Rengiil v. Ngirchokebai, 1 ROP Intrm. 197 (Tr. Div. 1985)

FUMIO SN RENGIIL,
Plaintiff,

v.

AICHI NGIRCHOKEBAI, TADAO NGOTEL, and RIUCH NGIRUCHELBAD,
Defendants.

CIVIL ACTION NO. 33-84

Supreme Court, Trial Division
Republic of Palau

Findings of fact; opinion; judgment
Decided: March 8, 1985

BEFORE: ROBERT W. GIBSON, Associate Justice.

This matter came on regularly for hearing before the undersigned Judge of the above-entitled Court commencing on August 13, 1984. It was thereafter from time to time continued and concluded on February 21, 1985.

Plaintiff appeared by Carlos Salii, Esq., defendant Aichi Ngirchokebai by Johnson Toribiong Esq., Toribiong and Coughlin of Counsel, Tadao Ngotel by Kaleb Udui, Esq., and defendant Riuch Ngiruchelbad by Francisco Armaluuk.

Following closing argument the court took the matter under advisement and now enters its Findings of Fact, Opinion and Judgment as follows:

1. On or about September 17, 1974, plaintiff and defendant Aichi Ngirchokebai, the latter acting through his duly appointed agent Baules Sechelong, entered into an executory contract for purchase of a parcel of land containing 4031.10 square feet as shown on Division of Land Management Map dated December 2, 1969, in evidence herein as plaintiff's Exhibit "A", more particularly described in defendant's Aichi Ngirchokebai Exhibit No. "1".

2. The aforementioned contract required the payment by plaintiff to defendant Aichi Ngirchokebai of the sum of $1,000 at the time of the making the contract between Baules Sechelong and plaintiff (defendant Aichi Ngirchokebai requiring such sum for an upcoming business ⊥198 trips to Japan) receipt of said sum and the delivery thereof to the defendant Aichi Ngirchokebai being acknowledged by Baules Sechelong, agent for said defendant Aichi Ngirchokebai. The Court finds the evidence sufficient to establish the existence of an agency relationship, the consequent authority in Baules Sechelong to contract to sell said parcel for the best immediate obtainable cash price, and the existence of an executory contract. The Court further finds that the remainder of the agreed purchase price of $1,700, i.e. $700, was to be paid upon the execution and delivery by defendant Aichi Ngirchokebai to plaintiff of a "Transfer"

Deed to the parcel. The substance of this agreement is set forth in plaintiff's Exhibit "B".

3. Upon his return from Japan, in early October 1974, defendant Aichi Ngirchokebai endeavored to repudiate the transaction and return the $1,000 to plaintiff through the ministration of his erstwhile agent, Baules Sechelong. Baules Sechelong, however not wishing to become embroiled in an evidently upcoming dispute, the plaintiff refusing to concur in the attempted avoidance of the Contract, told defendant Aichi Ngirchokebai that he, the defendant and not Baules Sechelong, would have to handle that facet of the transaction on his own. Defendant Aichi Ngirchokebai did so by:

(a) retaining plaintiff's $1,000.

(b) refusing to execute and deliver a proper form of "Transfer" Deed to the subject property.

(c) refusing to accept the tender by plaintiff of the remaining $700 due on the executory contract and returning the check therefore to plaintiff unnegotiated.

(d) searching out a new buyer at an enhanced selling price.

We pause to remark that the Court finds no evidence whatsoever that defendant Aichi Ngirchokebai ever endeavored to complete the transaction and, of even more probative significance, did not offer to complete the sale to plaintiff at a re-negotiated price equal to that at which he disposed of it to defendant Riuch Ngiruchelbad. In other words defendant Aichi Ngirchokebai completely ignored the obligation to perform under the executory contract and proceeded to deal with the property as though no such obligation ever existed.

⊥199 4. By Deed of Sale, dated May 16, 1975, defendant Aichi Ngirchokebai transferred the property to defendant Riuch Ngiruchelbad for a sum exceeding the agreed selling price of the previous contract to plaintiff by $792.60. There is testimony to the effect that the transaction was closed several weeks before the execution of the Deed, the latter being recorded on May 16, 1975, in Book XIV, at pp. 49-50, Records of the Clerk of Courts.

