

PIUS ITOL, Plaintiff
v.
RONALD SAKUMA and NGETUBERHAI ANTOL, Defendants
Civil Action No. 340
Trial Division of the High Court
Palau District
November 17, 1967

See, also, 3 T.T.n. 351

Action to determine rights in land in Korol' Municipality. Plaintiff contracted to sell property to defendant, and later substituted offer of second lot after Court determined that plaintiff could not sell first lot without proper consents, and that plaintiff must repay amount received from defendant toward purchase price. The Trial Division of the High Court, Associate Justice D. Kelly Turner, held that original contract was extinguished by Court order and that there was no binding offer and acceptance as to second lot since defendant attempted to accept part of terms and to reject others. Court held plaintiff is present owner of second lot and must return to defendant amount paid toward purchase price of original lot.

1. Contracts-Agreement to Contract in FutU'e

Where seller and buyer arrive at understanding that if one piece of property cannot be sold according to agreement, second piece of property may be substituted, and there are not specific terms as to second lot, there is no binding agreement to enter into contract in the future.

2. Contracts-Agreement to Contract in Future

A contract to contract in the future must be definite in all its essential terms.

3. Contracts-Acceptance-Conditional

Where prospective buyer of land attempts to accept part of seller's offer and to reject remainder, his rejection, as matter of law, of part of offer prevents valid contract of sale coming into existence.

4. Contracts-Acceptance-Conditionall

Prospective buyer's secret intent to accept part of seller's offer and reject remainder is without legal effect.

5. Contracts-Acceptance-Conditional

If offeree fixes condition to acceptance of offer, or requests modification or change of offer, there is rejection of offer which puts end to negotiations unless offeror renews offer or assents to modifications suggested.

6. Contracts-Generally

Regardless of whether prospective buyer and seller are versed in law of contracts, law is applicable to them whatever their beliefs are as to legal effect of their conduct.

Contracts--Acceptance-Conditional

Where prospective buyer of land accepts part of seller's offer and retains deed to land, rejection of remainder of offer prevents valid contract of sale, and buyer is not entitled to keep or record deed.

8. Contracts-Acceptance-Conditional

If offeree once rejects offer by a conditional acceptance, he cannot afterward revive offer by tendering unconditional acceptance of it.

9. Contracts-Acceptance-Conditional

Offer which contemplates a bilateral contract, or one set of promises in exchange for another set of promises, cannot be divided into parts, some of which might be accepted and others rejected.

10. Contracts-Acceptance-Conditional

Where seller offers his land and house in exchange for cash and another house, buyer must accept whole offer or none of it.

11. Contracts-Generally

Where both parties to defective contract are equally guilty of wrongfully taking advantage of the other, neither will receive equitable consideration and court will strictly adhere to law of contracts.

12. Real Property-Improvements

Party who places structure on land, without buying lot and with notice of third party's claim of ownership of property, has no rights in land nor in cement block structure she built on it.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	F. ARMALUUK
<i>Counsel for Defendant:</i>	BAULES SECHELONG

TURNER, Associate Justice

FINDINGS OF FACT

1. Prior to November 24, 1962, Pius Itol, purported to sell land called Itungelbai, being Lot 860 (Japanese land records), Koror, Palau Islands, to defendant Ronald Sakuma for the sum of five thousand nine hundred thirty-five dollars and twenty cents (\$5,935.20), at approximately six dollars per tsubo for 989.9 tsubos.

2. Sakuma paid one thousand dollars (\$1,000.00) down on November 24, 1962, and thereafter paid varying amounts at irregular intervals, when Pius asked for money, until March 2, 1964. Total payments were three thousand five hundred seventy-five dollars and ninety-four cents (\$3,575.94).

3. On February 25, 1963, suit was filed in behalf of a clan lineage against the parties to recover possession of Lot 860. *Medaliwal v. Pius Irewei, Ronald Sakuma and Ngirachemul*, 2 T.T.R. 546.

4. Sakuma continued payments on the purchase price after suit was brought.

5. The High Court judgment required Pius to obtain consent of the clan lineage for the sale, or upon failure to do so, to repay Sakuma the amount paid on the purchase price. Consent was not obtained and the sale agreement was extinguished. Judgment was entered February 6, 1964.

6. On March 8, 1964, upon evident failure of the sale, Pius executed a quitclaim deed to Sakuma for Omis, Lot 1018 (Japanese land records), being the land subject of the present suit. The deed recited a consideration of the same amount to have been paid for Itungelbai, Lot 860, \$5,935.20. Pius and his counsel, Itebang Luii, who drafted the deed, took the deed to Sakuma and told him they wanted the balance due on the recited consideration plus a transfer of a house owned by Sakuma to Itungelbai in exchange for the land Omis and the house on it in which Pius was living. They left the deed with Sakuma.

