THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-02739

Between

ROBERTO CHARLES

BHAMINI MATABADAL

Claimants

AND

SHASTRI PRABHUDIAL

Defendant

Before The Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. P. Maharaj instructed by Ms. W. Panday for the Claimants
2. Mr. Scotland instructed by Ms. Chang for the Defendant

Date of delivery: 2nd March, 2016

DECISION

1. Before the Court for its determination are two applications. The first is the Claimant's Notice of application dated 12th October, 2015 by virtue of which the Claimants sought the following reliefs:

    a. That judgment entered against the Defendant by virtue of an admission under Rule 14.1(2) of the Civil Proceedings Rules 1998 (as amended), pursuant to Part 14.3 of the Civil Proceedings Rules 1998, (as amended) (the 'CPR').

    b. The judgment be entered for the sum of $290,000000, being the purchase price of a parcel of land under Agreement for Sale dated the 28th day of March, 2014 which was never performed as well as the sum of $4,700.00 being legal costs incurred with interest at the rate of 6% per annum.

    c. An order that the Defendant pay the cost of this application and the cost of the action.

2. The second is the Defendant's notice of application filed 13th October, 2015 by the virtue of which an order to extend the time for filing and service of the Defendant's defence was sought.

3. Affidavits were filed by the parties in relation to both applications and legal submissions in support of their respective positions were also filed.

4. The Court determined that it was prudent to first determine the Claimants' application which was filed first in time and if the Claimant's application was not successful then it would consider whether or not it should extend the time for the Defendant to file a Defence.

5. In determining whether the Claimants are entitled to obtain a judgment on admission the Court considered Part 14 of the Civil Proceedings Rules 1998 (as amended) ("the CPR") which provides as follows:

"1 (1) A party may admit the truth of the whole or any part of any other party's case.

(2) He may do this by giving notice in writing (such as in a statement of a case before or after the issue of proceedings.

3 (1) Where a party makes an admission under Rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) The terms of the judgment shall be such that it appears to the Court that the applicant is entitled to on the admission.

(3) An application to determine the terms of the judgment must be supported by evidence.

6. In the instant case the Claimants' application is premised upon a letter dated 11th May, 2015 written on behalf of the Defendant in response to the Claimants' pre-action protocol letter. It is however important for the Court to outline the factual foundation upon which this case is premised.

7. The Claimants' case is that they entered into an agreement for sale dated 28th March, 2014 with the Defendant and agreed to purchase the unexpired leasehold interest in a parcel of land for the sum of $290,000.00, the parties knew at the material time that the interest in the said land was vested in one Leela Seenath and that the Defendant had an agreement with her to acquire her interest which was then to be assigned to the Claimants.

8. The sum of $290000.00 was duly paid by two payments, namely, one in the sum of $30,000.00 on the 28th March, 2014 and $260,000.00 on the 30th April, 2014. The Claimants also entered into a written sale agreement dated 30th April, 2014 with Leela Seenath that provided for an assignment of all her interest in the said leasehold land to them. The Claimants contend that this was a facilitative agreement given that they had already paid all the sums owed to the Defendant. There are conflicting positions as to how this agreement was in fact effected.

9. The interest in the land was never assigned to the Claimants and it was discovered that Leela Seenath had in fact assigned her interest in the land to another party. The Defendant thereafter failed to refund the Claimants the $290,000.00 he received from them.

10. The Claimants subsequently issued a pre-action letter to the Defendant and by letter dated 11th May, 2015, Mr. Earl John Attorney at law acting on behalf of the Defendant replied (the said letter).

11. The said letter was not flagged as being "without prejudice". In accordance with Part 14 of the CPR, any admission must be in writing, it must be relevant and relate to the facts relied upon by the Claimant and the admission must be in the nature of a clear acceptance of the material facts as outlined by the Claimant. In the said letter the fact that the Defendant had received $290,000.00 from the Claimants was not disputed and the Defendant expressed his willingness to refund the Claimants "on the basis that he was also refunded his purchase price from Leela Seenath."

12. The said letter also acknowledged that the agreement dated 28th March, 2014 between the Claimants and the Defendant was "now null and void". The Claimants in the reliefs sought, prayed inter alia for a declaration that the said agreement dated 28th March, 2014 had been rescinded and/or was null, void and that same to be set aside, they also asked for a refund of the $290,000.00 as well as the sum of $4,700.00 being the cost of legal expenses that arose out of the transaction.

13. On the issue of the "validity" of the agreement dated 28th May, 2014, there was a clear and unequivocal admission and acceptance by the Defendant that same was in fact "null and void". The logical conclusion therefore is that there can be no legal justification for the continued retention of any sums that were paid under the said agreement. Counsel for the Defendant referred the Court to **The Dorchester Groups Ltd. v. Kier Construction Ltd. (215) EWHC 305**, **(TCC)** but the Court formed the view that the said case could not be applied in the instant matter, as the letter in **Dorchester** contained and open offer or package of terms which the party could have either accepted or

rejected. In this instant case the said letter said…."I am instructed that he is willing to refund your clients their purchase price on the basis that he was also refunded his purchase price from Leela Seenath".

14. The Court had to consider whether the statement to repay the Claimants was made in the context of a reservation and/or whether it was contingent upon any other circumstances. On the face of it, the offer to repay was made contingent upon the Defendant receiving from Leela Seenath the sums advanced by the Defendant to her, however having regard to the Defendant's acceptance that the agreement dated 28th March, 2014 was "null and void", this resulted in a circumstance where the sums paid under the said agreement could not be validly retained and the Defendant's suggestion that the refund would be contingent upon his receipt of a refund from Leela Seenath, is not premised upon a foundation that has any legal justification. The Claimants were not parties to the Defendant's agreement with Leela, nor was there any express contractual term or agreement as between the Claimants and the Defendant, that any such refund must first occur before the monies advanced by the Claimants to the Defendant could be refunded, in the event that the land was not assigned to them. There was a clear and unequivocal representation in writing by the Defendant that the agreement of the 28th March 2014 was null and void, accordingly there is no legal justification for the continued retention of any of the sums that were paid to him by the Claimants and the Claimants are entitled to a refund of the $290,000.00.

15. The parties entered into an agreement that was ill advised and it was clear as at the 28th March, 2014 that the leasehold interest in the lands was held by Leela and that same had not been assigned to the Defendant, in that context there was an inherent risk that Leela may not have assigned her interest in the lands to the Defendant, but the parties accepted this risk. The sums paid on account of legal fees cannot in the circumstances be factored into this judgment and the Court also noted that the sums claimed for legal fees do not appear to be consistent with the schedule of fees as outlined in the Legal Professional Act. This Court is not inclined to order the Defendant to pay the sum of $4,700.00 as claimed as there is no evidence that there was any agreement between the parties as it

related to the incurrence of legal costs and the said letter contains no admission in relation to the said sum.

16. Accordingly there shall be judgment in favour of the Claimants as against the Defendant. The Court declares that the agreement dated 28th March, 2014 is null, void and of no effect and the Defendant shall repay to the Claimants the sum of $290,000.00. Interest shall accrue on the said sum of $290,000.00 at a rate of 2 ½% per annum from 30th April, 14 until the date of this judgment and interest shall accrue from the date of this judgment until repayment at the statutory rate of interest. The parties shall be heard on the issue of costs.

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FRANK SEEPERSAD

JUDGE