

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 200/2011

[2016] SCSC 945

HOOLOOMAN PROJECT SERVICES
Plaintiff

versus

VIKASHWARNATH RAMSAHYE
SEYCHELLES LICENSING AUTHORITY
Defendants

Heard:

Counsel: Mr. E. Chetty for plaintiff

Mrs. Lansiglu for 2nd defendant

Delivered: 25 November 2016

JUDGMENT

Renaud J

Background

[1] The Plaintiff is suing the Defendants and is praying this Court, firstly, to order the 1st Defendant to pay the Plaintiff US\$14,957.00 and SR212,225.00 and costs for car rental from 15th October, 2011 to date of judgment, plus interests and costs. Secondly, the Plaintiff is praying this Court to issue a mandatory injunction against the 2nd Defendant, compelling it to register, in term of section 9 of the Road Transport Act, S18107 in the

name of the Plaintiff; thirdly, to issue a mandatory injunction against the 1st Defendant, compelling the 1st Defendant to transfer ownership of vehicle S18107 to the Plaintiff, and fourthly, to issue prohibitory injunction against the 1st Defendant, ordering the 1st Defendant not to transfer ownership of S18107 to any third party, except to the Plaintiff. Finally, to make any other order this Court deems fit and necessary.

The Parties

- [2] The Plaintiff is a Company incorporated in Mauritius, was and is at all material times an Overseas Company, and is carrying on the business of Quantity Surveying, in the Seychelles.
- [3] The 1st Defendant, who is a Mauritian national was at all material times employed in Seychelles by the Plaintiff and amongst other things, the 1st Defendant had the power to effect procurement for and on behalf of the Plaintiff in Seychelles.
- [4] The 2nd Defendant is a statutory Corporation created by the Seychelles Licences Act of 2010 and is responsible for granting Licences to keep vehicles and also to register vehicles, in terms of section 9 of the Road Transport Act.

The Plaintiff

- [5] The Plaintiff shows that in early 2008 the Plaintiff allegedly purchased 2 motor vehicles, both being Kia Picanto LX, for US\$14,000.00 each, from Cocktail (Pty) Ltd, trading as Excel Motors. The 1st Defendant was handling all dealings relating to the purchase of those two vehicles, and that he fraudulently and without the knowledge and consent of the Plaintiff, caused the 2 motor vehicles, which were respectively assigned registration number S18107 and S18097, to be registered in his personal name, under section 9 of the Road Transport Act.

- [6] In early in 2009, the Plaintiff purchased a motor bike of the make Yamaha, from Abhaye Valabhji Pty Ltd, costing SR45,475.00. The 1st Defendant who was also the one handling this purchase on behalf of the Plaintiff fraudulently and without the consent and knowledge of the Plaintiff caused the motor bike registered S19113, to be registered in his personal name, under section 9 of the Road Transport Act.
- [7] On 19th March, 2010 the Plaintiff allegedly purchased a motor vehicle S16279 from Indian Ocean Architectural Services Ltd costing SR150,000.00. Likewise it was the 1st Defendant who was handling all issues in respect of Indian Ocean Architectural Services Ltd, for and on behalf of Plaintiff for purchasing S16279, fraudulently and without the knowledge and consent of the Plaintiff, caused S16279 to be registered in his personal name.
- [8] All the vehicles mentioned above vehicles were allegedly in the possession of the Plaintiff and were being used by the 1st Defendant in the course of carrying on its business of Quantity Surveying in Seychelles, from the date of purchase until mid-September 2011.
- [9] The Plaintiff became aware of the alleged fraudulent acts of the 1st Defendant after the termination of the contract of employment of the 1st Defendant, when the latter with the assistance of members of Seychelles Police Force came to take over possession of S16279 and S18107 on 14th September, 2011 on Mahe. On 16th September, 2011 one Clement Gonthier, with the assistance of members of Seychelles Police Force, took possession of S18097 on Praslin where it was being used by the employees of the Plaintiff in connection with the business of Quantity Surveying on the basis that Mr. Gonthier had purchased that vehicle from the 1st Defendant.

