

IN THE SUPRME COURT OF SEYCHELLES

Civil Suit No. 324 of 2009

2013 SCSC

Pamela Cooposamy=====Plaintiff

versus

Joe Morel Duboil=====Defendant

Counsel: Basil Hoareau for the Plaintiff

France G Bonte for the Defendant

Heard: 17/11/2010; 15/03/2013

Delivered: 31/05/2013

JUDGMENT

Egonda-Ntende, CJ

1. The plaintiff brings this action seeking to recover from the defendant the sum of US\$20,000.00 which she lent him sometime in 2006 and which the defendant agreed to pay back by December 2006. On the defendant's instructions and request she transferred this sum to a firm in Japan from which the defendant was purchasing a pick up/truck or vehicle. At the time the defendant was living together with the plaintiff's sister, Millie Cooposamy, and they had one child. The plaintiff was living abroad at the time. Despite repeated requests from the plaintiff the defendant has refused to pay her back.
2. The defendant admits that the plaintiff advanced the sum claimed but he contends that this was not a loan as claimed. There was an agreement that this was for a refund of the money that the defendant has spent on the house of the plaintiff and her sisters in which the defendant and his common law partner, the plaintiff's sister, were living. The defendant claims that between 1996 and 2008 he spent R132,000 for materials, labour and transport for the repair of the house and garage. He claims to have spent a further sum of R26,173 towards payment of house insurance during this period. The defendant therefore counter

claims from the plaintiff a sum of R46,797 [being the difference between the sum paid by the plaintiff and the total sum spent by the defendant, including insurance payments, on the house] with interest and costs.

3. The plaintiff denied that there was ever any agreement between her and the defendant for the refund of the defendant's expenses for the repairs to her father's house or insurance that the defendant allegedly paid for the said house. She contended that any contribution to repairs to the house in question made by the defendant were done in the name and on behalf of Millie Coopoosamy, the defendant's paramour, at the time. The plaintiff denied owing the defendant any money.
4. Both alleged agreements between the parties are oral. However in light of the relationship between the parties either agreement can be proved by oral testimony. It is not disputed both on the pleadings and in testimony of either party that the sum of US\$20,000 was advanced to the defendant in the manner set out in the plaint. What is in issue is whether it was paid in pursuance of an agreement for a refund of the defendant's expenses on his paramour's father's house, now belonging to the three sisters or it was a loan to be repaid in December 2006?
5. During the hearing of this case the defendant contended that this action is arising only because he separated from the plaintiff's sister. If that is to be taken seriously it must apply both ways. Similarly he would be raising his counter claim merely because the plaintiff has claimed her money. I prefer to analyse the facts with an open mind.
6. The plaintiff testified in person and called Millie Coopoosamy as a witness. In her testimony the plaintiff was firm that there was no agreement that the sum of US\$20,000 was for refund of any moneys spent by the defendant. PW2, Millie Coopoosamy, testified that repairs to the house were contributed to by all the sisters and the defendant contributed the portion for Millie Coopoosamy, his paramour. I find this more probable than the claim by the defendant.
7. Firstly the defendant and Millie Coopoosamy moved into the house in 1996. It is hardly unlikely that expenses incurred in 1998 by the defendant were only agreed to be paid back in 2006 at the time the defendant needed a loan. Secondly the defendant was in occupation of the house in question, together with his paramour and son. The other sisters of the paramour

were not in the country. There is no probable explanation why it would be only the plaintiff to refund the expenses of the defendant when it was not the plaintiff that invited the defendant into the house.

8. I accept the evidence of the paramour, Millie Coopoosamy, that the defendant paid insurance to protect his own property which he brought into the house. It makes no sense to claim the said sum of money from the plaintiff. It was an expense incurred by the defendant without consulting the plaintiff. Nor was it incurred on account of the plaintiff. There is no evidence adduced in this matter that there was an agreement by the plaintiff to refund the said money. It was paid in the names of the plaintiff's father who was the owner at the time of the property and house in question. This claim is simply a fabrication by the defendant to avoid meeting his obligations to the plaintiff.
9. So is the claim for repairs to the house. No agreement has been established by the defendant that the plaintiff in 2006 agreed to refund the defendant all his back expenses [as far back as 1996 when he entered into the house] on the house in which he was living and later expenses up to 2008 when he departed. The defendant's testimony in this regard is simply not logical. Why should the plaintiff agree to meet the defendant's expenses in respect of the alleged total repair bill incurred by the defendant over a 12 year period while she was neither fiduciary nor occupant of the house? The house was home to the defendant, his paramour and son!
10. I accept that the plaintiff advanced to the defendant the sum of US\$20,000.00 as a loan repayable in December 2006. This sum is outstanding. The defendant has not paid it back. I order the defendant to pay back the said sum of money or its current equivalent in Seychelles rupees together with interest at the legal rate from the date of filing of this claim until payment in full and costs of this suit.
11. The counter claim is dismissed with costs.

Signed, dated and delivered at Victoria this 31st day of May 2013

FMS Egonda-Ntende
Chief Justice