7. That same day Sakuma told Itebang he did not agree to the proposal. Sakuma did not return the deed then, nor later, when its return was requested.

8. On July 8, 1965, Sakuma recorded the deed.

9. In August, 1965, Sakuma and his wife went to Pius'

and told him they wanted to use the land. Pius was living in his house on the land. Pius told Sakuma and his wife he was negotiating a sale of the land to Asang, in Guam, for ten dollars per tsubo and that he had been promised the purchase money during November, 1965, and that as soon as he obtained the money, he would repay Sakuma the amount he owed him plus ten percent (10%) interest. Sakuma agreed to this, but he did not mention he had recorded the deed the previous month.

10. During November, Asang, the prospective buyer asked for further delay, Pius sent word to Sakuma and asked for further delay of the repayment.

11. Subsequently, Pius learned Asang's wife would be in Koror with the purchase money in February, 1966. He so notified Sakuma, who did not reply until January 28, 1966, then saying he would not agree to further delay. The next day, Sakuma or the defendant Ngetuberrai began construction of a building on a portion of Lot 1018.

12. On February 1, 1966, Pius sued to restrain construction. *Pius Itol v. Ronald Sakuma and Ngetuberrai Antol*, Palau District Court Civil Action No. 1195. At the same time he brought the present suit, in the nature of a quiet title action, in this court.

13. The District Court denied the injunction after hearing, affirmatively approved continuation of construction, and warned the defendants by conditioning its order on the result of the present case.

14. Later in February, the wife of Asang arrived in Koror with the purchase money but upon learning of the litigation, refused to proceed with the sale.

15. On October 10, 1966, Pius' ownership and right to sell Omis-Lot IOIS-was challenged in *Keltnguul Ngirudelsang v. Piusltol*, 3 T.T.R. 351.

16. On November 7, after plaintiff's case had been presented, judgment was ordered in Civil Action No. 357 for

Pius on motion of defendant's counsel. It is apparent from the judgment, the suit contesting Pius' ownership was without any merit.

17. Upon trial of the present case, plaintiff urged that the sale to Sakuma had not been consummated and the recorded deed was void, while defendant Sakuma submitted that the sale of Omis, evidenced by deed, was valid but that he had rejected the other provisions of Pius' proposal. Sakuma paid nothing further after receiving the deed March 8, 1964, and Pius has continued to live on the property. Defendant Ngetuberrai has operated the Blue Gardenia Restaurant in the building she or Sakuma constructed on the property in February, 1966.

CONCLUSIONS OF LAW

Analyzing the evidence, illustrated by the foregoing chronological findings of fact, we see that this case presents elemental problems in the law of contracts.

[1,2] To begin with, there was a contract of sale of the land Itungelbai. When it appeared this agreement might be extinguished by Civil Action *No.* 284, [2 T.T.R. 546] the parties arrived at an understanding, not amounting to a binding contract, that they would, if their fears came true that the Itungelbai sale was terminated, enter into a new contract of sale involving the land Omis.

The plaintiff testified as to this understanding:

"During the course of the trial of this action brought against me by Ngirachemul and Bilung, I told Sakuma if I lost the case, I will give you Omis in place of Itungelbai. So he said, 'I will just wait until after the suit or action filed against you has been settled.' "

This general statement without specific terms did not constitute a binding agreement to enter into a contract in the future. A contract to contract in the future must be definite in all its essential terms. 17 Am. JUR. 2d, Contracts, § 28.

The judgment in Civil Action No. 284 [2 T.T.R. 546] resulted in the extinguishment of the Itungelbai contract. As between Pius and Sakuma, their sole obligation to each other was reduced to the court's order that:

"... the defendant Ronald Sakuma shall recover from the defendant Pius Irewei so much of the purchase price as he has paid."

Afterwards, on March 8, 1964, Pius undertook to enter into a new contract with Sakuma, which, among other things, would discharge his obligation to repay in accordance with the court order. Pius offered to sen Omis to Sakuma for the same amount of money Sakuma had agreed to pay for Itungelbai and for the transfer of a house on land Sakuma owned to the land Itungelbai in exchange for 'Pius' house on Omis. Unwisely, anticipating his offer would be accepted, Pius left the quitclaim deed with Sakuma when he made the offer.

[3] The day the offer was made Sakuma rejected it, but retained the deed in the belief he could accept part of the offer and reject the remainder. His rejection, however, as a matter of law, of part of the offer prevented a valid contract of sale coming into existence.

"The meeting of minds, which is essential to the formation of a contract, is not determined by the secret intention of the parties, but by their expressed intentions" 17 Am. Jur. 2d, Contracts, § 18.

[4,5] Sakuma's secret intent to accept part of the offer and reject the remainder was without legal effect.