[10] The 1st Defendant allegedly sold and/or transferred 3 of those vehicles as follows:

- (i) On 14th September, 2011 the 1st Defendant sold and/or transferred S18097 to Clement Gonthier;
- (ii) On 15th September 2011 the 1st Defendant sold and/or transferred vehicle S19113 to one Linda Mathiot;
- (iii) On 19th September 2011 the 1st Defendant sold and/or transferred S16279 to one Maureen Bouabid.

[11] The Plaintiff alleged that vehicle S18107 is still registered in the name of the 1st Defendant.

[12] The Plaintiff averred that the acts of the 1st Defendant of, fraudulently and without the knowledge and consent of the Plaintiff, causing the vehicles to be registered in his personal name rather than the Plaintiff's name and taking on the possession of the vehicles and selling and/or transferring those vehicles amount to a "faute" in law, which faute has caused damages to the Plaintiff, particularized as follows:

Loss of vehicle S18097	US\$14,000.00
Loss of motor bike S19113	SR45,475.00
Loss of vehicle S 19279	SR150,000.00
Rental expenses from 14th September 2011 uptil 6th October 2011 at SR400.00 per day.	SR10,350.00
Rental expenses from 7th October 2011 at SR400.00 per vehicle	SR6,840.00 as of 14th October 2011 and continuing at SR800.00 per day.
Rental expenses from 16th September	

2011 at US\$33 per day.

US\$957.00 from 14th October, 2011
and continuing at the rate of US\$33
per day.

- [13] The Plaintiff is also claiming that the Defendant is liable to pay damages to the Plaintiff and to grant possession and ownership of S18107 to the Plaintiff.

Interlocutory Application

- [14] The Plaintiff by further Application supported by Affidavit moved the Court for the interlocutory injunctions prayed for in its Plaint. On 14th November, 2011 the Court granted prohibitory injunctions prohibiting the 1st Defendant from transferring ownership of S18107 to any third party until the further order of the Court and also prohibiting the 2nd Defendant from registering any document by which to transfer S18107 to any third party until the further order of the Court.

Answers to Request for better Particulars.

- [15] The requests related to paragraph 1 and 2 of the Plaint. The Plaintiff responded that the Plaintiff was registered as an Overseas Company on the 21st of January 2008, attaching a copy of the Document issued by the Registrar of Companies.
- [16] The Defendant was employed in Seychelles with the Plaintiff from 1st July 2001 to 31st July 2011, on several fixed term contracts.

1st Defendant's Defence

- [17] The 1st Defendant averred that the Plaintiff Company was in Seychelles since 1998 but only incorporated around 2006 carrying on the business of Quantity Surveyor and project management services.

- [18] The 1st Defendant averred that he did not have power to effect procurement for and on behalf of the Plaintiff in Seychelles, any procurements made on behalf of the Plaintiff were effected by Mr. Navin Hoolooman, the Director of the Plaintiff Company, in conjunction with the 1st Defendant.
- [19] The two vehicles were purchased in 2008 for the price of US \$14,000 each from Cocktail (Pty) Ltd. The 1st Defendant contended that it was both the 1st Defendant and the Plaintiff who went to purchase the vehicles acting together and that the purchase price was paid in US \$ dollars. Furthermore, given that the Plaintiff Company was not registered with the Seychelles Revenue Commission for tax purposes and in order to avoid having to pay taxation on the said vehicles, Mr. Hoolooman instructed Cocktail (Pty) Ltd to register the cars in the name of the 1st Defendant.
- [20] The 1st Defendant averred that two motorcycles were purchased, one for US \$2,100 and the other one for US\$2,700. Both the motorcycles were registered in the name of the 1st Defendant with the express consent and under the instruction of the Plaintiff, in order to avoid paying taxes on the said motorcycles. One of the motorcycles was then sold by him last year for and on behalf of the Plaintiff and the proceeds were ploughed back into the Company.
- [21] The 1st Defendant averred that he, together with the owner of the Plaintiff Company, Mr. Navin Hoolooman, who was present in Seychelles at the time, bought the vehicle from Mr. Jean Marc Eynaud, the Director of Indian Ocean Architects, who had registered the car in his personal name. It was expressly agreed between the Plaintiff and the 1st Defendant that this car would also be registered in the 1st Defendant's name for avoidance of tax.
- [22] The 1st Defendant averred that all the vehicles were in his possession and he was the person responsible for dispatching the cars to the employees of the Plaintiff Company as and when needed.

