

IN THE SEYCHELLES COURT OF APPEAL

AUTO CLINIC (PTY) LTD.

APPELLANT

VERSUS

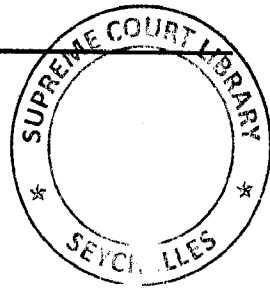
ALAN HORNER

RESPONDENT

SCA22/02

(Before: Ayoola P, Pillay & Matadeen JJA)

Miss. D. Zatte for the Appellant
Mr. J. Renaud for the Respondent



JUDGMENT
(Delivered by Matadeen, JA)

This is an appeal against a judgment of the learned trial Judge who dismissed a claim brought by the appellant, then plaintiff, against the defendant, now respondent, on the ground that the appellant had failed to establish its case on a balance of probabilities. The present appeal is against this finding of the trial Judge.

It was not disputed before the trial court that the respondent was a director and shareholder of the appellant company and that rent collected on behalf of the appellant company amounting to SR176,000.00 had been paid into the Supreme Court Registry in the name of the appellant company.

The appellant's plaint then went on to aver in its paragraph 6, that --

"the defendant unlawfully withdrew and appropriated a sum of SR82,500.00 from the Registry for his personal use"

The evidence which was adduced before the trial court on behalf of the appellant by another director shows that –

- a) that director did not know whether the money withdrawn had been accounted for in the books of the appellant company and never enquired from the respondent as to the use of the money;
- b) that director had heard from the accountant of the appellant company that the money withdrawn was in an escrow account;
- c) the Registry of the Supreme Court did allow a sum of SR82,500.00 to be withdrawn at the request of the respondent who is equally a director of the appellant company.

No evidence was adduced on behalf of the respondent.

In the light of the evidence adduced on behalf of the appellant itself which did not establish any unlawful withdrawal of money, let alone any appropriation of that sum for the personal use of the respondent who, as conceded by learned counsel for the appellant, had authority to withdraw that sum in his capacity as director, we take the view that the learned trial Judge reached the only proper conclusion when he found that *"the plaintiff has not established on a balance of probabilities that that sum has been*

appropriated by the defendant who is admittedly a director, for his own use, as averred in the plaint". It may be that the withdrawal has not been authorised in accordance with the legislation governing companies. But the evidence adduced did not disclose appropriation.

For the reasons given above, we dismiss the appeal, with costs.

Dated this 11th day of April 2003