"If a condition is affixed to the acceptance by the party to whom the offer is made, or any modification or change in the offer is made or requested, there is a rejection of the offer which puts an end to the negotiations, unless the party who made the original offer renews it or assents to the modification suggested." 17 Am. Jur. 2d, Contracts, § 62.

[6] Whatever interest in the land Sakuma may have thought he acquired by retaining the deed and recording

it after having rejected the offer is immaterial. It is true the parties may not be versed in the law of contracts, but the law is applicable to them whatever their beliefs were as to the legal effect of their conduct.

The Restatement of the Law of Contracts, Sec. 20, relating to "manifestation of mutual assent" as one of the necessary elements of creation of a binding contract says, in Comment "a":-

"Nor is it essential that the parties are conscious of the legal relations to which their words or acts give rise."

[7, 8] Sakuma's acceptance of part of Pius' offer of sale-retention of the deed-and rejection of the remainder of the offer resulted in legal consequences which are binding upon him whether he was conscious of them or not. Since he rejected the offer, has in fact not accepted it at any time as made, there was no contract. He was not entitled to keep or record the deed nor occupy and use the land Omis. Nor could he, as he apparently wanted to do in August, 1965, accept the offer when he and his wife went to Pius and told him he wanted to use the land for a business structure for the defendant Ngetuberrai Antol.

"The offeree having once rejected the offer by a conditional acceptance, cannot afterward revive it by tendering an unconditional acceptance of it." 17 Am. Jur. 2d, Contracts, § 62.

[9] Nor does the law of acceptance of an offer which make certain exceptions applicable to divisible contracts help the defendants. There was no contract, divisible or entire, and the offer was not intended to be nor could it be divided into parts, some of which might be accepted and others rejected. It was a single offer contemplating a bilateral contract, that is, one set of promises in exchange for another set of promises.

A divisible offer and an entire offer may be illustrated this way:

A wholesaler offers to sell 100 sacks of rice at a fixed price per sack. The buyer may promise to buy one sack or one hundred sacks at that price. But if the seller offers "all of my rice" for a lump sum price, then the buyer must accept the hundred sacks and pay the entire lump sum.

[10] In this case, Pius made an entire offer of the land and his house located on it in exchange for the specified amount of cash and another house to be moved to Itungelbai. Sakuma was obliged to accept all of it or none of it. Restatement of the Law of Contracts, Sec. 266.

One of the difficulties in resolving equities between the parties, as distinguished from imposing the law of contracts upon their acts and statements is that neither of them adopted and adhered to consistent positions or conduct. Sakuma should have recorded the deed and paid the balance due at once, if he honestly believed he could accept part of the offer and reject part of it.

The same criticism may be made of Pius' vacillating conduct. If he honestly believed the deed void because of Sakuma's rejection of the offer of sale, he should have promptly undertaken to repay the money he had received from Sakuma.

[11] Since both parties are equally guilty of wrongfully taking advantage of the other, we may not give either of them any special or equitable consideration. To resolve their difficulties, we are compelled to strictly adhere to the law of contracts.

From all of the evidence, we must conclude the recorded deed from Pius to Sakuma is void. The land Omis, Lot 1018 (Japanese land records), is owned by the plaintiff. Defendant Sakuma has no interest in it but he does have a valid judgment order in his favor requiring plaintiff to repay the money.

[12] Since the defendant Ngetuberrai Antol is not in the position of an innocent purchaser without notice, she has no rights in the land nor in the cement block structure she built on it. She admitted she did not buy the parcel from Sakuma which she occupies and she had no notice of the plaintiff's claim of ownership because she was made a defendant, when she started to build, in the plaintiff's suit in the District Court for a restraining order and also in the present case.

JUDGMENT

In view of the foregoing facts and the law applicable to them, it is:-

Ordered, adjudged, and decreed:-

1. That plaintiff, Pius Itol, be and hereby is declared to be the owner of Lot 1018 (Japanese land records) situated in Korol', Palau Islands.
2. That the quitclaim deed from Pius Itol to Ronald Sakuma, dated March 8, 1964, and recorded with the Clerk of Courts of the Palau District on July 8, 1965, be and the same is cancelled and held to be void and without force and effect.
3. That the plaintiff pay to the defendant Sakuma the sum of three thousand five hundred seventy-five dollars and ninety-four cents (\$3,575.94), together with interest at the rate of ten percent (10%) per annum from March 2, 1964, until the date of this judgment in the amount of one thousand two hundred fifty-one dollars and fifty-eight cents (\$1,251.58), and thereafter on the judgment sum of four thousand eight hundred twenty-seven dollars and fifty-two cents (\$4,827.52) at the rate of six percent (6%) per annum until paid.
4. That if the said sum is not paid within ninety (90) days from date hereof, the defendant, by appropriate motion, may apply for an order in aid of judgement.