[23] Vehicle S18107 was sold to Clement Gonthier and Police assistance was used in order to take possession of S16279 and S18107. The 1st Defendant averred that these vehicles were in fact cars and not motorcycles.

[24] The 1st Defendant averred that:

- (i) All the transactions were fully authorized and consented to by the Plaintiff, who was well aware that all the vehicles were being registered in the 1st Defendant's name;
- (ii) It was the Plaintiff, who, through Mr. Navin Hooloomann, gave specific instruction that the vehicles be registered in the 1st Defendant's name in order to avoid paying taxes on those purchases;
- (iii) It was expressly agreed between Mr. Navin Hooloomann and the 1st Defendant that in exchange for the 1st Defendant working at a reduced salary and for being responsible for the various vehicles maintenance, upkeep and servicing that the cars would belong to him in exchange for his first two years of services;
- (iv) For four years the Plaintiff Company was paying the road tax, licenses and insurance on the vehicles, all of which clearly showed that the vehicles had been registered in the 1st Defendant's name all of which the Plaintiff had copies of.

[25] The 1st Defendant averred that as part of the agreement between himself and the Plaintiff, represented by Mr. Hooloomann, it was agreed that vehicle S18107 would become the 1st Defendant's upon completing two years of service as payment for work done.

[26] The 1st Defendant prays for the dismissal the Plaintiff's suit with costs and to revoke the prohibitory injunctions granted on 4th November 2011.

The 2nd Defendant's Defence

[27] The 2nd Defendant averred that it complied with the interlocutory injunction of the Court dated 4th November, 2011, hence vehicle S18107 is still registered in the name of the 1st Defendant.

[28] The 2nd Defendant averred that it has not committed any "faute" in law and is not liable in damages to the Plaintiff.

Evidence on behalf of Plaintiff

[29] Ms. Vanessa Laurence testified that she is a Quantity Surveyor working for the Plaintiff since 2004. The Plaintiff is a Consultancy Company doing project management and quantity surveying for clients. She is authorised in writing by the Plaintiff to represent it in Court and to testify on its behalf as per Exhibit P1 and Exhibit P2.

[30] The witness eventually produced a Power of Attorney duly notorialised and the Plaintiff Company resolution giving full power and authority to the witness to act for and on behalf of the Plaintiff. These are now Exhibit P4(1) and P4(2).

[31] She knows the 1st Defendant when she joined the Plaintiff Company he was the person based in Seychelles and he was the first person she met when she went for an interview. He was the Project Manager working on Ephelia and Raffles Hotels. The Plaintiff purchased 2 Kia Picanto cars, 1 motor cycle and 1 Hyundai Getz. All the payments were transferred by the Plaintiff from Mauritius and the 1st Defendant was supposed to liaise with the 2nd Defendant for registration and H. Savy for insurance. The 1st Defendant registered all the vehicles under his name.

[32] The Plaintiff has proof of payment for those vehicles by four Bank Transfers. The first Bank transfer of US\$12,910.00 was made on 19th March, 2010 for the purchase of the Hyundai car. The second Bank transfer of US\$2,675.00 was made on 19th January, 2009

for the motorcycle. The third Bank transfer of US\$14,040.00 was made on 25th February, 2008 and the fourth Bank transfer of US\$ 14,040.00 was made 9th January.

