Barbe v Hoareau
(2003) SLR 118

France BONTE for the Plaintiff
Wilby LUCAS for the Defendant

On appeal by the Plaintiff the CA remitted the case to the Supr Court 16 November 2004 in CA 5 of 2003.

Judgment delivered 3 March 2003 by:

KARUNAKARAN J: The Plaintiff in this action claims a su R127,000 from the Defendant for loss and damage, which the former allegedly su d due to an alleged breach of an agreement by the latter. The subject matter of aid agreement is a motor vehicle namely, a commercial pick-up Registration Num . 8973. In addition to the above money-claim, the Plaintiff seeks this Court fo order directing the Defendant to return the said pickup to the Plaintiff.

The facts of the case as transpire from the evidence are as follo

> In the past, the parties were friends. In mid-1997 both inte to start a joint venture in transport business. They jointly obtained a loar 214, 351 from the Development Bank of Seychelles for the purchase of a ton pick-up for commercial use so that the profit derived therefrom could nared between the parties. The bank sanctioned the said loan to both of as borrowers, on the following terms and conditions as per exhibit P3:
>
> (i) The Defendant shall create a first line mortgage on his vable property namely, V2270 in favour of the bank as security for the
>
> (ii) A pledge should be registered on the pickup as a collate curity thereof.
>
> (iii) Motor Vehicle- Comprehensive -Insurance on the pick- be assigned in favour of the bank; and
>
> (iv) The loan amount shall be repayable with interests equal monthly installments over a period of five years.

Accordingly, the parties purchased the pickup Registration Number S. 8973, in October 1997 from a company, an importer named "South Seas Trading" for a total price of R316,000/- availing the bank loan. In compliance with the conditions of the said loan agreement, the Defendant mortgaged his immovable property V2270, a pledge was registered on the pick-up and the motor insurance was assigned in favour of the bank accordingly. However, for reasons best known only to the parties, the ownership of the pick-up was registered solely on the name of the Plaintiff with the Seychelles Licensing

Authority. Be that as it may. According to the Plaintiff, the parties entered into a verbal agreement for a joint venture whereby the Plaintiff would be a sleeping partner and the Defendant would drive the pick-up for commercial use to make earnings and should submit the accounts of the income to the Plaintiff. The revenue generated thereof would be shared equally between the parties. The Plaintiff testified that he paid a sum of R40,000 to one Mr Morin, the Manager of South Seas towards the purchase -price of the pick-up. The Plaintiff admitted in his evidence that the Defendant also paid a sum of R40,000 towards the purchase price. Further, the Plaintiff testified that from October 1997 until March 1998 he was collecting the business-income from the Defendant and was repaying the bank loan. During that period according to the Plaintiff, he used to get around R5000 to R6000 per month as his share from the net profit. At the same time he stated that the business was sometimes down and he got his share of profit ranging from R4000/- to R5000/- per month. According to the Plaintiff, this arrangement worked well until the dispute arose between the parties in April 1998. Thereafter, the Defendant continued the business on his own giving no share of profit to the Plaintiff. In this background, now the Plaintiff makes his claim in the plaint against the Defendant as follows:

Loss of revenue from June 1999 to the date of the plaint at R3,500 per month	R 77,000
Moral damage	R 50,000
Total	**R127,000**

Moreover, the Plaintiff seeks this Court for an order directing the Defendant to return the said pick-up to the Plaintiff with immediate effect.

On the other side, the Defendant testified that he transferred a sum of R40,000 to the Plaintiffs bank account and gave Plaintiff a total of R22,500 in cash as Defendant's contribution for the purchase of the pick-up. Further, the Defendant testified that during the first one and a half year period he was earning a gross income of about R25,000 to R30,000 per month from the business. During that period, the Plaintiff was collecting all the money from the Defendant: and making repayments of the bank loan. As the Plaintiff defaulted, the bank asked the Defendant to resume the loan repayments. As a result, the Defendant stopped all the dealings of his partnership with the Plaintiff and took over possession of the pick-up without giving any accounts to the Plaintiff. Since then, the Defendant has been repaying the loan directly to the bank. Now, a total of R103,776 remains due and payable on the said loan account with the bank. In these circumstances, the Defendant denies the claim of the Plaintiff and seeks dismissal of this action.