5. There is no evidence to establish the fact that defendant Riuch Ngiruchelbad was aware of the prior sale to plaintiff or the existence of the executory contract, in fact it appears to the court that plaintiff was unaware of the deed to defendant Riuch Ngiruchelbad until trial of the case was commenced.

6. Thereafter on January 13, 1984, defendant Riuch Ngiruchelbad conveyed the property by Warranty Deed to defendant Tadao Ngotel for a consideration of $4,000, defendant Aichi Ngirchokebai Exhibit "2".

7. During the period of the ownership of the property by defendant Riuch Ngiruchelbad plaintiff proceeded to sporadically dump upon the property several loads of gravel and other waste material, in good faith, believing himself to be the purchaser of the property. The court

finds however that the dumping and other sporadic work done on the premises by the plaintiff was not sufficient to constitute notice of the plaintiff's claim to the property.

8. Defendant Tadao Ngotel subsequently commenced the construction of improvements on the subject property such improvements being substantial in nature and consisting of a two story office building having a present Fair Market Value of not less than $30,000.

9. Upon observing the commencement of construction plaintiff initiated this action seeking first an injunction to prevent defendant Tadao Ngotel from proceeding therewith and said injunction having been denied the matter proceeded to trial as noted.

OPINION

1. Defendant Aichi Ngirchokebai proposes that he made reasonable efforts to rescind the transaction. However the Court being of the opinion that Baules Sechelong was the duly appointed and acting agent of defendant Aichi Ngirchokebai with actual authority to enter into the executory agreement with plaintiff, and that that ⊥200 agreement, with respect to offer and acceptance, becoming fixed upon payment of the initial $1,000, any unilateral attempt to cancel such contract was of no force and effect.

> The renunciation of a contract does not amount to a "recission", since one party to the contract cannot by himself rescind a contract. *Green v. Franklin Dress Co.*, Tx. Civ. App., 137 S.W.2d 131, 132.
>
> In order to work "recission" of a contract, there must be an express or implied agreement to such effect or it must be rescinded by operation of law. *Letress v. Washington Co-op. Chick Ass'n*, 111 P.2d. 594, 596; 9 Wash.2d 64.

2. Plaintiff claims the transaction to have been entered into and consummated subject to Palauan Custom. Expert witness testimony which the Court accepts is to the effect that no written evidence is required to effect a binding transfer of land. Neither is there an operative Statute of Frauds which requires that a written memorandum of the transaction be made and signed by the party to be charged therewith. Since defendant Aichi Ngirchokebai is the party to charge, defendant Aichi Ngirchokebai's Exhibit "2" does not meet this requirement as it was prepared by the plaintiff.

> The court is clear that there is no requirement in the Trust Territory such agreements be written down. *Penno v. Katarina*, 2 TTR 470 at 472.
>
> In the Trust Territory there are, unfortunately, no statutory provisions relating to land transfers except Code Section 1023 providing for recordation with the Clerk of Courts. There is no requirement that a written instrument is necessary to take the transaction out of the statute of frauds, and when there is a written document that it either be witnessed or acknowledged under oath. *George v. Walder*, 5 TTR 9 at 12.

3. 57 TTC § 302 is intended to protect the bona fide purchaser for value who lacks notice, actual or constructive, of a prior unrecorded transfer. (*See Asanuma v. Pius*, 1 TTR 458; and *Rudimch v. Chin*, 3 TTR 323 wherein ⊥201 at p. 327 the court said:

> Even if Chin had paid full consideration, his failure to obtain a written deed and to record it with the Clerk of Courts left his interest without protection as against a subsequent good faith buyer, without notice, who recorded his deed. *See* Sec. 1023, Trust Territory Code and *Asao Asanuma v. Pius & Joaquin A. Flores*, 1 TTR 458.

However, the failure to record does not invalidate the transfer except as to subsequent innocent purchasers without notice.

