an imbalance of bargaining positions such that it would be unfair to hold her to the agreement.
5. Clearly that question cannot be determined by the Court simply on the sworn statements it has before it in relation to the summary judgment application. That position was properly conceded by the third party's counsel, Mr Kesaka. In any event the defendant says that he then paid Solomon Islands Home Finance Limited \$26,000.00, being a portion of the arrears. He continued in occupation of the property but was then told to stop any further payments to the finance company without any reason being provided. It appears that within a few days of this, this being in late 2007, he was then advised by that same employee that the third party was selling the property to the claimant for \$100,000.00, that he would receive \$50,000.00 from those proceeds of sale by way of a refund of his original instalment of \$50,000.00 paid in 2002, that the finance company would receive the balance of arrears in the further sum of \$26,000.00, and that the balance of \$24,000.00 would go to the third party. The sale to the claimant then proceeded for \$100,000.00, and the defendant received a cheque for \$50,000.00 as earlier identified. With this he said he opened a term deposit account with the ANZ, of

- which the claimant is an employee, and put the money in there and that it remains untouched awaiting the outcome of this case.
6. The claimant's solicitor invited me to conclude that inevitably the receipt of the money by the defendant amounted to a discharge in law preventing the defendant from contending that the earlier agreements are still on foot. I clearly cannot do that on the papers. All the circumstance need to be looked at, but I will say that on the face of it there appears to be no acceptance of the \$50,000.00 in the sense that the defendant was agreeing that that was in full and final settlement of his rights under those earlier agreements. That will need to be a matter which if it is pursued by the claimant, and I suggest that there are very weak grounds for so doing, it will be at a full trial.
 7. The claimant was registered on the Estate Register as the new lessee on 4 January 2008, and issued proceedings against the defendant for possession on 29 May 2008. Not until 17th March 2010 did he bring an application for summary judgment. One of the critical issues in this case is the legal effect of the arrangements made between the third party and the defendant, first on 14 February 2002 and then subsequently on 26 June 2006. As part of that consideration, it is noted that the third party claims to have terminated the 14 February 2002 agreement with the defendant for non-payment of the purchase price (paragraph 22 of her sworn statement 24 September 2010).
 8. This termination was then referred to in her solicitor's letter of 10 December 2007 to the Solomon Islands Home Finance Cooperation Limited. The third party did not, however, give evidence of the method by which she said she terminated the arrangement.
 9. A real issue is whether or not any purported termination was effective in law, an issue which cannot be determined solely on the evidence before the Court. The legal effect of the subsequent agreement of 26 June 2006 would also need to be considered when looking at whether she had a right to terminate the original agreement in the first place, and even if she did, whether that was lawfully and effectively carried out in terms of notice and the like.
 10. Another central issue will be the extent of the claimant's knowledge, if any, as to the status of the defendant and the rights which he asserted as at the time the

claimant agreed to buy the property. The defendant was still in occupation of the property at that time, and to the knowledge of the claimant.

11. It will be necessary for the claimant to show that he was a bona fide purchaser for value of the property without notice of the defendant's interest (section 229, of the Land and Titles Act), should it be found that the defendant's arrangements with the third party were still on foot at the time of purchase.
12. In this respect, he may face some hurdles. I refer for example, to the letter from the third party to him dated 26 November 2007(DN 8 of the claimant's sworn statement of 17 March, 2010), which letter was prior to an agreement being reached with him and in which he was put on notice that the defendant had been in occupation of the property since 2002 but that "since then nothing much has been done."
13. It is also clear from the claimant's letter to the defendant dated 7 of February 2008 (DN 9 of the claimant's sworn statement of 17 March 2010) that the claimant knew that there was an ongoing dispute between the defendant and the third party. He said in that letter, which was a notice to the defendant to vacate the premises, "You may want to say whatever you like about Mrs Caroline T Mariu, but at the bottom line that is your problem with the said person and I have no part of that problem."
14. Clearly, the extent of his knowledge as to the dealings between the defendant and the third party at the time he purchased the property will need to be a matter that is explored in evidence given at trial and I cannot possibly draw binding conclusions as to this on the papers alone.
15. For the reasons given, I am satisfied that the defendant has an arguable defence to the claim, and that the matter will need to go to trial so that the many issues in what I agree is quite a complex case will have to be determined.
16. I give one further example as to the potential complexity. Mr Marahare for the claimant submitted that the supplementary agreement of 26 June 2006 could not be binding and effective because it was conditional on the consent of Solomon Islands Home Finance Limited, which consent he invited me to infer was never given. It is to be recalled that this is an agreement in respect of which the third

party asserts that she never even read. Of course, implied with any such condition would be an obligation on the part of the third party as seller to take reasonable steps to obtain such consent. There is absolutely no evidence of her even drawing that agreement to the bank's attention, and indeed why would she have when she asserts that she never even read the agreement in the first place? Thus, on the face of it there is every reason to suspect that that agreement has been breached by her and she cannot rely on her breach to now try to distance herself from the agreement. Indeed reading her sworn statement, it does appear on the face of it that at a certain point she simply made a peremptory decision that she no longer wish to deal with the defendant and that she was going to sell this property to the claimant albeit at a price well under the valuation of \$150,000 she obtained in respect of the property.

17. I mention this in some detail to illustrate to the claimant that matters such as the continued validity of the agreement cannot be determined based on a few paragraphs in sworn statements by the various parties. It needs to be the subject of a full trial. For reasons given, I decline the application for summary judgment and all other orders sought in that application. Because of the late filing of the third party's sworn statement and because neither of the main protagonists have adopted completely unreasonable positions, I direct that each party is to bear its own costs in relation to the summary judgment application.
18. I also now grant leave to the defendant to file an amended statement of defence and direct that any such amended defence be filed and served by 29th October 2010.
19. I also order that the matter be listed for mention at 9.30am on 4 November 2010.

BY THE COURT

**Justice IDR Cameron
Puisne Judge**