

IN THE SUPREME COURT OF SEYCHELLES

ROBERT HORWATH

PLAINTIFF

VERSUS

1. GILLES ANDRE PAUL PINCHON

2. CHANTAL MARTHE PINCHON

3. ELITE EXCURSIONS COMPANY

DEFENDANTS

Civil Side No 13 of 2009

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Mr. D. Sabino for the Plaintiff

Mr. A. Derjacques for the Defendants

JUDGMENT

D. Karunakaran, J.

[1] This is an admiralty action in personam. The plaintiff herein claims Euro 2500 from the 1st and the 2nd defendants and also seeks a declaration of ownership in his favour in respect of the vessel “Tip Sea” presently owned by the 3rd defendant, which is a company, in which the 1st and 2nd defendants are holding 100% of its shares jointly. Besides, the plaintiff seeks an order compelling the 1st and 2nd defendants, who are the directors and shareholders of the 3rd defendant to deliver possession of the said vessel to him.

[2] Upon a precipe for a warrant of arrest being filed by the plaintiff, the Court on 27th January 2009 made an order arresting the said vessel lying at the Eden Island Marina, Mahé, Seychelles.

[3] Subsequent to the said arrest, at the instance of an interlocutory application made by the defendants, the Court 20th day of May 2009, ordered the release of the said vessel from the arrest but on the following conditions:

- The defendants shall not operate the said vessel outside the jurisdiction of Seychelles
- The defendants shall not sell, assign, or transfer ownership of the said vessel until the issue of ownership is finally determined by Court
- The defendants shall maintain the vessel and ensure that it is in a good seaworthy condition.

Be that as it may, the defendants not only deny the plaintiff's claim in entirety but also make a counterclaim in the sum of Rs100, 000/- as moral damages, against the plaintiff alleging that they suffered loss and prejudice because of the frivolous and vexatious action the plaintiff has brought in this matter.

[4] The facts that transpire from the pleadings and evidence on record are these:

The 1st and the 2nd defendants are husband and wife respectively. In or around 2004, the plaintiff and the defendants were residing in Switzerland. In fact, the plaintiff's wife and the 2nd defendant were school-mates. Both families frequently met and became close friends in Switzerland. After a couple of years, the defendants' family came to Seychelles, started tourism-related businesses and settled in Seychelles. However, the friendship between the two families continued. The plaintiff's family occasionally visited Seychelles for holidays and stayed with the defendants' family. According to the Plaintiff, at all material times he is and was the beneficial owner of all the shares in a motor-vessel, type BAJA, built in 1993 known as "TIP SEA", having purchased the same on the 15th August 2008 from one Michael B. Lassal in New York, USA *vide exhibit*

P1 and P2 for the total price of US\$ 31,000/- for the boat, trailer and other spare parts.

[5] According to the plaintiff the 1st and 2nd Defendants, who being residents of Seychelles, had agreed with the Plaintiff to set up a company in Seychelles, with the Plaintiff as the main shareholder, to manage and commercialize the said vessel in Seychelles. Pursuant to the agreement, the Plaintiff, at his own costs, arranged the delivery of the vessel to the 1st and 2nd Defendants in Seychelles in November 2008. The Plaintiff also remitted the sum of EURO 2,500 to the 2nd Defendant for the purpose of taking an all- risks insurance cover for the vessel. The 1st and 2nd Defendants, in breach of the terms of the agreement, failed to form the company contemplated by the agreement and placed the vessel under the 3rd Defendant's control and management. In spite of reminders of the Plaintiff, the 1st and 2nd Defendants failed to date to perform the agreement or to insure the vessel. Further, in spite of the demands of the Plaintiff, the Defendants have refused to relinquish possession of the vessel to the Plaintiff and instead are taking steps to charter the vessel, which was uninsured, and to register it on the name of the 3rd Defendant, in fraud of the rights of the Plaintiff (sic) vide the plaintiff's statement of claim dated 26th January 2009.

[6] According to the plaintiff that he is the beneficial owner of all the shares in the said vessel. He testified that the vessel was delivered to the defendants to set up a company with him as the main shareholder, and to manage and commercialize the vessel. Euro 2500 was remitted to cover Insurance costs. However, the defendants fraudulently, registered the vessel in the name of the 3rd defendant depriving the plaintiff of his ownership of the vessel.

[7] On the other side the defendants claimed that a sum of US dollar 42,500 was paid to the plaintiff vide exhibit D19 and 20, who made the necessary arrangements for the purchase of the vessel from one Michael B. Lassal in New York, USA. According to the defendants they are the owners of the vessel

having purchased the vessel from the said Michael B. Lassal and have the title to the vessel as per the certificate of ownership in exhibit D11, the bill of sale, in exhibit D16, the bill lading in Exhibit D1. The defendants have insured the vessel on 27th November 2008 with SACOS Insurance Company for the sum of Rs.1, 853,008 and also have paid a premium of Rs.49, 904.

[8] Having sieved through the entire pleadings, evidence including all exhibits on record and having carefully analyzed the submissions made by both counsel, it seems to me, the following are the fundamental questions that arise for determination in this matter:-

(1) Has the plaintiff established on a balance of probabilities that he is the beneficial owner of the vessel "TIP SEA", for having purchased the same on the 15th August 2008 from one Michael B. Lassal in New York?

(2) Has the plaintiff established on a balance of probabilities that there was an agreement between the parties that the defendants would set up a company in Seychelles, with the Plaintiff as the main shareholder, to manage and commercialize the said vessel in Seychelles? and

(3) Has the plaintiff discharged his evidential burden to prove on a balance of probabilities that the plaintiffs fraudulently acquired ownership of the said vessel?

