

IN THE SUPREME COURT OF SEYCHELLES

LEON MONDON

Vs

GILBERT RASSOOL

Civil Side No: 230 of 2008

Mr. W. Lucas for the plaintiff
Mr. Sabino for the defendant

JUDGMENT

Renaud. J

The Plaintiff is claiming the total sum of **SR434,000.00** from the Defendant on the ground that the Defendant failed to pay him the proceeds of his half share in the operation of a fishing boat.

The Plaintiff pleaded that by virtue of a Sale Agreement dated 12th March, 1992 he purchased a fishing boat (“the boat”) by the name of “TAZAR” jointly with one Mr. Jean Claude Vidot from Mr. Glenn Hyen Choen for the sum of SR33,000.00.

That on the 17th August, 1992, Mr. Jean Claude Vidot sold his half share in the boat to the Defendant for a consideration of SR47,500.00 with an implied intention that the boat belongs to the Plaintiff and Defendant in equal 50% share each.

The Plaintiff also pleaded that the sale transaction of 17th August, 1992 was endorsed by the signature of both Mr. Jean Claude Vidot as the Seller and the Defendant as the Buyer.

The Plaintiff further averred that the boat has been in operation for the last 16 years under the administration of the Defendant with the responsibility to safeguard his interest and revenue out of the catch earned from the operation of the boat.

The Plaintiff further averred that the Defendant without the Plaintiff's consent and consultation sold the boat to a third party on 4th April, 2008, for the sum of SR100,000.00 and the Defendant failed to account for his half share of the proceeds of the sale either on dividend for profit raised and accumulated for the past 16 years.

The Plaintiff particularized his loss and damages as follows

(a) Claim for 50% share in the proceeds of the sale	–SR 50,000.00
(b) Claim for dividend for 16 years at SR2,000.00	
per month or SR24,000.00 per year	<u>-SR384,000.00</u>
Total	-SR434,000.00

In his Statement of Defence, the Defendant raised *pleas in limine litis* as follows:

- “1. *The Plaintiff’s claim over any purported ownership or beneficial rights over the fishing boat is prescribed; the Plaint is therefore bad in law and must be struck out.*
2. *Alternatively, the Plaintiff is not entitled to claim for any amounts of the purported loss of use prior to November 2003 as it is prescribed. Paragraph 6 and the prayer of the Plaint must therefore be amended accordingly”.*

On the merits the Defendant denied the claims of the Plaintiff and averred that the Plaintiff sold the boat and not some implied half-share of it to the Defendant, adding that the boat is therefore entirely owned by the Defendant. The Defendant also averred that there was no such arrangement.

The Defendant admitted that he sold the boat for SR100,000.00 but denied that he needed the consent of the Plaintiff to do so and that he did not have to account to the Plaintiff for any matter or sum whatsoever.

The *pleas in limine litis* stated earlier above were heard and my considered ruling delivered on 17th July, 2009 when I, *inter alia*, stated that the points of law raised in the *Plea in Limine Litis* by the Defendant will stand or fall depending on the determination of a fact. That fact is whether the fishing boat in issue was the subject of a joint partnership in half share with a previous person and that that previous person sold his half share to the present Defendant.

Having heard the parties on the merits, this Court is now in a position to determine this matter.

The Sale Agreement **Exhibit P1** dated 12th March, 1992 was between one Glenn Hyuen Chuen as Seller and Messrs. Leon Mondon and Jean-Claude Vidot as Buyers confirming that the boat was sold to them for SR33,000.00. That Agreement was typewritten.

That same Agreement was thereafter endorsed at the bottom part, in the handwriting and in the presence of a Police Officer at Baie Lazare Police Station, Mr. Justin Francois, as follows –

“this is to certify that the share of Jean-Claude Vidot from a fishing boat named Tazar has been sold to Gilbert Rassool on the 17th August 1992 at 12.00 hrs for the sum of R17,500.00 has been received in cash from Gilbert Rassool.”

Both Mr. Jean-Claude Vidot and the Plaintiff signed at the bottom of that Agreement and was also countersigned by the Police Officer and dated 17th August, 1992.

On the basis of the evidence before this Court I find that the boat belonged jointly to the Plaintiff and one Mr. Jean-Claude Vidot at the material time. The Defendant herein purchased only the half share of the boat, that of Mr. Jean-Claude Vidot. The other half share remained for the Plaintiff.

At the time the Defendant purchased the boat in 1992, it was damaged having been struck on the reef. He claimed to have paid SR47,000.00 to the owners namely the Plaintiff and Mr. Jean-Claude Vidot. He does not have documentary proof of that payment or any document to witness that transaction except the agreement **Exhibit**

P1. For the purpose of determining this issue this Court will not go further and beyond the written Agreement Exhibit P1.

The Defendant salvaged the boat from the reef and repaired its bottom part at his own cost. The boat went out fishing for about 5 months and the engine which was in it was too small and it failed. Thereafter the boat was pulled ashore and not used for fishing operation for quite a long time as the Defendant at that time had a fleet of fishing boats and these were in operation. The Defendant then had the boat completely redone and fitted with a new engine and he personally met the cost which he stated to have been SR205,000.00. In April 2008 the Defendant sold the boat for SR150,000.00.

Did the previous partnership between the Plaintiff and Mr. Jean Claude Vidot continue to subsist after the Defendant purchased the half share of Mr. Vidot? That needs to be determined in the light of the law relating to partnership.

A partnership cannot exist in law unless there is a prior agreement between the partners as provided in Article 1832 of the CC Sey. The agreement can be express or implied for the partners to make a joint contribution for the purpose of sharing any benefit that may result therefrom. I find that no such agreement exists between the parties before this Court. If there was indeed an agreement the Plaintiff would have contributed towards the repairing and re-equipping the boat; participate in the operation of the partnership and the sharing in the regular profit generated. The Plaintiff never contributed towards the cost of repairs and re-equipping the boat and nor did he participate in its operation. Moreover the Plaintiff never advanced

any claim from any profit generated if that was ever generated arising out of the operation of the boat.

On the basis of the evidence before the Court I find that the Plaintiff did not receive his half share of the selling price of the boat when his partner Mr. Jean-Claude Vidot sold the boat to the Plaintiff. He did not receive that share because the Defendant did not pay him his share. The Defendant paid Mr. Vidot SR17,800.00 for his share and he should have likewise pay the Plaintiff his share which he did not do. On the other hand there is no evidence that the Plaintiff, over the last 16 years, approached the Defendant to get his half share in the sum of SR17,800.00. Upon the Defendant selling the boat the Plaintiff can only claim that sum from the Defendant which I find that the Plaintiff was and is entitled to.

In conclusion it is my judgment that the Plaintiff is entitled to only SR17,800.00 from the Defendant. I accordingly enter judgment in favour of the Plaintiff in the sum of SR17,800.00 with interest at the legal rate from the date of judgment.

I make no order as to cost.

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B. RENAUD
JUDGE

Dated this 18 March, 2013