> There is no statute of frauds requiring a writing for a transfer of land in the Trust Territory. An oral transfer is effective and there need be no recordation of an oral transfer. The only purpose of the recordation statute, 57 TTC § 11202, is to protect a purchaser against an alleged prior transfer. It is not true, as plaintiff argues, that to be "effective" a transfer must be recorded. *Llecholch v. Blau*, 6 TTR 525.

As a practical matter defendant Aichi Ngirchokebai can certainly not raise any such defense as it was his own breach of duty to give a written "Transfer" Deed which prevented plaintiff from recording same and so protecting himself from the claim preferred and protected positions of defendants Ngiruchelbad and Tadao Ngotel.

4. The Court finds that, as matter of law, defendant Riuch Ngiruchelbad and Tadao Ngotel are Bona Fide Purchasers for value without notice of the claim of plaintiff. A bona fide purchasers is defined as being:

> "Bona Fide purchasers" is one who takes without actual or constructive knowledge of facts sufficient to put him on notice of the complainant's equity. *Blodgett v. Martsch, Utah*, 590 P.2d 298, 303.

5. And as such, each having recorded their respective deeds to the parcel under the authority of 57 TTC § 302, *Chin, Asanuma, and Blau, supra*, the court must hold them to have superior title to that claimed by the plaintiff.

⊥202 6. Neither can plaintiff, through his sporadic dumping and spreading, as we have noted, claim notice sufficient in degree to have put defendant Tadao Ngotel on notice; since practical effect plaintiff was, as to Tadao Ngotel, a gratuitous contributor of fill material as all his efforts were being expended on land which the Court concludes was in the ownership of Riuch Ngiruchelbad after May 16, 1975.

The common law rather than the statutory law, in the United States is applicable

> in the Trust Territory in the absence of applicable statute in the Trust Territory Code. In the United States the common law relating to land transfers has largely been codified by statute. Most of it is therefore not applicable to land transfers in the Trust Territory. *George v. Walder*, 5 TTR 9.

7. It is clear from the evidence that plaintiff although endeavoring early on to extract a Deed of "Transfer" from defendant Aichi Ngirchokebai eventually gave up and so from late 1974 to initiation of this suit, undertook no further action which would have put a prospective purchaser on notice of his claim of ownership. Sec. 801(a)(2) of the Palau District Code provides a method by which this notice can be accomplished. Plaintiff's Exhibit "B" confirms knowledge on the part of plaintiff of the value of having a written "Deed of Transfer" but his actions confirm the fact that he was lax in seeking to force such from defendant Aichi Ngirchokebai.

> Thus it appears that plaintiff has exposed himself to the well-founded charge that he is attempting here to enforce a stale demand, in violation of equitable right, a party must act diligently and expeditiously, on pain of losing the right. 19 Am. Jur. 343, Equity, §§ 498 & ffg. *Rochunap v. Yosochune*, 2 TTR 16.

8. This suit beginning the nature of an equitable action to Quiet Title, plaintiff has the burden of proving that Riuch Ngiruchelbad and Tadao Ngotel had notice of his claim when they first acquired the title in 1975 and 1984, respectively.

> Trust Territory courts, too, have had occasion to consider and to discuss the ⊥203 question of burden of proof in cases involving title disputes. In *Ochebir v. Municipality of Angaur*, 5 TTC 159, 165 (Tr. Div.), the Court correctly stated:
>
> The burden of proof is upon a plaintiff in a quiet title action. He can recover only by showing that title is in himself, not by showing a weakness in a defendant's title. *See also, Tasio v. Yesi and Nieisich*, 3 TTR 598 (App. Div.); *Sandbargen v. Gushi*, 7 TTR 471.

The court holds that plaintiff failed to establish such knowledge on the part of defendants (Riuch Ngiruchelbad and Tadao Ngotel) by the requisite modicum of the evidence.

9. Laches is defined as "sleeping upon ones' right" to the extent of permitting such action to mislead another to his detriment. It is corollary to "stale demand".

> The neglect or delay of the plaintiff and his brother which was injurious to the defendants as above found, clearly constituted laches. In a very large number of decisions in the High Court of the Trust Territory it has been held that the doctrine of laches will be applied in the Trust Territory, and judgments have been rendered against plaintiffs who were guilty of laches -- the bringing of stale demands. *Baulolk v. Taidrikl*, 4 TTR 152.