- [33] The Plaintiff bought the 2 Kia Picanto cars for Excel Motors in Seychelles as per Exhibit P5 dated 8th January, 2008. The motorcycle was bought from Abhay Valabhji in Seychelles as per Exhibit P6 dated 18th December, 2008. All these vehicles were registered with the 2nd Defendant in the name of the 1st Defendant. The Plaintiff did not agree for these vehicles to be registered in the name of the 1st Defendant.
- [34] The Plaintiff bought another car from Indian Ocean Architectural Services for SR150,000.00 but that also is registered in the 1st Defendant's name. A photocopy of the purchase document was admitted as Exhibit P3 and Counsel undertook to produce its original before the conclusion of the hearing.
- [35] The 1st Defendant took all these motor vehicles and ran away with them and apparently sold them. These vehicles have never been returned to the Plaintiff.
- [36] When the 1st Defendant was working with the Plaintiff, these motor vehicles were maintained and insurance paid for by the Plaintiff.
- [37] It is not within the knowledge of the witness whether the Plaintiff did not register the motor vehicles in its own name in order to avoid paying taxes. The Plaintiff never consented for these motor vehicles to be registered in the name of the 2nd Defendant.
- [38] When cross-examined the witness stated that on 14th September, 2011 the 1st Defendant sold and transferred vehicle S18097 to one Germaine Gonthier. On 15th September, 2011 the 1st Defendant sold and transferred vehicle S19113 to one Linda Mathiot. On 19th September, 2011 the 1st Defendant sold and transferred vehicle S16279 to one Maureen Hoareau.
- [39] The witness is aware of the Court order made on 14th November, 2011 prohibiting the 2nd Defendant to transfer vehicle S18107 to any third party until the further order of this Court. She agreed that the Plaintiff is praying the Court to issue mandatory injunction against the 2nd Defendant to register and transfer vehicle S18107 onto the name of the Plaintiff. This

vehicle is still registered in the name of the 1st Defendant and would be satisfied in the event that if only vehicle is transferred onto the name of the Plaintiff. The Plaintiff has no claim for any damages against the 2nd Defendant.

[40] The witness does not know if Exhibits P5 and P6 were ever produced to the 2nd Defendant as it was the 1st Defendant who was doing all the transactions.

[41] The witness is also not aware whether the 1st Defendant had any Power of Attorney to operate the Plaintiff Company in Seychelles but he was the one who came here when the Plaintiff Company had the first project and he was the leading man.

Evidence on behalf of 1st Defendant

[42] The 1st Defendant was duly served with the summons and Plaint and he appeared by Counsel who request for and was duly given further and better particulars. Learned Counsel also duly entered a Statement of Defence on behalf of the 1st Defendant. However, the 1st Defendant never put up appearance in Court to give evidence at the hearing despite of his being given numerous opportunities to do so. The suit proceeded to be heard in the absence of the 1st Defendant who never attended Court.

[43] It may be true that the 1st Defendant did not attend Court by himself or by Counsel who lacked instructions to do so, that does not mean that the evidence adduced by the witness of the Plaintiff ought not to be judiciously analysed to establish whether the Plaintiff has satisfied the Court on the balance of probabilities that it has proved its case.

[44] The answers to request for better particulars established that the 1st Defendant is a Mauritian who was employed by the Plaintiff and was working in Seychelles from July 2001 to July 2011 on several fixed term contracts.

[45] Any admissions made by the 1st Defendant in his Statement of Defence which implicates him, will obviously be treated as evidence before this Court in deciding this suit unless these admissions have been proven to be untenable by the evidence of the witness of the Plaintiff.

- [46] The 1st Defendant in his Statement of Defence admitted that two vehicles were purchased in 2008 for the price of US\$14,000.00 each from Cocktail (Pty) Ltd by both Mr. Hoolooman of the Plaintiff and the 1st Defendant acting together and Mr. Hoolooman instructed Cocktail (Pty) Ltd register the vehicles in the name of the 1st Defendant for avoidance of tax.
- [47] The 1st Defendant also admitted that in fact two motor cycles that were purchased for a total sum of US\$4,900.00 and both motor cycles were registered in the name of the 1st Defendant by the expressed consent and under the instructions of the Plaintiff, again for avoidance of tax. One of the motorcycles was then sold by the 1st Defendant in 2011 for and on behalf of the Plaintiff and the money was ploughed back in the Plaintiff's Company.
- [48] The 1st Defendant stated that he together with the owner of the Plaintiff Company, Mr. Navin Hoolooman who was present in Seychelles at the time, purchased a car from Mr. Jean Marc Eynaud of Indian Ocean Architects, registered as a private car, and was expressly agreed by Mr. Hooloman that that car be also registered in the name of the 1st Defendant for avoidance of tax.
- [49] The 1st Defendant also admitted that the vehicles in issue were in his possession and he was the person responsible for dispatching the cars to the employees of the Plaintiff's Company when needed.
- [50] The 1st Defendant admitted that he sold vehicle S18107 to Clement Gonthier and on 16th September, 2011 the latter sought Police assistance in order to take possession of that car which was on Praslin.
- [51] The 1st Defendant also admitted that on 14th September, 2011 he also sought Police assistance in order to take over possession of motor cars S16279 and S19113 which were on Mahe and thereafter sold by him.

