Adonis v Larue (1999) SLR 66

Frank ELIZABETH for the plaintiff Philippe BOULLE for the defendant

Ruling delivered on 8 October 1999 by:

KARUNAKARAN J: The plaintiff in this matter sues the damages in the sum of R365,000 which the plaintiff allegedly breach of contract by the defendant.

ndant for loss and red as a result of a

The plaintiff is the mother and the defendant is her son. It is avall material times the plaintiff was residing in Italy and the defe 19 August 1994 the defendant agreed to purchase a parcesituated at Barbarous, Mahe for the plaintiff and to have the defendant's name temporarily until the plaintiff returned to Sey pertinent to note that the plaint hereof does not disclose the replaintiff paid any sum to the defendant in pursuance of the said 71(d) of the Seychelles Code of Civil Procedure in this regard contain.

in the plaint that at in Seychelles. On land title no B858 e registered in the ss. By the way, it is al fact whether the ement. See section what a plaint must

The plaintiff upon her return to Seychelles requested the defer into her name. However, the defendant refused to make the alleged agreement.

to transfer the land er in breach of the

Consequently, the plaintiff claims that she suffered loss and action herein.

ges and hence the

At the outset of the hearing in this matter whilst the plaintiff was in support of her case, she attempted to adduce oral evidence agreement between the parties. Counsel for the Defendant Mr the admission of evidence in this respect. He argued that no admissible in terms of article 1341 of the Civil Code as the va exceeded R5000. On the contrary, counsel for the Plaintiff Mr this case falls as an exception to the rule under article 1341 of him, the blood relationship between the parties being the mothe

g evidence-in-chief stablish the alleged swiftly objected to evidence should be the subject matter beth submitted that lode. According to son, it was morally

impossible for the plaintiff to obtain from the defendant a written proof of the obligation. Hence, he contended that oral evidence is admissible in this case as it falls under exception to article 1341. Having heard both sides on this issue the Court in its ruling overruled the objection of Mr Boulle and allowed the plaintiff to adduce oral evidence despite the value of the subject matter exceeding R5,000. In fact, the Court held this case as an exception to article 1341 in view of the said moral impossibility due to blood relationship between the parties relying on the Mauritian case law in *Nunkoo and others v Nunkoo* 1973 MR 269. It is relevant to note here that the same position of case law

has also been reiterated by Chief Justice Alleear in the case of *Esparon & Anor* (unreported)–SC Civil Side 157/ 1990.

e Esparon v Serge

Following the said ruling the plaintiff continued giving evidence in order to establish the alleged agreement. Again Mr Boull 1321 of the Civil Code alleging that the agreement which the planothing but a back-letter. It is one of simulation in which the agreement namely Exh-P1, that is the registered title deed in farespect of the land in question, is destroyed, in effect, by a sechack-letter should be in writing and registered within 6 mont making of the deed. In the absence of such writing as has had contended that the said secret contract is void. Therefore admissible to prove a void contract. In support, Mr Boulle cited the relevant excerpts from the judgement of the Seychelles C Ruddenklau v Timm Adolf Botel (unreported) Civil Appeal 4/199 the admission of evidence to prove the alleged back-letter, a vo

attempted to testify ected under article is trying to prove is ent and ostensible of the defendant in ntract. In law such om the date of the ed in this case, he evidence shall be uthority. He quoted of Appeal in *Sidna* nce, he objected to tract in law.

On the other hand Mr Elizabeth contended that the authority of relevant to this case. He attempted to distinguish the instant facts and in substance. Further, he submitted that the alleged parties is not a back-letter or simulation or secret agreement. Court to allow oral evidence to prove the transaction in question

by Mr Boulle is not from the other on action between the efore, he urges the

I carefully analysed the points raised by both counsel in the perused the relevant provision of law as to back-letters. Indee Civil Code provides that:

ubmissions. I also ticle 1321(4) of the

Any back-letter or other deed, other than a back-letter or deed as aforesaid which purports to vary, amend or rescind any registered deed of or agreement for sale, transfer, exchange, mortgage, lease or charge or to show that any registered deed of or agreement for, or any part of any registered deed of or agreement for sale, transfer, mortgage, lease or charge of or on any immovable property is simulated, shall in law be of no force or avail whatsoever unless it shall have been registered within six months from the date of the making of the deed or of agreement for sale, transfer, exchange, mortgage, lease, or charge of or on the immovable property to which it refers.

Obviously, the issue herein raises two important questions.

- 1. Is the alleged transaction a back-letter in law?
- 2. If so, is oral evidence admissible to prove this back-letter?

As regards the first question, on the face of the pleadings in the plaint it is clear that the parties allegedly entered into an agreement for the transfer of the land in question to the

plaintiff. This fact was not disclosed in the actual transfer dee the defendant. In pursuance of this hidden or undisclosed at allegedly made a sham transfer of the land in his name. This executed and registered with the land registry. In fact, this apparent and ostensible transfer. However, this deed was implement the hidden agreement between the parties. In understood that the unceremonious agreement which the partie is nothing but a back-letter whereas the registered deed a sim the answer to the first question in the affirmative. That is "ye transaction is a back-letter in law" and so it should be treated as and purposes.

ecuted in favour of ent, the defendant I transfer was duly stered deed is the nately intended to ircumstances, it is jinally entered into, In. Therefore, I find alleged unwritten for all legal intents

Now let us move on to the second question. In this respect, points raised by both counsel particularly, on the issue as evidence to prove a back-letter.

efully analysed the dmissibility of oral

In this case, obviously the plaintiff is trying to prove a secret destroys the apparent and ostensible transfer deed i.e. Exh executed and registered. However, the alleged secret contract writing nor registered. In terms of article 1321(4) if a back-lette six months from the date of the making of the deed, in law it sha

act, which in effect This deed is duly never reduced into ot registered within of no force or avail.

As quotably stated in the case of Botel (supra) "while the required cases be merely evidentiary pursuant to article 1341 of the Coexception provided by article 1347 of the Code, the required provided for in article 1321(4) is formal. The consequence is the void by reason of the absence of writing."

It of writing in other lbeit subject to the of writing in cases h secret contract is

In the circumstances, I quite agree with the submission of evidence shall be admissible to prove the terms of a back lette but a void contract. Therefore, I find the answer to the second That is "no oral evidence is admissible in law to prove this back."

Soulle that no oral w which is nothing ion in the negative.

For these reasons, I uphold the objection raised by Mr Boulle cannot adduce oral evidence to establish the back-letter the contract between the parties as no oral evidence in this respect.

ale that the plaintiff the alleged secret missible in law.

Record: Civil Side No 399 of 1997