

## **DONLEY BETI v PETER AUFIU**

Civil Case No. 170 of 1990  
cc 170-90.HC

High Court of Solomon Islands

Judge: Ward C.J.

### **FACTS:**

The plaintiff offered \$70,000 for a property that was advertised on tender. On the 3rd of July the defendant hand delivered a letter to him saying that his offer of \$70,000 had been accepted after a higher offer had failed. The plaintiff was given twenty days from the date of the letter to accept the defendant's offer. The plaintiff accepted by telephone on the same day. The following day the plaintiff approached the National Provident Fund to apply for a loan. The loan seemed to exceed his ability of repaying, and the plaintiff said that he would find two other people to share the purchase. The loan application was in the plaintiff's name only and the Manager of the Housing Loan Scheme rejected it on the 5th of July. A letter of rejection was sent out to the plaintiff on the 13th of July. It rejected his application because the property had already been sold. The plaintiff received the rejection letter on the 24th of July.

On the 17th of July the defendant informed the plaintiff that he had sold the property to a third party. The plaintiff then wrote a letter to the defendant outlining the acceptance, which he had conveyed to the defendant in the conversation on the 3rd of July.

### **NATURE OF CLAIM:**

The plaintiff claims specific performance of a contract to sell the property 191-036-9, Lot 780 for \$70,000 or damages in lieu.

The High Court has to determine whether the agreement between the plaintiff and the defendant was subject to the availability of a loan, or it was an agreement to purchase.

### **OUTCOME:**

Judgement given for the plaintiff.

### **LEGAL PRINCIPLES**

#### **Ratio Decidendi:**

- An acceptance within the time allowed for acceptance is conclusive of an agreement, if accompanied by sufficient consideration and intention.
- Once a valid offer is accepted there is a binding agreement, and the party that fails to fulfil its' contractual obligations is liable for breach of contract.

- The court may refuse to exercise its discretion to grant the equitable remedy of specific performance if a third part has acquired bona fide interests that would be affected.
- Specific Performance is not normally awarded where common law damages can be the adequate remedy.

### **Obiter Dicta:**

- The conflicting versions of irrelevant facts need not be resolved.

### **COMMENTARY:**

#### **Tenders:**

In law an announcement asking for tenders is not an offer but an invitation to treat. (*Spencer v Harding* (1870) LR 5 CP 561.) An exception to this doctrine occurs when the announcement clearly indicates that the highest or lowest tender will be accepted. The present case clearly follows the conventional approach where an announcement asking for tenders is a mere invitation to treat.

#### **Offer and Acceptance**

An offer can be accepted anytime before it is revoked. In this case the offeror gave the plaintiff twenty days to accept the offer. Had the plaintiff failed to accept within the requisite period then the offer would have terminated automatically. (*Dickinson v Dodds* (1876) 2 Ch. D. 463. The offer by the defendant was valid when the plaintiff accepted it. The general rule seems to be that the person to whom an offer is made can accept it. Also, the offer has to be present in the mind of the person who accepts it. In the present case the offer was made by the defendant to the plaintiff when he hand delivered the letter to the plaintiff, and the plaintiff accepted it when he telephoned to the defendant to say that he would purchase the property.

#### **Binding Contracts**

An agreement is binding on the parties to the agreement. In this case both the parties were providing consideration. The defendant promised to transfer all interests in the property to the plaintiff for the plaintiff's promise of payment of \$70,000. There was sufficient consideration for the contract to be enforceable. (*Dunlop v Selfridge* [1915] AC 847). The present case showed a clear intention of the parties to be bound by the agreement and there was consideration. Moreover the terms of the contract were certain. Hence this contract for the sale of the defendant's property to the plaintiff was a binding agreement on both parties to the agreement.

#### **Equitable Remedies: Specific performance and Bona Fide Purchasers**

The remedy of specific performance is an equitable remedy and thus is totally subjected to the discretion of the court. It is not awarded when the common law damages is adequate as a remedy, or if the party seeking the remedy has unclean hands. In the current case the remedy of specific performance was refused for two main reasons. Firstly, because an innocent third party had acquired indefeasible rights to the property when the property was sold by the defendant to the third party. And secondly, because the remedy of damages seemed to be an appropriate remedy for the plaintiff who on the face of things did not seem to have the money to purchase the property in the first place, due to the rejection of his loan application. However, that is not to say that he could not have obtained loan from another source.

#### **Other Comments:**

It would have been interesting to see whether the Court of Appeal would have granted the equitable remedy of specific performance, had this case been appealed by the plaintiff. This case involved the sale

of a particular land and building and the law has always adopted the view that the purchaser of land cannot be adequately compensated by damages when the vendor refuses to complete the agreement of sale. (*Suva Bowling Club v Suva City Council*, unreported, Supreme Court, Fiji, SC208/1982) However, specific performance is an equitable remedy and is totally based on the discretion of the court. Where a bona fide purchaser for value obtained a legitimate interest in the property, this denies the remedy of specific performance to the plaintiff.

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