

IN THE SUPREME COURT OF SEYCHELLES

RAYMOND CAMILLE

Vs

EDWINA HEENES

Civil Side No: 60 of 2009

Mr. W. Lucas for the plaintiff

Mr. Derjacques for the defendant

Ruling

RENAUD, J

The Plaintiff is claiming that the Defendant borrowed a sum of SR50,000.00 from her and returned only SR10,000.00 and failed, neglect and refused to repay the balance.

During the course of the hearing, Learned Counsel for the Defendant objected to the Plaintiff adducing oral evidence to prove her claim on the ground that the sum exceeds SR5,000.00 and there is no proof in writing.

Article 1341 of the CCSeY provides that any matter the value of which exceeds SR5000.00 shall require a document drawn up by a Notary or under private signature, even for a voluntary deposit, and no oral evidence shall be admissible against and beyond such document nor in respect of what is alleged to have been

said prior to or since the time when such document was drawn up, even if the matter relates to a sum of less than SR5,000.00.

In the instant case only the first rule applies as there is no document drawn up by a Notary which is being disputed. In such case Article 1347 may be applicable.

Article 1347 provides that the rules in Article 1341 do not apply if there is a writing providing initial proof which emanates from the person against whom the claim is made which renders the facts alleged likely.

The Plaintiff is required to prove a juridical act which consists in the manifestation of the will, having as immediate and direct aim either to create or transfer, or to confirm or acknowledge or to modify or extinguish obligations or rights.

In his Pleint the Plaintiff disclosed that she was going to rely on certain documents which include correspondence from Credit Union, correspondence from the Plaintiff and copy of counter foil of cheque book. The onus was on the Defendant to inspect such document which she failed to do.

In the case of *MacGaw v Jean &or SLR (1990)* at page 190 the Court *inter alia* held that a cheque is a writing providing initial proof in writing which would permit oral evidence to be led at the hearing of a suit.

The Plaintiff is also relying on the principle of moral impossibility because of the very close relationship and trust that existed between her and the Defendant at the

material time. The Plaintiff now claims that this establishes an exception to the rules in Article 1341.

In the circumstance I overrule the objection of the Defendant and will permit the Plaintiff to adduce documentary evidence disclosed in her Plaint to provide initial proof in writing which may serve to prove the juridical act alleged. I will also allow the Plaintiff to adduce evidence to establish moral impossibility.

I rule accordingly.

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B. RENAUD
JUDGE

Dated this 7 March, 2013