

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES

Civil Side No324 of 2009

Pamela Cooposamy

Plaintiff

versus

Joe Morel Duboil

Defendant

Basil Hoareau for the Plaintiff

France G Bonte for the defendant

RULING

Egonda-Ntende, CJ

- [1] In this action the plaintiff is seeking to recover from the defendant the sum of US\$20,000 which she contends she lent to him under an oral agreement. As he failed to pay it back as agreed she commenced this action for recovery of the same. The defendant denied that he borrowed any money from the defendant and in fact set up a counter claim to recover expenses he allegedly incurred on a property co owned by the plaintiff and her sisters, one of whom, was at one point in time, living with the defendant in that property.
- [2] At the trial, on the close of examination of the plaintiff, the defendant's learned counsel, Mr. Bonte, raised an objection that her testimony was inadmissible for being contrary to article 1341 of the Civil Code of Seychelles as the claim in question was over R 5,000.00 and it did not have supporting documentary evidence. The law did not prescribe a particular time when the objection could be

made and in this case it had been made in time at the close of the testimony of the plaintiff. Counsel claimed that he had to wait for the plaintiff's examination in chief to be completed before he could make his objection after he had ascertained the position during cross examination.

- [3] Mr Basil Hoareau, learned counsel for the plaintiff, submitted in reply, that, though Mr. Bonte was partially correct, Mr. Bonte had missed the boat, so to speak, by failing to object to the evidence at the time the plaintiff testified. In the result he was precluded from objecting to the admission of such evidence.
- [4] A similar matter to the issue under consideration arose in Paul Michaud v Lucia Ciufrini, Seychelles Court of Appeal Civil Appeal No. 26 of 2005. The Court of Appeal held, inter alia, (as summarised in Leading Cases of Seychelles 1988-2010 at page 302),

‘(3) If a party does not object to oral evidence when it is given that evidence is assumed admissible.

(4) If a party objects to oral evidence on the grounds of non-compliance with article 1341, then the Judge must hear the evidence and arguments from the parties to determine whether an exception under article 1374 or 1348 applies. The Judge must give a ruling on the admissibility or otherwise of the evidence before the proceedings are resumed.’

- [5] It appears to me this is more or less what happened here. The plaintiff testified and the defence took objection to the admissibility of that evidence. Objection to the evidence is taken when the evidence is given and the court can then truly ascertain whether in law that evidence is admissible or not. I do not agree with Mr. Hoareau that Mr. Bonte had ‘missed the boat’ so to speak. Objection was taken in the same proceeding before any other step was taken in the case. The objection was taken consistent with the decision of the Court of Appeal in Michaud v Lucia Ciufrini above. The evidence is

heard and then arguments by counsel made after which the judge gives a ruling.

- [6] The objection is well grounded. The plaintiff's claim is for US\$20,000.00 far in excess of R5,000.00. Oral evidence related to the same is inadmissible in these proceeding by virtue of article 1341 of the Civil Code of Seychelles. The plaintiff's testimony is accordingly rejected. The defendant's objection to the admissibility of the plaintiff's testimony on this point is upheld with costs.

Signed, dated, and delivered this 31st day of January 2011

FMS Egonda-Ntende

Chief Justice