

IN THE SUPREME COURT OF SEYCHELLES

ISABELLE JULIUS

PLAINTIFF

VERSUS

JOSIANNE MARIE

DEFENDANT

Civil Side No 290 of 2003

Mr. J. Renaud for the Plaintiff

Miss. K. Domingue for the Defendant

JUDGMENT

Perera J

The defendant leased a business premises from one Franky Jean for a period of one year from 10th March 2003, to trade under the business name of “D2 U collection”. That business entailed the retail selling of mainly items of clothing. The agreed monthly rental was Rs4000. The lessee was responsible for the payment of electricity, water and telephone bills. The business was registered on 17th June 2003, in the joint names of the defendant and her daughter Bergutta Marie. A “retailer licence” was issued by the Seychelles Licensing Authority on 26th March 2003 for the period 24th March 2003 to 23rd March 2004.

The plaintiff avers that during the month of April 2003, it was agreed with the defendant, who is her niece, that both of them would initially put in items of clothing which they had, for sale. It is further averred that consequently, on 2nd May 2003, the plaintiff brought in clothes, handbags and shoes to the value of Rs.59,163, and that the defendant put in similar items valued at Rs32,600. The plaintiff also avers that she paid Rs4700 in respect of electricity and water connection deposits. The plaintiff concedes that it was the defendant who ran the shop with her (*plaintiff's*) daughter Samantha Marie, and that she only visited the shop occasionally.

The plaintiff alleges that in mid July 2003, she noticed that most of the clothes and other goods she put in had been sold, but the defendant had not given her any money or accounted for the sales. She further avers that the defendant agreed to refund the sum of Rs.59,163 or a lesser amount with the return of clothes and other goods that had not been sold to make up the sum of Rs59,163 plus Rs4700, making a total of Rs64,313. She avers that only a sum of Rs4700 was refunded, although the defendant had agreed to settle the full amount by 15th August 2003. She therefore claims Rs59,163 with interest and costs.

The defendant disputes the value of the clothing and other goods that the plaintiff put in to the business. She avers that the plaintiff came in regularly to the shop only to obtain advances of money. She further avers that the plaintiff came to the shop in August 2003 and removed all the clothing and the other goods which remained unsold. She also avers that the amounts obtained by the plaintiff as advance payments exceeded the value of the items placed by her in the shop, and that hence, no money is owed to her.

The plaintiff did not produce any documentary evidence of the value of goods she put in to commence the business. So also, no "stocks register" was produced. The plaintiff testified that a joint account was opened at the Mauritius Commercial Bank (P2) and towards mid July 2003 she found that there was only Rs4060 in the account. The bank statement shows that from April 2003 to September 2003, there had been cash withdrawals of Rs2,355.31, Rs6,000 (*two amounts*), Rs3000 and Rs1000, a total of Rs18,355.31. The plaintiff further testified that the defendant paid herself Rs2000 as wages and paid Rs2000 to her daughter who was employed there. Shown exhibit D4, which records that a sum of Rs29,051.24 was given by the defendant to the plaintiff, the plaintiff admitted that she signed it, and that amount was her money. Later she stated that she did not recall taking any money from the shop except for Rs4000 which the defendant refunded.

Lyn Arnephy, the daughter of the plaintiff testified that both her mother and the defendant brought clothes and shoes from abroad for sale. In May 2003, the plaintiff commenced a joint venture with the defendant, but she did not know as to how much she contributed in cash or in kind. However, on the day they decided to terminate the venture, she saw the defendant giving the plaintiff Rs4000. The plaintiff complained that the defendant owed her money. She was not aware whether the defendant had given the plaintiff any other money before or after that day. She however saw the plaintiff taking away her balance clothes remaining unsold, in a basket.

Samantha Marie, another daughter of the plaintiff worked in the shop as a cashier. The defendant attended to the customers. Most of the entries in the books of trade were made by her. Her mother, the plaintiff brought in clothes and shoes worth about Rs59,000. The prices were totalled, and the items were entered in a book which was in the possession of the defendant. She worked there for three months, and was paid a salary of Rs2000. The daily earnings were taken by the defendant for banking the following morning. When the plaintiff noticed that the sales proceeds had not been banked, she asked the defendant for her share. The defendant agreed to pay in instalments and paid Rs4000 which was the money paid by her for the electricity deposit. She further stated that whenever the defendant went to Dubai for purchasing, she would return and state that most of the clothes she brought were seized by the customs at the airport. However when the plaintiff went on such trips, she brought back everything. Those purchases were done by both of them from sales proceeds. Shown the sales book (*exhibit D5*), the witness stated that all stocks were entered in a "stock register" which had a yellow cover. She was referred to entries dated 2nd May

2003, 9th May 2003 and 14th June 2003, where it had been recorded that sums of Rs.272, Rs120 and Rs363 were missing, she stated that whenever she was not at the cashier's desk, anyone could have access to the money.

The witness was referred to the entry in exhibit D5 under the date 31st May 2003 wherein it is recorded "2 tickets Rs6800 & Rs6800 Isabelle Rs5000." She stated that it could have been copied from another book. In any event, she stated that the defendant took that money to travel abroad with her husband for purchasing.

The defendant in her testimony stated that the plaintiff put in only three plastic bags of clothing to commence the business. The items were shirts, skirts and "ladies tops". There were around 20 shirts priced at Rs175 each, 12 mini skirts priced at Rs.200 each and about 50 "ladies tops", priced at Rs125 each. The total value therefore was Rs6,250. She however conceded that in all, the plaintiff did not put in items worth more than Rs12,150. She stated that every transaction was recorded in the book, exhibit D5. The initial stocks were not recorded anywhere. However only the sales were recorded on a daily basis.