[9] Obviously, the first question on the issue of ownership is a question of fact. This does not involve any point of law. The answer to this question completely depends upon the credibility of the witnesses, their testimonies, the genuineness of the documents they produced in evidence claiming title to the vessel and the circumstantial evidence if any, to establish their respective claims.

[10] On the question of credibility, I believe the defendant Mrs. Chantal Pichon. I accept her evidence, in that the defendants are the lawful owners of the vessel. From observing his demeanor and deportment, I do not believe the defendant in any aspect of his evidence, who did not appeal to me as a credible witness. As rightly submitted by Mr. Derjaques, upon evidence and on a balance of probabilities am satisfied that

- In accordance with a Bill of Sale, dated the 17th of July 2008, the 3rd Defendant purchased the said vessel from the Plaintiff in the sum of US\$42,500.00.
- Plaintiff was paid the sum of Swiss Franc 15,000.00, on the 14th of July 2008, by Mr. Christophe Decosterd, for and on behalf of the Defendants, as part payment for the vessel.
- Plaintiff was paid the sum of US\$7,500.00, on the 20th of July 2008, by Mr. Christophe Decosterd, for and on behalf of the Defendants, as part payment for the said vessel.
- Plaintiff was paid the additional sum of US\$10,703.50cts, on the 14th of October 2008, by Mr. Christophe Decosterd, for and on behalf of the Defendants, as part payment for the said vessel.
- Plaintiff was paid on the 24th October 2008, the further sum of US\$13,750.00, by Mr. Christophe Decosterd, for and on behalf of the Defendants, for the said vessel.
- Mr. Michel Lasell, the original owner of the said vessel, was paid by the Defendants, the final installment owed by Plaintiff for the vessel, the sum of US\$1,750.00, on the 2nd February 2009.
- Plaintiff was paid on the 4th of September 2008 the sum of Swiss Franc 2644/-, for the customs clearance and tax, by Mr. Christophe Decosterd, for the Defendants.
- Plaintiff was paid, on the 15th of September 2008, the sum of Swiss Franc 2,152.00, for the displacement of the said boat from Sandy

Creek to New York, by Mr. Christophe Decosterd, for and on behalf of the Defendants.

- The 3rd Defendant paid the SACOS Insurance Company Ltd, the sum of R49, 904.00cts, on the 27th of November 2008, and was issued Policy No. MAHULL000613, for the said vessel.
- The 3rd Defendant has registered the boat with the Port Authority, and was issued Hire Craft No 355.
- The 3rd Defendant paid for the freight, the landing fee and customs duties to Hunt Deltel & Co Ltd, the sum of R10, 725.00, on the 19th of November 2008 as per exhibit D1.
- The 3rd Defendant, as the documented consignee received the said vessel, from the shipper, on the 12th of November 2008.
- The 3rd Defendant obtained the Import Permit and paid the necessary fees to the Republic of Seychelles on the 30th of November 2008.
- The Defendants obtained zero tax concession from the Government of Seychelles, on the 2nd of September 2008.
- On the 23rd of December 2008, the Defendants obtained a license to operate the said boat, within the jurisdiction of Seychelles. (License No.131010).

In the circumstances, I find that the Defendants are the bona fide purchasers for value and have properly insured the said vessel.

[11] Also I find on evidence that the Defendants never agreed to form a locally registered company with Plaintiff and in any event, the plaintiff has not discharged his evidential burden to prove that there was such an agreement between the parties. Defendants have obtained a hire-craft license with the authorities and are the registered owners of the vessel.

[12] The Defendants have made a counterclaim in the sum SR100, 000/- as moral damages for this frivolous, vexatious, malicious and defamatory claim and allegations of Plaintiff.

Obviously, the burden of proof rests entirely, on the Plaintiff to establish his claim, which he miserably failed to do.

[13] It appears to me on a balance of probabilities that the Plaintiff's documents are clearly, manufactured, ex facie, without official stamps and contradictory, for instance, Exhibit P1, contained no. 134157, and Exhibit P2, no 533331Q. They appeared to have been pasted to accommodate Plaintiff's allegations. Plaintiff's statements of accounts were only items in Court and have no evidential value. Plaintiff had no receipts for invoice, i.e. Exhibit P3, dated 8.10.2008. He conceded that he had no agreement in writing of the alleged agreement to jointly invest in the hire craft. He stated that he had been the original consignee, as per the bill of lading, but later changed the consignee to the Defendant. He stated that he had changed the bill of lading, which shows that the Defendants own the Tip Sea vessel, in November 2008.

[14] Therefore, I find that the Plaintiff's action in this matter is frivolous and vexatious. His testimony under oath is patently, unreliable and untrue. His documentary evidence in my considered view is suspect. In the circumstances, I find that

(1) The plaintiff has obviously, failed to establish on a balance of probabilities that he is the beneficial owner of the vessel "TIP SEA", for having purchased the same on the 15th August 2008 from one Michael B. Lassal in New York.

(2) The plaintiff has failed to establish on a balance of probabilities that there was an agreement between the parties that the defendants would set up a company in Seychelles, with the Plaintiff as the main shareholder, to manage and commercialize the said vessel in Seychelles.

(3) The plaintiff has miserably failed to discharge his evidential burden to prove on a balance of probabilities that the defendants fraudulently acquired ownership of the said vessel.

[15] In the final analysis, having carefully examined the entire evidence on record, I find that the plaintiff has failed to establish even a prima facie to substantiate his claim as per his statement of claim in this matter.

Therefore, I dismiss the plaintiff's claim in this admiralty action. I allow the counterclaim of the defendants. Accordingly, I enter judgment for the defendants and against the plaintiff in the sum of Rs100, 000/- with costs.

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D. KARUNAKARAN

JUDGE

Dated this 22nd day of July 2013