I carefully perused the pleadings, the testimony and documentary evidence adduced by the parties in this matter. First, as regards the plea in limine litis raised by the Defendant, as I see it, the plaint is not grounded on two causes of action as alleged by the defence but only one cause of action namely, the breach of an agreement. Hence, the Plaintiff has prayed for damages for the breach and as a consequential relief

thereof, has prayed for a mandatory injunction for the return of the pick-up. In the circumstances, I do not find anything improper or irregular in the pleadings of the plaint. Accordingly, I hold that the plea in limine is devoid of merits. Therefore, I dismiss the plea in limine litis raised by the Defendant in this matter.

Now, let us move onto the merits of the case. It is evident that the testimony of the Plaintiff does not tally with the pleadings in the plaint on the material particulars of the claim. There is also a considerable variation between the pleadings and documentary evidence adduced by the parties. There are inconsistencies and inexplicable gaps in the evidence given by both parties. It lacks cogency. However, in the overall assessment of the entire evidence on record I find on the preponderance of probabilities that the following facts and circumstances are established to my satisfaction: -

1. The parties did enter into a partnership venture whereby they jointly purchased a pick-up for commercial use with a view to share the profits.

2. Then were no clear terms agreed upon by the parties as to profit sharing, as to who should contribute what towards capital investment and as to who should pay what for the initial expenditures.

3. The parties never agreed upon anything nor made provision as to what should be done when the partnership is dissolved; and

4. The agreement is silent in respect the crucial terms that are necessary for the determination of the issues that arise before this Court in this matter.

Having said that, I note that a partnership agreement must be drawn up in writing when the object exceeds the value of R5000 and no oral evidence shall be admissible against and beyond the terms of the agreement vide article 1834 of the Civil Code. However, the parties did not object to, during trial and thus the evidence in this respect came in, that would have otherwise been rendered inadmissible. Therefore, I have to rely and act upon the evidence to the extent as it has been admitted to render justice to the parties. In my considered view, this Court in the given circumstances of this case has no other choice but to steer the law towards the administration of justice rather than the administration of the letter of the law.

It is truism that all agreements lawfully concluded shall have the force of law for those who have entered into them. They shall not be revoked except by mutual consent or for causes, which the law authorizes. They shall be performed in good faith. See Article 1134 of the Civil Code.

Article 1135 of the Civil Code reads as follows:

> Agreement shall be binding not only in respect of what is expressed therein but also in respect of all the consequences which fairness, practice or the law imply into the obligation in accordance with its nature.

Further, I note that when a partnership agreement is silent, and it shall be open to the Court to adjust the contributions of the parties upon an equitable basis, where the work, skill or know-how is such as to justify a higher participation. See article 1853 of the Civil Code.

In arriving at a just and equitable solution in this matter, I take into account the following:

1. The bank loan was secured by mortgaging the property belonging to the Defendant.

2. The Plaintiff has not contributed anything in substance to raise the bank loan for the purchase of the pick-up.

3. The Plaintiffs only contribution to the partnership business was R40,000, the sum be directly paid to the said importer of the pick-up and so I find.

4. All the loan repayments, which the Plaintiff made to the bank up to April 1998, were from the earnings of Defendant.

5. The Plaintiff in breach the terms of the agreement defaulted loan repayments with the bank and so I find.

6. The Defendant has contributed his work, in addition to his contribution of money totaling R62,500 towards the purchase-price of the pick-up.

7. Now, there is a balance of R103,776 remains due and payable by the Defendant on the said loan account with the bank as his immovable property is still burdened with mortgage.

8. Since the Plaintiff was the one who initiated the breach of the agreement, and is at fault, he is not entitled to any moral damages.

In the circumstance, though it might appear ultra petita, justice, equity and fairness dictate this Court to enter judgment in the following terms:

1. I declare that the agreement between the parties in respect the business involving motor vehicle registration number S.8973 was terminated in April 1998 by the conduct of the parties following the breach by the Plaintiff of the terms as to loan repayment.

2. I order the Defendant to pay the sum of R40,000 to the Plaintiff with interest at the commercial rate of 10 per annum on the said sum as from the date of the plaint.

3. Upon receipt of the said sum, I order the Plaintiff to effect transfer of ownership of the said motor vehicle Registration Number S. 8973 to the Defendant.

4. I award neither damages nor costs of this suit for or against any party.

Record: Civil Side No 114 of 2000