The defendant further testified that the plaintiff obtained advances of money from the shop stating that she had financial problems. Once she took Rs6000 and on another occasion a further Rs6000. Later she wanted money to send her daughter to go to England, and she was given Rs10,000. The defendant alleged that the plaintiff's youngest daughter, one Jumina also came into the shop, and it was on those occasions that money was found to be missing. She maintained that document D4 set out the full amount handed to the plaintiff and that it was signed by her in acknowledgment. Save for the refund of Rs4000, the balance sum was for her personal use. The money she gave her to do purchasing in Dubai was from proceeds of sale. She withdrew money from the joint account for that purpose.

On being cross examined, she stated that the first part of document D4 recording the payment of Rs24,000 had already been written in the book, and when she came on 16th July 2003, she wrote "I Josianne give Isabelle" Rs5051.25 thus making a total of Rs29051.24. However it was put to her that two sums of Rs6000 had been withdrawn from the joint bank account on 4th June and 26th June 2003 (P2). She replied that she did not bank all the proceeds of sales and that she kept some money with her. The sum of Rs29,000 was paid partly from the withdrawals from the bank and partly from money kept by her.

Robert Jeannevol, a pick up driver, testifying on behalf of the defendant stated that he transported a suitcase, four bags and two trolley bags belonging to the defendant to her shop. On the way, at Belonie, four large plastic bags, and a smaller bag full of clothes were also loaded into the pick up. He was unable to state what the weight of the bags were.

Andre Nancy, the husband of the defendant testified that his wife was engaged in buying and selling clothes. She travelled abroad for purchasing, and sold the items in Praslin and La Digue. However as the customers were not prompt in making payment they decided to keep the clothes at home until the shop was opened. The defendant permitted her Aunty, the plaintiff, to join her in the business contrary to his advise. He corroborated the evidence of the pick up driver Jeannvol as regards the transportation of the bags from his house and that of the plaintiff. He stated that the goods and materials supplied by the defendant were far more than the few clothes put in by the plaintiff to commence the business.

He further stated that he is engaged in building construction, and that he gave the defendant various amounts ranging from Rs3000 to Rs6000 to assist her in her shop business.

Terry Louise, a pick up driver testified that sometime in the year 2003, the defendant hired his services to transport some items from her shop at La Rocher. He saw the plaintiff and her two daughters there. The plaintiff removed a mirror from the wall and collected some clothes into three plastic bags. The witness stated in cross examination that he is a brother of the defendant, and that he sometimes stayed at her premises.

Basically, the business was registered in the names of the defendant and her daughter. The defendant was also the sole lessee of the shop. However, both the plaintiff and the defendant operated a joint account at the Mauritius Commercial bank. Admittedly, the business commenced in March 2003, but the plaintiff brought in goods only on 2nd May 2003. According to the bank statement (P2), for the period 29th April 2003 to 4th May 2005, the total debits were Rs.29,075.12 and the total credits Rs.27,175.25, thus leaving an overdraft of Rs.100.13. It is also not in dispute that the plaintiff terminated the joint venture in July 2003. During that period there were two withdrawals of Rs.6000 each, Rs.3000 and Rs.1000. The defendant claims that they were monies paid to the plaintiff. Exhibit D4 records those three initial payments, Rs.6000, Rs.6000 and Rs.10,000 amounting to Rs.22,000 plus a sum of Rs.2000. Below those amounts, it is recorded-

<i>"I Josianne give Isabelle</i>	4776.25		
		225	<i>Sgd: illegibly</i>
	x	50	<i>(Plaintiff).</i>
		275	
	<i>All total Rs.</i>	<i>29,051.24 "</i>	

The figures 10,000 is clearly an alteration of 1000. The total has also been altered from 13,000 to 22,000

and a further 2000 added. The bank statement records cash withdrawals of Rs.6000 on 4th June 2003, a further sum of Rs.6000 on 26th June 2003 and another sum of Rs.3000 on 17th July 2003. Admittedly, the plaintiff finally left the business in July 2003. Those three amounts were recorded in exhibit D4 on 16th July 2003. Hence on a balance of probabilities, the plaintiff was paid a total sum of Rs.18,051.25, and not Rs.29,051.24.

As regards the value of the items put in by the plaintiff, there is no documentary evidence that they were worth Rs.59,163, as claimed. However the defendant admitted that they were worth around Rs.12,150. The plaintiff maintained that the clothes and shoes she put in were itemised and priced by the defendant at the commencement of the business. It is reasonable to accept that in a venture of this nature, whatever may be the family relationship between the parties, goods brought in to commence a joint venture would have been entered and priced and recorded in a "stock book". Samantha Marie stated that this "stock book" had a yellow coloured cover. But that was not produced by the defendant who had custody of it. It is therefore unacceptable that stocks, sales, expenses etc were all entered in the sales register. On the basis of the demeanour of the parties in Court, the plaintiff impressed me as being more truthful than the defendant. The two daughters of the plaintiff also gave truthful evidence. As regards exhibit D4, they only testified regarding the sum of Rs.4000 and (Rs.5051.25) which their mother was given on the last day. In these circumstances, although there is no documentary evidence, I accept the evidence of the plaintiff that she put in goods worth Rs.59,163 to the business. However admittedly, the plaintiff removed a "basket full of clothes" when she ceased business with the defendant. The value thereof is unknown. It would, in the circumstances be reasonable to accept that those goods were worth Rs5,000. Deducting that amount and the sum of Rs.18,051.25 the plaintiff is entitled to recover Rs.36,112 for the goods supplied by her.

Accordingly, judgment is entered in favour of the plaintiff in a sum of Rs.36,112 together with interest and costs.

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A.R. PERERA

JUDGE

Dated this 9th day of December 2005