

IN THE SUPREME COURT OF SEYCHELLES

CHARLES

MAZZORCHI

PLAINTIFF

VERSUS

THE GOVERNMENT OF SEYCHELLES

Rep by the Attorney General

DEFENDANT

Civil Side No 348 of

2006

Mr. F.Ally for the Plaintiff
Ms Jumaye for the defendant

JUDGMENT

B. Renaud J

The plaintiff claimed that he is the owner of 10 units of twelve metres used dredger pipes (“pipes”) which he kept at the premises of Mr. Allan Ernestine at Providence Industrial Estate. According to him, at an unspecified date in December 2004 or beginning January 2005, the employees of the defendant employed at the defendant Land Transport Division of the Ministry of Transport, in the course of their employment with the Defendant, without the plaintiff’s permission and consent, removed and took possession of all those dredger pipes from where the plaintiff had kept them and the defendant used them for building a bridge at Providence, Mahe.

The plaintiff averred that each of the pipes is valued at

SR25,000.00.

The plaintiff further averred that the defendant's employees said removal, taking possession and use of the pipes, the defendant's detention of the pipes and its deprivation of the plaintiff's enjoyment and use of those pipes are unlawful, wrongful and a faute in law and the plaintiff claims from the defendant his 10 pipes and a sum of SR125,000.00 representing loss of value or depreciation of those used dredger pipes.

Alternatively the plaintiff averred that the defendant's employees said removal, taking possession and use of the pipes, the defendant's detention of those pipes and its deprivation of the plaintiff's enjoyment and use of those pipes are unlawful and wrongful and amount to a faute in law and the plaintiff claims from the defendant the sum of Rs250,000.00 representing the value of those 10 pipes.

The plaintiff prayed for the following:

- (i) *To declare that the dredger pipes are the property of the plaintiff;*
- (ii) *To order the defendant to return all the dredger pipes to the plaintiff and pay the plaintiff loss and damage in the sum of SR125,000.00; or*
- (iii) *To order the defendant to pay the plaintiff*

compensation for the dredger pipes in the sum of SR250,000.00.

(iv) *With interest and cost.*

The defendant denied all the material particulars of the claim of the plaintiff and averred that the pipes were the property of the Government of Seychelles and the defendant used those pipes to build a bridge at Providence, Mahe.

At the conclusion of the hearing of the case, the defendant submitted that those pipes were the lawful property of the Government of Seychelles. These pipes were previously used by a foreign company which was undertaking a reclamation project for the Government of Seychelles and the pipes were kept on the property of the Government of Seychelles. They were of no further use to the dredging company and were left abandoned as used/waste material upon completion of the work and departure from Seychelles of the Company. The defendant added that there is no indication that the dredging company had left the pipes for a certain period of time to be later re-appropriated and thus could be classed as *“res derelictae”*.

Learned Counsel for the defendant also submitted that the pipes were formerly owned by someone else prior to being the ownership of the Government of Seychelles, but they were abandoned for an indefinite period of time and as they were found on the property of the Government of Seychelles, the Government took possession thereof in good faith in terms of Article 2279 C C

Sey.

According to the Learned Defendant's Counsel the pipes were clearly in the possession of the Government of Seychelles and therefore they are the rightful owners, unless the presumption that possession was in good faith can be rebutted by the plaintiff.

The defendant further submitted that the plaintiff failed to prove how he allegedly came into possession of those pipes nor has he proved that the Government did not come into possession of those pipes in good faith, adding that the plaintiff failed to show any documentary proof of how he allegedly obtained those pipes.

In conclusion, the defendant submitted that as the plaintiff has failed to rebut the presumption, the defendant has established that the Government of Seychelles was in possession of the pipes in good faith and that the action of the plaintiff be dismissed, with costs to the defendant.

The fact that the plaintiff worked for the dredging Company was admitted by the defendant's witness. The plaintiff claimed that he owned those 10 dredger pipes having received them from the Company that was conducting dredger works in Seychelles some years ago. The plaintiff then stored those 10 pipes on the land of his friend Mr. Ernestine at Providence Industrial Estate, Mahe. Those 10 pipes were taken by Officers of the defendant and placed underneath a makeshift bridge at Providence, Mahe.

After the collapse of the permanent bridge at Providence after the December, 2006 Tsunami, it was urgent and necessary for the

defendant to build a makeshift bridge. The defendant therefore, went round and collected all used dredger pipes that they could find to build the bridge. As the pipes that they had were no sufficient and due to the urgency of the situation they did not ascertain the ownership of the pipes before they took possession of them. After the pipes were taken, the plaintiff was informed of it and he immediately claimed the pipes from the defendant as evidenced by exchanges of correspondences produced as exhibits.