Evidence on behalf of 2nd Defendant

- [52] Ms. Flavia Contoret the duly authorised representative of the 2nd Defendant, as per Exhibit D4, testified that she is employed by the 2nd Defendant as Principal Licensing Officer.

She registers licensed vehicles, dealing with issues regarding licences and other related matters.

- [53] To register a motor vehicle the applicant must submit an Application Form to the 2nd Defendant along with import permit and bill of entry if it is imported by the owner, and in the case of it being bought in Seychelles through a motor dealer, proof of purchase from the dealer. Only the owner of the vehicle needs to be present to effect a registration. If the vehicle is to be transferred, both the seller and the buyer must appear in person and must produce National Identity Card.
- [54] The witness produced Exhibit D1 being documentation related to vehicle S18107 dated 23rd January, 2008 showing 1st Defendant as the owner. The vehicle is a private vehicle. Exhibit D2/1; D2/2 and D2/3 are documentations dated 23rd January, 2008 related to the registration of the same private vehicle in the name of the 1st Defendant. The 1st Defendant also produced the proof of purchase from the car dealer Excel Motors dated 22nd January, 2008, now Exhibit D3 showing the 1st Defendant as its purchaser. Vehicle S18107 is still registered in the name of the 1st Defendant, in view of the Court's injunction, against its further transfer. She does not know the whereabouts of that vehicle.

Findings

- [55] In Seychelles the registered owner of a licensed motor vehicle is that held by the 2nd Defendant unless there is other ownership Agreement as evidence to the contrary. In the instant case there was no other Agreement evidencing the ownership to be contrary to what is held by the 2nd Defendant that the 1st Defendant is the owner of vehicle S18107.
- [56] It is in evidence that upon first registration of any licensed vehicle in Seychelles the person applying to be registered as the owner must satisfy the 2nd Defendant as to proof of ownership in either of two ways. If the applicant has imported the vehicle directly, proof of ownership must be by the production of the Import Permit together with the Bill of Entry in his or her name. Otherwise, if the vehicle has been purchase from a motor vehicle dealer locally, an invoice from the dealer in the name of the applicant must be produced. In the case of a vehicle already on the road which the owner is selling to a new buyer, both the

seller and the buyer must appear in person with their respective National Identity Card in order the complete transfer formalities in the presence of Officers of the 2nd Defendant.

[57] In the instant suit the 1st Defendant satisfied the 2nd Defendant's requirements as to proof of ownership upon first registration of all the vehicles in issue. These vehicles were therefore registered in the personal name of the 2nd Defendant as being private vehicles from its first registration until final disposal and transfer by the 1st Defendant around September, 2011, except for vehicle S18107 which was first registered in January, 2008 and which is still held in the name of the 1st Defendant in view of a Court injunction issued in November, 2011.

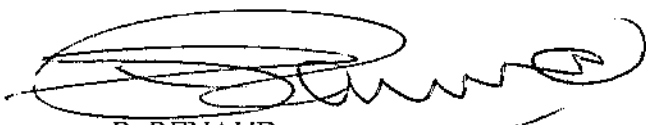
[58] Vehicles S18097 was first registered in the name of the 1st Defendant in January, 2008 and sold and transferred by himself in September, 2011. Motor cycle S19113 was first registered in the name of the 1st Defendant in early 2009 and was sold and transferred by himself in September, 2008. Motor vehicle S16279 was purchased on 19th March, 2010 and ownership transferred onto the name of the 1st Defendant and was sold and transferred by himself in September, 2011.

