

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

C.P. 13/94

BETWEEN: SEINAFO LAULU of Moataa,  
Carpenter and SIAPO SEINAFO  
LAULU his wife:

Plaintiffs

A N D: TITI POE POUESI of Maluafofou,  
Widow:

Defendant

Counsel: TRS Toailoa for plaintiffs  
P A Fepuleai for defendant

Hearing: 7 & 20 July 1998

Judgment: 27 July 1998

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**JUDGMENT OF SAPOLU, CJ**

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The plaintiffs in this case are seeking an order for specific performance of an oral contract for the sale of land which they claim was made between the defendant as vendor and themselves as purchasers.

The plaintiffs are husband and wife and the defendant is an aunt of the second-named plaintiff, Siapo. Essentially the plaintiffs' evidence shows that the disputed land is situated at the Apia Park at Moataa and is owned by the defendant. The land is described as parcel 2751, Flur XII & I Upolu, Plan 5608, LR XI/146. In early 1985, the second-named plaintiff, Siapo, requested the defendant if she and her family could live on the land. The defendant agreed

and gave permission to Siapo to live on the land with her family. Thus, the plaintiffs moved on to the land, built a house on it and occupied the land with their children. Later in the same year, Siapo asked the defendant if she would agree to let the plaintiffs buy the land. After some initial hesitation, the defendant agreed and she stated the price for the land as \$16,000, but after further discussion with Siapo, the defendant agreed to reduce the price of the land to \$12,000.

Then in the second part of 1985, the first-named plaintiff, Seinafo, had a job for the construction of a guest house at Savaii. So the plaintiffs went to Savaii. Siapo's sister named Laulua, who was living with her husband at Malifa, later moved on to the disputed land and lived on it while the plaintiffs were at Savaii. From the money the plaintiffs received from Seinafo's construction work they sent a sum of \$500 to Laulua to be given to the defendant as part payment for the price of the disputed land. A receipt dated 26 August 1985 was produced by the plaintiffs to confirm that payment. The receipt has the defendant's signature on it and it shows a payment of \$500 from Laulua and her husband Sola. Then in early 1986, the plaintiffs sent another sum of \$300 from Savaii to Laulua to be given to the defendant as another part payment for the price of the land. A receipt dated 20 January 1986 was also produced by the plaintiffs to confirm that payment. That receipt has the signature of Pitone, the defendant's son-in-law, and it shows a payment of \$300 from Laulua and her husband Sola "for part payment of land at Moataa". The plaintiffs returned from Savaii to the land in 1986. Later that year Laulua passed away and her husband Sola then left the land. It was said in evidence that Sola is now living in New Zealand.

Now, after the plaintiffs' return from Savaii, the defendant asked Seinafo to do repairs to the top floor of her two-storey house where she lives at Maluafou and to build an extension

to the ground floor of her house. This was a substantial job and the defendant told Seinafo to give her the fee for the job. After some discussion between the plaintiffs, Seinafo told the defendant that his fee for the defendant's job was to be counted as part of the consideration for the price of the disputed land. According to the plaintiffs, the defendant accepted that arrangement. After that job, the defendant asked Seinafo to do other jobs for her and her property where she lives at Maluafou. These jobs were the building of another house of the defendant; the building of a wooden shed; the re-roofing of the defendant's garage; the cutting down of trees; the doing of repairs to the fence around the defendant's pig sty; and the construction of a sofa, chairs and a television stand for the defendant. For all that work, Seinafo and his wife Siapo said they were not paid any monetary remuneration. They testified that the jobs which Seinafo did for the defendant were done as part of the consideration for the price of the land. Seinafo also testified that the total value of all the work he had done for the defendant at her request is approximately \$11,200.

Now the defendant did not appear to give evidence. She was admitted into the National Hospital. Her counsel told the Court that she is now 75 years old. This case was then adjourned for the defendant's counsel to advise the Court on the basis of medical opinion as to when the defendant would be sufficiently fit to testify before the Court. The defendant's counsel has appeared again twice. On 20 July, he advised the Court that the defendant had left the hospital on her own. He also advised the Court that the case for the defendant was closed.

The only witness that was called for the defendant was her daughter Tupe Pitone. She testified that she had no knowledge of the first receipt which was produced by the plaintiffs. As to the second receipt, she testified that the writing on that receipt is hers and she wrote in

the receipt what her mother told her to write down. What is written in this receipt shows a payment of \$300 from Laulua and her husband Sola on 20 January 1986 "for part payment of land at Moataa".

Tupe Pitone in her evidence also confirms that Seinafo built an extension to her mother's house and painted the top floor. But whenever Seinafo wanted money or fine mats, the defendant would give those to him. This was denied by Seinafo and his wife Siapo. They testified that Seinafo's work for the defendant was never rewarded with money or fine mats.

After giving careful consideration to the whole of the evidence, I have decided to accept the plaintiffs evidence as to the alleged oral contract for the sale of land and the terms of that contract. The documentary evidence of the two receipts do go a long way to confirm the plaintiffs' testimony as to the existence of an oral contract for the sale of the land at Moataa. The second receipt of 20 January 1986 expressly states that it was for a payment of \$300 for part payment of land at Moataa. Such language clearly suggests the pre-existence of a contract for sale of land. The particular land being at Moataa. One can reasonably infer from this and other circumstances of this case that the first receipt dated 26 August 1985 for a payment of \$500 was also for the same purpose as expressly stated in the second receipt which is part payment for the land at Moataa.

Apart from the documentary evidence, I think when the various jobs that Seinafo carried out for the defendant without monetary remuneration are looked at collectively, they do go to confirm the plaintiffs' oral testimony about the alleged oral contract for the sale of land. I cannot reasonably believe that Seinafo would have performed and carried out all the jobs he did for the defendant without monetary remuneration, if it was not for the fact that his

fee for those jobs were being counted as part of the consideration for the price of the land, the subject of the alleged oral contract of sale.

The plaintiffs evidence as to the existence of the oral contract between the defendant and the plaintiffs for the sale of the defendant's land at the Apia Park to the plaintiffs at the price of \$12,000 has not been contradicted by any evidence from the defendant. There is also no evidence against the plaintiffs evidence as to the valuation given by Seinafo of the work he had done for the defendant at the defendant's request.

No defence derived from the Statute of Frauds 1677 (UK) was also pleaded. Counsel must have had good reason for not doing so. It only means I do not have to deal with such a matter.

In all, I am satisfied that there is an oral contract as alleged by the plaintiffs and in the circumstances of this case it is just and equitable to order specific performance of that contract against the defendant. It is ordered accordingly.

As to the question of costs, counsel for the plaintiffs to file and serve within 7 days memorandum as to costs. Another 7 days is then allowed for a reply to the initial memorandum.

*TEM Sapa*  
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CHIEF JUSTICE

Solicitors:

Toailoa, of Apia for plaintiffs

Fepuleai, of Tamaligi for defendant