

**Boux v Procopio
(2008) SLR 72**

Frank ELIZABETH for the plaintiff
Daniel CESAR for the first defendant
Teresa MICOCK for the second defendant

Ruling delivered on 2 April 2008 by:

PERERA ACJ: The cause of action pleaded in the plaint is a dispute as to the ownership of two motor vehicles, Hyundai Getz STD GLS registered as S 10251 and Hyundai Matrix GLS diesel 1.5 CRDI, registered as S 11183. The plaintiff avers that he paid the purchase price of both vehicles and also the trades tax, GST, insurance and the road licence from his own funds. He however avers that upon the first defendant advising him that he could not register the vehicles in his name, he agreed to transfer vehicle No S 10251 in the name of the first defendant and the other vehicle S 11183 in the name of the company "Le Bon Bon (Pty) Ltd". The plaintiff further avers that he retained possession, use and enjoyment of the said vehicle S 10251 and allowed the first defendant to retain and use vehicle S 11183. It is now averred that on 19 October 2007, the first defendant with the assistance of the police, the second defendant, took possession of vehicle S 10251 without his approval or consent. The plaintiff therefore claims an order on the second defendant to recover vehicle S 10251 from the first defendant and return it to him, and also a similar order on the first defendant to return both vehicles to him. Further and in the alternative, he claims US Dollars 23,500 and Euro 28,000 which he avers he paid for the vehicles.

The first defendant has filed a defence and a counterclaim. In the defence, he denies the claim of the plaintiff, and avers that he is the lawful owner of vehicle S 10251, while vehicle 11183 is owned by the said company in which he is the Managing Director and also a 50% shareholder. He has produced proof of those averments. For present purposes the averments in the counterclaim need not be considered as they relate to a wider transaction which is in dispute between the parties.

The instant matter before Court is an application for an interim injunction, purportedly under section 304 of the Code of Civil Procedure to restrain the first defendant from the alleged wrongful act or breach of the alleged agreement, and for an order that the said vehicles be returned to him until a further order is made by Court. He also seeks an injunction against the first defendant to stop harassing, threatening and disturbing him, and also for an order that he does not come within 25 metres of himself and his wife. At the hearing of this motion however, counsel for the plaintiff did not press for the latter injunction upon an undertaking given by the first defendant. He also limited the first injunction to vehicle No S 10251.

The second defendant has so far not filed a defence, nor a reply to the motion for

injunction. The averments in the main defence have been reiterated by the first defendant in the reply to the motion for injunction. It is averred that the plaintiff has no legal or equitable interest in any of the said vehicles and hence the injunction sought should be refused. He avers that the company vehicle is being driven by an unknown person without insurance, and it was in these circumstances that he made a complaint to the police to seize the vehicle.

The plaintiff has in his plaint sought inter alia an order for the Seychelles Licensing Authority to register both vehicles in his name. Hence presently, vehicle No 10251 is registered in the name of the first defendant, and vehicle No 11183 in the name of the company of which he is the Managing Director. According to the particulars furnished by the Company Registry, the first defendant holds 50% shares of the said company while the balance 50% is held by one Cultreri Maria Pia. The documents produced by the first defendant show, prima facie, that the plaintiff's wife and son were employees of the restaurant business of the company and that they are no longer working in those capacities. The capacity of the plaintiff in the company remains unsubstantiated.

The pleadings disclose a substantial dispute between the parties. It was held in the case of *D'offay v Attorney-General* (1975) SLR 118, as summarised in the headnote –

- (1) Where a plaintiff is asserting a title or right, an interim injunction should be refused if the existence of such title or right was open to serious doubt.
- (1) An interlocutory injunction should only be granted if it is necessary to protect a plaintiff against irreparable injury which could never be adequately remedied or atoned for by damages.
- (2) Where a doubt exists as to the plaintiff's right, the burden of proof is upon him to show that the inconvenience he will suffer by a refusal is greater than that which the defendant will suffer by the grant of the injunction.

In the present case, the issue of ownership of the vehicles can be determined only upon considering the respective oral and documentary evidence of the parties at the hearing on the merits. Further, the plaintiff has claimed as an alternative prayer the value of the two vehicles. Hence it cannot be said that a refusal to grant an injunction would cause irreparable injury to the plaintiff which cannot be adequately remedied or atoned for by damages. In these circumstances, the plaintiff has not established that the inconvenience he will suffer by a refusal will be greater than that which the first defendant will suffer by the grant of the injunction. The first defendant has disclosed the circumstances in which the vehicle was seized by the second defendant, the police, at his instance as the registered owner. The propriety of such action is also a matter to be decided in the main hearing. That alone is insufficient to order a restoration of the status quo as the first defendant has provided documentary evidence disclosing prima facie that he is the registered owner. In fact such registration has been admitted by the

plaintiff in paragraph 4 of the plaint. In these circumstances the application for the interim injunction is dismissed. There will however be no order for costs.

Record: Civil Side No 371 of 2007