[59] On the other hand the evidence of the sole witness of the Plaintiff does not remained unchallenged when assessing all the evidence and/or admissions made before this Court by any of the parties. Note is taken of the established facts that all the vehicles in issue were registered in the name of the 1st Defendant as motor vehicles for private use, whereas, the Plaintiff is a business or commercial concern. Further note is taken of the established fact that those vehicles could not have been accounted as assets in the yearly account of the Plaintiff and verified by Auditors in the Annual Account for the years ending December, 2008, 2009 and 2010 as these movable assets were not registered in the name of the Plaintiff. That being the case, the Directors of the Plaintiff did not raise any issue with the 1st Defendant as to accounting and the whereabouts of their assets. The contention that the Plaintiff only became aware of the transactions of the 1st Defendant only after the services of the 1st Defendant was terminated, in my judgment cannot hold water. I find this to be simply untrue.

- [60] I find that Plaintiff was aware of all the transactions complained of and acquiesced thereto. That is why all the vehicles were registered in the 1st Defendant's name right from the beginning. Apparently that happened because the Plaintiff, Mr. Navin Hooloomann, gave specific instruction that these vehicles be registered in the 1st Defendant's name for reasons best known to the Plaintiff.
- [61] When testifying, the witness of the Plaintiff stated that she was not aware if there was any agreement between Mr. Navin Hooloomann and the 1st Defendant, whereby, in exchange for the 1st Defendant working at a reduced salary and for being responsible for the various vehicles' maintenance, upkeep and servicing that the cars would belong to him in exchange for his first two years of service.
- [62] Finally the 1st Defendant averred that as part of the agreement between himself and the Plaintiff, represented by Mr. Hooloomann, it was agreed that vehicle S18107 would become the 1st Defendant's upon completing two years of service as payment for work done. This is denied by the Plaintiff.
- [63] The witness for the Plaintiff confirmed that throughout the Plaintiff Company was paying the road taxes, licences and insurance on all the vehicles, despite these vehicles not being registered in its name. The Plaintiff's Annual Accounts should have shown those expenses despite these actual assets not being shown in the account. There must have been some sort of agreement between the Plaintiff and the 1st Defendant for this to have happened. Had this been otherwise, the Plaintiff would have definitely taken action much earlier when it must have realized that its register of assets does not reflect these vehicles as its movable assets.

- [64] In the final analysis, I find and conclude that despite the Plaintiff having paid for the vehicles in issue, the Plaintiff voluntarily registered the 1st Defendant as the owner of those vehicles throughout the material times. No action was ever taken by the Plaintiff to alter that situation which it was aware of throughout. The 1st Defendant being the registered owner of those vehicles lawfully sold and transferred them as he pleased. Vehicle S18107 which is under Court injunction is also registered in the name of the 1st Defendant as the lawful owner thereof. I find no element of fraud on the part of the 1st Defendant.
- [65] For reasons stated above, I find that the Plaintiff has not, on a balance of probabilities made out its case against the 1st Defendant and the claims of the Plaintiff against the 1st Defendant is not proven to the satisfaction of this Court.
- [66] With regard to the claim against the 2nd Defendant, I find that the latter had fully complied with the relevant statutory requirements and established procedures when registering the vehicles in issue onto the name of the 1st Defendant. The Plaintiff has not satisfied this Court that the case against the 2nd Defendant is proven to the satisfaction of this Court.
- [67] In the circumstances, and for reasons and findings set out above, I hereby dismiss the entirety of the Plaintiff's claims against both Defendants, with costs to the Defendants.
- [68] I hereby discharge the injunction granted by this Court on 4th November, 2011 and vehicle S18107 is accordingly freed. The 2nd Defendant is accordingly discharged from the said injunction.

Signed, dated and delivered at Ile du Port on 25 November 2016.



B. RENAUD

Judge of the Supreme Court