

IN THE SUPREME COURT OF SEYCHELLES

ANTOINE LEON

PLAINTIFF

VERSUS

SYLVETTE SHEILA ASSARY

DEFENDANT

Civil Side No. 147 of 2008

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Mr. W. Herminie for the Plaintiff

Mr. J. Renaud for the Defendant

JUDGMENT

B. Renaud J

The Plaintiff entered this plaint on 29th May, 2008 praying this Court to order:

- (a) The Defendant refund him the sum of SR115,348 with interest at 10% from the 31st July, 2007 and continuing;
- (b) The Defendant to pay the cost of this action.

The Defendant appeared by Counsel and entered a Statement of Defence.

The matter was set for hearing on 23rd September, 2010 and on the date of the hearing the Defendant failed to appear in Court and no valid reason was given for her absence. Learned Counsel for the Plaintiff applied for leave to hear matter ex-parte. The Court, after hearing Learned Counsel for the Defendant, ordered the hearing of the evidence of the Plaintiff albeit in the absence of the Defendant.

The Court gave the Defendant another opportunity to be heard on a date when the case was to be adjourned, that was on 25th October, 2010.

The Plaintiff testified and was duly cross-examined by the Learned Counsel for the Defendant. After the Plaintiff closed his case, the hearing was adjourned to allow the Defendant to be heard. At the adjourned hearing the Defendant again failed to attend Court and no valid reason was given for her absence.

In her Statement of Defence denied each and every allegations of the Plaintiff and averred that the Plaintiff had given her money for buying household matters as a result of amorous relationship they enjoyed, and, for paying rent in respect of business premises which they promptly rented.

When testifying the Plaintiff produced in evidence a hand-written agreement as documentary proof of his claim. He testified that it was the Defendant who drew up that document and he simply signed it. That document was admitted and marked as Exhibit P1 and is worded as follows:

“This is an agreement made between Antoine Leon of Copolia, Mahe.

And

Sylvette Sheilla Assary Leste of Anse Aux Pins Reef Estate, Mahe.

For her to buy a new Toyota Hilux Double Cab pick-up 3000 Diesel 4x4 5m/T Model Code Lan 25R – prmdim and options power steering, iar con, CD music

system etc. From Japan, CIF value USS23,160 Seychelles Rupees (152,875) one five two eight five only.

This agreement we made on the 26th day of April, 2007. She agree that I will pay her by instalment. When the pick-up arrive in Seychelles about July or August 2007 she will believe (deliver) it to me Antoine Leon.

From Friday 23rd March to Friday the 27th April, 2007 I give her a total of Seychelles rupees (115,348) one five three four eight only.

Signed: Sylvette Sheilla Assary Leste 26.04.2007.”

Under cross-examination Learned Counsel for the Defendant introduced Exhibit D1, a hand-written document under the signature of the Plaintiff worded as follows:

“I Antoine Leon of Copolia Mahe wish to say that during the past few month since 2006 I was lending Sheilla Leste money financially to pay electricity and water bill house hold items etc and the amount is equal to (S.R. 125,500).

Signed: Antoine Leon

Date 3/07/2007”

Likewise under cross-examination Learned Counsel for the Defendant introduced Exhibit D2, a type-written Rent Agreement between Marcel Hoareau and Sylvianne Hoareau as Landlords and Mr. Antoine Leon and Ms. Sylvette Sheila Leste as Tenants. That agreement was in respect of a premise at Anse Aux Pins for a monthly rent of SR10,000.00 starting 31st July, 2007 for a period of 2 years. Both the Plaintiff and the Defendant signed that Rent Agreement as Tenants.

In her Statement of Defence the Defendant claimed that the Plaintiff had given her money for buying household matters as a result of an amorous relationship they enjoyed, and, for paying rent in respect of business premises which they promptly rented.

The Plaintiff explained that the premise which was subject to the Rent Agreement Exhibit D2 was to be rented with the intention of them to jointly operate a shop but that venture never materialized. The Plaintiff also clarified that he lent the Defendant other sums of money that is shown in Exhibit D1 and this had nothing to do with the money paid to the Defendant for the import of the pick-up. He said that he gave the Defendant that money stated in Exhibit D1 on the condition that she will pay the duty on pick-up when it comes. I do not have any reason to disbelieve the Plaintiff.

On basis of the evidence of the Plaintiff I conclude and find that pursuant to an agreement dated the 26th April, 2007, Exhibit P1 hereinafter referred to the “*agreement*”, the Defendant agreed to import a pick-up model Toyota Hilux Double capacity 3000cc Diesel 4x4 5m model code Lan 25R prmdim with full

options, hereinafter referred to as the “*vehicle*” for the Plaintiff in consideration of a sum of SR152,875.00 exclusive of duty. The said vehicle was to be delivered on or before the end of July, 2007. The payments were made by installments and a total sum of SR115,348.00 had been paid by the Plaintiff to the Defendant.

I also find that in breach of the agreement, the Defendant failed, neglected or refused to honour the agreement, as a result of which the Plaintiff have suffered the loss and damage that he is claiming with interest at 10% per annum and continuing.

In the premise, I am satisfied that the Plaintiff has proved on a balance of probabilities his claim against the Defendant. I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the sum of SR115,348 with interest at 10% per annum from the 31st July, 2007 and continuing until the full amount is paid.

I also award cost of this suit to the Plaintiff.

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B. RENAUD

JUDGE

Dated this 4th day of March 2011