

Mohamed Nizam s/o Mohamed Ismail v Sadique Marican bin Ibrahim Marican and Others
[2009] SGHC 161

Case Number : Suit 178/2008, RA 385/2008
Decision Date : 10 July 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : K Mathialahan (Guna & Associates) for the plaintiff; Sadique Marican and Anand Kumar (Frontier Law Corporation) for the defendants
Parties : Mohamed Nizam s/o Mohamed Ismail — Sadique Marican bin Ibrahim Marican; Anand Kumar s/o Toofani Beldar; Zulkifli bin Mohd Amin

Civil Procedure

10 July 2009

Judgment reserved.

Choo Han Teck J:

1 The plaintiff was a client of the law firm M/s Sadique Marican & ZM Amin ("the firm"). The three defendants were the partners of the firm. The plaintiff instructed the third defendant to act for him in the purchase of a property known as 3 Rose Lane #03-05 ("the property") from the vendors Tan Thing Kiang and Lui Poh Geok. The purchase price for the property was \$700,000. The balance after the payment in cash was to be made by way of a bank loan as well as money from his CPF account. The plaintiff subsequently made various payments amounting to \$380,600 as advised by the firm towards the purchase. Out of this, a sum of \$35,000 was paid to vendors' solicitors to hold as a deposit. The rest of the money appeared to have been taken by the third defendant. The purchase was due to be completed on 16 November 2007 but was not. The vendors' solicitors served the requisite notice to complete. The plaintiff still did not complete, and consequently, the vendors rescinded the sale and forfeited the deposit sum of \$35,000.

2 It transpired that the third defendant did not utilise the money paid by the plaintiff towards the completion of the purchase, and till the date of the hearing of this appeal, he had not accounted for the money. It seemed that the third defendant was no longer contactable and the Law Society of Singapore had intervened and inquired into the firm's client account. The plaintiff's claim in this action was for the recovery of the sum of \$380,600 that he had entrusted to the firm towards the purchase of the property concerned.

3 The defence of the first and second defendants was that the third defendant acted beyond his authority and that the first and second defendant had no knowledge of what the third defendant was doing at the time he did so. The plaintiff applied and obtained summary judgment against the first and second defendants for the sum of \$380,600 with costs. Against this judgment the first and second defendants appealed.

4 In the course of the appeal the first and second defendants applied for leave to file a further affidavit. This was an affidavit by Ebrahim Marican Batcha Sahib ("Ebrahim"), the elder brother of the first defendant. Ebrahim was also the litigation manager of the firm. In his supplementary affidavit, Ebrahim deposed that he had informed the plaintiff when the plaintiff's payment in the sum of \$28,000 (part of the \$35,000) to the vendors' solicitors was dishonoured on 27 September 2007 and that the plaintiff told him the payment was initially stopped by reason of a misunderstanding with the bank.

According to Ebrahim, the plaintiff suggested that, to avoid a repetition, he (the plaintiff) would make payment by a cash cheque for the stamp fees and make other payments by cashier's orders in favour of the firm. In reply, the plaintiff denied Ebrahim's allegations. He maintained that he made the payments as directed by Ebrahim himself.

5 The first and second defendants submitted that there were a number of triable issues. These are set out in paragraph 21 of their submissions as follows:

- 1 whether the plaintiff was himself ready, willing and able to complete the property purchase?
- 2 whether the plaintiff indeed obtained any bank loan sufficient to complete the purchase?
- 3 did the vendors commence action against the plaintiff for the failure to complete?
- 4 why did the plaintiff make payment of the sum of \$15,600 which was for payment to Commissioner to Stamp Duties to the firm instead?
- 5 why did the plaintiff make payment of the sum of \$15,600 which was for payment to Commissioner to Stamp Duties to the firm instead by way of a cash cheque?
- 6 as opposed to the usual role of a law firm being a stakeholder for the 4% and the sales proceeds, is it also the ordinary course of a dealing of a law firm to receive and hold monies in conveyancing for the purchase of a property? This is a question of fact.
- 7 why did the plaintiff not prepare a cashier's order in the name of the vendors directly?
- 8 why did the plaintiff say that he had no dealings with the 3rd defendant when there were numerous letters written directly by the 3rd defendant to the plaintiff which was exhibited by the plaintiff himself in his affidavit?
- 9 why did the plaintiff say that he had no dealings with the 3rd defendant when the 3rd defendant actually witnessed him signing the letter of confirmation at exhibit "MN-10"?
- 10 why did the plaintiff not take steps to complete the matter or mitigate his losses when he had notice that the matter could not have been completed?

I am of the view that the above issues had been adequately addressed in the affidavits. It seemed clear that the plaintiff communicated with Ebrahim for the purposes of the transaction. Ebrahim and the first defendant were the ones in the firm who were acquainted with the plaintiff. The first defendant and the plaintiff were schoolmates. Ebrahim was related by marriage to the plaintiff.

6 The incontrovertible facts in this claim were that the plaintiff instructed the firm to act as his solicitors for the purchase of the property and the plaintiff paid a sum amounting to \$35,000 to the vendors' solicitors to hold as a deposit for the purchase. This sum was paid through the firm. The

plaintiff paid further sums of money amounting to \$330,000 being part of the purchase price and \$15,600 being the stamp fees to the firm for the money to be disbursed according to the plaintiff's obligations under his contract of purchase with the vendors. It was also an incontrovertible fact that those sums of money were not paid by the firm as they should. It appears that the third defendant had fraudulently taken the money and could not now be found. The first and second defendants argued that the court below should not have granted summary judgment against them. The general reasons were that there ought to have been an inquiry as to whether the plaintiff was himself negligent and whether they were aware of what transpired between the third defendant, Ebrahim and the plaintiff.

7 The affidavits filed do not indicate any basis for challenging the plaintiff's conduct. There was no evidence other than Ebrahim's affidavit to show that it was the plaintiff who wanted the payments to be made by way of cashiers' orders to the firm. I do not think that Ebrahim's supplementary affidavit, filed late in these proceedings, assisted the defendants at all. The transaction to purchase the property was a regular one. The firm's conduct of the transaction as the purchaser's solicitors was not. The documentary evidence was sufficient to show that the third defendant and Ebrahim acted as ostensible agents of the firm.

8 For the reasons above the appeal is dismissed. I will hear the issue of costs at a later date.

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