The argument of the defendant that the pipes were res derelict as these had been abandoned and the defendant took possession of them, is refuted by the evidence of the plaintiff that the pipes were stored on the land of Mr. Ernestine and that upon the removal and taking of the pipes he was immediately informed and he claimed ownership thereof. Such argument is not tenable in that the pipes were the property of the dredging company which gave them to the plaintiff. The plaintiff stored them on Mr. Ernestine's land, which is a private property. It cannot, therefore, be successfully argued and found that the pipes were res derelict since they were on private property and stored together with other pipes. For a thing to be declared a res derelict it must be abandoned on public property or vacant property and should not as defendant's Counsel has stated "*n'appartenant a personne*". The pipes had an owner and the owner claimed ownership of them immediately after they were taken away.

The plaintiff was given those pipes when that Company

left Seychelles as he worked for that Company. It is clear that the plaintiff was the owner of those 10 dredger pipes that were taken by the defendant to build the makeshift bridge since he was in possession of them before the defendant took possession of them.

Defendant's witness admitted that the defendant pipes were not sufficient to build the makeshift bridge and they went around and collected pipes from other persons to do so. One place they went to was at Mr. Ernestine's property at Providence, Mahe. It was there that the plaintiff's pipes were stored.

As to the submission of Learned Counsel for the defendant that by being in possession of the pipes renders the defendant the owner of the pipes by virtue 2279 of the Civil Code, Article 2279 of the Civil Code provides that possession in good faith or movables establishes a presumption of ownership. Our law is, therefore, less strict than French law where "*possession vaut titre*". Our Article 2279 establishes a presumption of ownership and that possession must be in good faith and the presumption can be rebutted. Therefore, an owner who has been dispossessed of his movable can claim it back at any time specially if it has been lost, taken or stolen.

It is clear from the evidence that the defendant was not in possession of the pipes in good faith in that I knew the pipes were not for it but for a third party and they were taken along with other pipes which were for other third parties to build a makeshift bridge as a matter of necessity.

The defendant was a “detenteur precaire” or a “possesseur de mauvaise foi” of the pipes and not the owner thereof as it knew that the pipes were not owned by it. Coupled with the fact that its possession was not in good faith the plaintiff submitted that all the conditions for Article 2279 to apply does not exist and there is a “vice de la possession” of the pipes by the defendant.

The plaintiff by the mere fact of his previous possession of the pipes by storage on Mr. Ernestine’s land proves that he is the owner of the pipes. The pipes were unlawfully removed and taken away by the defendant’s employees to build the makeshift bridge and by this suit the plaintiff is claiming back possession of his property. It is trite, therefore, that the plaintiff does not need to produce any documentary proof of how he obtained ownership of the pipes. His mere previous possession thereof suffices and his proof that the defendant took the pipes without his consent, and the further fact that when the defendant took the pipes no title to the pipes were transferred - **Vide Droit Civil Les Bien Weil et Terre at Page 458 and note 528,** which confirms that proof of ownership of a movable can be established by all means and no documentary proof is necessary to establish such title as possession presumes possession (*in French law it “vaut titre”*)

The plaintiff has valued the pipes in the sum of not less than SR25,000.00 each. He claimed to have long experience in mechanical, engineering and steel works and he estimated the value of those dredger pipes taking into consideration on use that

he would have put them to or that they could be put to.

Agreeably the defendant could not successfully challenge the valuation in any way whatsoever or at all or by any evidence to the contrary, but the Court taking into consideration material and relevant factors, may place a different value on the pipes.

The pipes in issue are big steel pipes that were used in connection with dredging work at Providence. After its usage those pipes were left behind by the Dredging Company when they left. The plaintiff received some of those pipes and kept it for their use potentially as floating pontoon. I do not believe that those pipes had great value after its usage as if it had the Dredging Company would have either sold them or take them back with them. When I visited the site where those pipes were I found that they were all rusted after being in use for only 4 years in the sea. This shows that even these were used as pontoon by the plaintiff its potential life was short. I bear in mind that the plaintiff received those pipes for free, however, he incurred cost to collect, transport and stored them where they were. On the other hand, I note that when the defendant used those pipes there was a critical situation to remedy after the collapse of a bridge that connects Victoria to the South via the Highway. They were desperate and could not negotiate a fair price. It is my considered view that SR25,000.00 per length of pipe is too much on the high side. I assess the length of pipe at SR5,000.00.

The plaintiff originally prayed for the return of those pipes. The Court conducted a locus in quo at the site where the pipes are currently being stored and it was found that the pipes could not

be put to the use that the plaintiff originally wanted to put them to.

On the basis of matters aforesaid I give judgment in favour of the plaintiff and declare that the plaintiff is the owner of 10 lengths of the dredger pipes removed from Mr. Ernestine's land by the defendant's officers and I order the defendant to pay the plaintiff the sum of SR50,000.00 the value of the 10 pipes, with interest and cost.

Judgment is entered accordingly

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B. RENAUD
JUDGE

Dated this 23rd day of October 2009