10. Custom is no longer the sole criteria upon which to gauge the enforceability of transactions. It changes to meet current needs and requirements in a changing society.

> It is generally accepted rule that a usage or custom in conflict with a existing statutory provision is void. No custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute. *Ngruchelbad v. Merii*, 2 TTR 631.

Custom permits the transfer of land by oral agreement. 57 TTC 302 provides for recordation to protect subsequent bona fide purchasers for value without notice. To hold that a transaction under custom supercedes the ⊥204 interest acquired by such a purchaser effectively voids the statute. This, as we have seen from the *Merii* case, *supra*, is impermissible. Custom must yield to the mandate of the statute.

Thus, as between plaintiff and defendants Riuch Ngiruchelbad and Tadao Ngotel the right of plaintiff to claim the property must give way to the superior right acquired by Riuch Ngiruchelbad and Tadao Ngotel under their recorded deeds emphasized by the fact that plaintiff neglected to perfect his claim of ownership within a reasonable time.

> There are further principles of law, founded upon equity and fair dealing, which are applicable to Orem. We find in 3 Am. Jur. 2d, *Agency*, § 76:--
>
> . . . where none of two innocent parties must suffer from the wrongful act of another, the loss should fall upon the one who, by his conduct, created the circumstances which enable the third party to perpetrate the wrong and cause the loss.
>
> As between Orem and Akos, it was Orem who caused Akos' possible loss of the land because of Sinako'sSinako's wrong doing. Akos v. Orem, 3 TTR 504.

Plaintiff however is not without remedy of Quiet Title actions as we have seen are actions in equity and once the jurisdiction of the Equity *Court* is invoked it may render such relief as may be necessary to make the injured party whole. (*See*, for example *Clark, Summary of American Law*, pp. 234-253).

Had defendant Aichi Ngirchokebai performed as he was required to do under the Agreement reached between plaintiff and defendant Aichi Ngirchokebai's agent, Baules Sechelong, plaintiff would have received his deed in October 1974 and thus forestalled any subsequent sale to Riuch Ngiruchelbad. Instead, defendant Aichi Ngirchokebai seeking to turn a "tidy profit" at plaintiff's expense brought about the chain of events which has effectively not only deprive plaintiff of the benefit of his bargain, but has also "robbed" him of his money without commensurate *quid pro quo*.

So, while the court cannot under the state of the law ⊥205 as we have set it forth above grant plaintiff Specific Performance because of plaintiff's sleeping upon his rights, the court can

give such alternate relief as is permissible within established equitable principle.

> But the extent to which equity will go to give relief where there is no adequate remedy at law is not a matter of fixed rule. It rests rather in the sound discretion of the court. *Virginia RY Co. v. System Federation No. 40*, 57 S.Ct. 592.

The court takes judicial notice of the Cowell and Co. Inc. Appraisal Report of June 6, 1984. The property which is the subject of this suit lies in an area which Cowell has valued at $30 per square meter. The parcel contains 377.7 square meters and so derives a value of $11,331 we reduce this by $700 the balance due and owing from the plaintiff to defendant Aichi Ngirchokebai and reach a remainder of $10,631, a figure which we believe will compensate plaintiff for defendant Aichi Ngirchokebai's breach of his agreement to sell.

JUDGMENT

Based upon the foregoing it is hereby ORDERED, ADJUDGED, and DECREED that:

a. Title to the above described real property is hereby confirmed in defendant Tadao Ngotel free of any claim or right, title or interest therein by plaintiff Fumio SN Rengiil, defendant Aichi Ngirchokebai, or defendant Riuch Ngiruchelbad.

b. Plaintiff shall have judgment against defendant Aichi Ngirchokebai in the sum of $10,631, plus interest at the legal rate prescribed by 8 TTC § 1 to commence as of date of entry of this judgment.

c. Plaintiff, and defendants Riuch Ngiruchelbad, and Tadao Ngotel shall each separately, recover their costs and disbursements herein incurred against defendant Aichi Ngirchokebai.

d. Each party shall bear his or her own counsel fees.