

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 24/2012

[2016] SCSC

SYLVETTE MONTHY
Plaintiff

versus

SEYCHELLES LICENSING AUTHORITY
Defendant

Heard:

Counsel: Mr. F. Elizabeth for plaintiff

Mr. Kumar for defendant

Delivered: 29 November 2016

JUDGMENT

Renaud J

Background

[1] The Plaintiff is and was at all material times the owner of vehicle S18870. The 1st Defendant is and was at all material times the designated Authority for the registration and transfer of ownership of motor vehicles in Seychelles.

Plaintiff's case

[2] The Plaintiff by her amended Plaint is suing the Defendants because her motor vehicle S18870 was transferred, disposed of and sold without her knowledge, permission, consent or authorization allegedly with the assistance, connivance and/or collusion of the 1st and 2nd Defendants on or around the 7th December, 2011. That transaction caused her loss and damage for which the Defendants are held liable.

Defendants Case

[3] Both Defendants denied that they in any way liable to the Plaintiff for any damage that she may have suffered by the transaction.

The issues

[4] The pleadings reveal that there are four issues to be considered by the Court in this case, namely:

Whether the action of the 2nd Defendant, in stamping and signing Exhibit P1, without physically witnessing the Plaintiff's signature constitutes a "faute" in law in terms of Article 1382 of Civil Code of Seychelles?

Whether the 1st Defendant's action in relying on Exhibit P1 to effect the transfer of motor vehicle S18870 to a third party, constitutes a "faute" in law in terms of Article 1382 of Civil Code of Seychelles?

Did the Plaintiff suffer loss and damages as a result of the action of the 1st and 2nd Defendants respectively?

Facts

[5] The Plaintiff testified on her own behalf. Two witnesses testified on behalf of the 1st Defendant and the 2nd Defendant testified on his own behalf.

[6] The facts established by the testimonies of the witnesses reveal show that the son of the Plaintiff namely Mr. Aubrey Monthy, who passed away on 20th December, 2011, (hereinafter "the deceased") went to the 1st Defendant on or around 5th December, 2011,

to transfer motor vehicle S18870 which was registered in the name of his mother, the Plaintiff. The Plaintiff was not in the country at the time.

[7] The deceased was advised by the 1st Defendant that a letter of authorization from the Plaintiff is required to enable him to transfer that vehicle onto a third party. The deceased then went to the 2nd Defendant, an Attorney and Notary with Exhibit P1, and asked him to sign and stamp on it. The deceased who was a client of the Chambers of the 2nd Defendant told the 2nd Defendant that Exhibit P1 had been signed by the Plaintiff, his mother authorizing him to transfer the vehicle but the 1st Defendant simply required a Lawyer to sign and stamp it. The 2nd Defendant signed and stamped Exhibit P1 with his Attorney's Stamp. The deceased then took Exhibit P1 to the 1st Defendant on or about the 7th December, 2011 and used it to transfer vehicle S18870 to one Mr. Marcus Macgaw. Exhibit P1 was accepted by the 2nd Defendant as proof of authority given by the Plaintiff to the deceased to sell and dispose of her car.

[8] The Plaintiff, however, testified that she never authorised the deceased to transfer her car to any third party. The Plaintiff maintained that she did not write Exhibit P1 and the signature thereon is not hers. Moreover, the Plaintiff did not receive the proceeds of sale of the car.

[9] Exhibit P1 is worded as follows:

“Seychelles licencing Authority

Po box 3

Mahe

Seychelles

05/12/2011

Dear sir/madam

I'm giving my son Aubrey Monthy to do the transfer of my car S188870 to the above mention name As I am selling the car is on my name then currently I not available to do so as I out of the country. the car is on my name Slyvette Monthy.

Yours sincerely

Official Stamp of

Elvis Chetty (Signed and dated 7/12/11)

Elvis Chetty)

Sgd

S MONTHY”

- [10] Ms. Flavia Contoret the Principal Licensing Officer testified on behalf of the 1st Defendant. She insisted that the 1st Defendant took due care in ensuring that there was the necessary document to rely on when allowing for the transfer of vehicle S18870. The 1st Defendant placed reliance on Exhibit P1 authorizing her son to do the transfer on behalf of the Plaintiff. The signature of the Plaintiff on Exhibit P1 was verified against the signature of the Plaintiff on the record held by the 1st Defendant and it was found on the copy of the two signatures were similar. The transfer transaction was permitted only then. She maintained that there was no faute or omission on the part of the 1st Defendant in the execution of its duties.
- [11] Ms. Cheryl Sham Mane an Assistant Licensing Officer also testified on behalf of the 1st Defendant. She testified that she was the one dealin with vehicle transfers and issuing driving licence at the material time. She had seen Exhibit P1 when it was brought to her by the deceased together with his ID Card to transfer vehicle S18870. She referred Exhibit P1 to her Manager Ms. Contoret and after verifying it the latter endorsed with “no objection” meaning the letter of authorisation is in order for the transfer to go ahead. That is a regular procedure that she has to follow. The vehicle is a blue kia picanto hatchback registered S18870 and the buyer was Mr. Marcus Macgaw. The transfer took place on 27th December, 2011 and was signed by the deceased on behalf of the Plaintiff.
- [12] The 2nd Defendant Mr. E. Chetty in denying the claims of the Plaintiff maintained that by his simply stamping and signing Exhibit P1 did not amount to his attesting that the document had been executed in his presence by the Plaintiff. Secondly, none of the

Officers or employees of the 1st Defendant contacted him prior to the transferring the vehicle in order to confirm whether the document had been executed in his presence by the Plaintiff. He was contacted only after the transfer had been effected when the Plaintiff had queried them.

The Law

[13] Delictual and quasi delictual liability is governed by Article 1382(1) and (2) of the Civil Code of Seychelles (CCSey) worded follows:

Article 1382 (1) of the CCSey states that-

“Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.”

Article 1382 (2)

“Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or omission.”

[14] The three necessary elements when making a claim of delict, are -“fault, injury or damage and the causal link.” (See the case of Emmanuel v. Joubert, [1996] SCCA 49, 5)

[15] In general, faute is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused.

[16] However, the existence of injury to a Plaintiff does not automatically render someone to be at fault. Faute is defined in Article 1382(2) of CCSey as reproduced above.

[17] In cases like the instant suit again the provision of Article 1384 of CCSey comes into play. The relevant parts of Article 1384 read as follows:

“1. A person is liable not only for the damage that he has caused by his own act but also for the damage caused by the act of persons for whom he is responsible or by things in his custody.”

2.

3. *Masters and employers shall be liable on their part for damage caused by their servants and employees acting within the scope of their employment.*”

[18] Under Article 1384(3), all the Plaintiffs have to do is to establish the material facts from which the fault of the Master or Employer may be deducted. In this respect, this regime is different from the regime of Article 1382. As Encyclopedie Dalloz Responsabilite du fait d'autui, at para 364, puts it:

“La responsabilite des commettants pour les dommages cause par leurs preposes est profondement different de la responsabilite du droit common prevue par l’article 1382 du code civil. Nous savons, en effect, que non seulement la faute du commettant n’a pas a etre prouvee par la victim main encore que le commettant ne peut echapper a sa responsabilite en prouvant son absence de faute dans le choix ou la surveillance du prepose.”

[19] Legal burden always rested on the Plaintiffs to prove the case against the Defendant for fault by making the material averments and supporting them by the deposition of its witnesses. It, thereafter, fell upon the Defendant to rebut the evidential burden which shifted upon them.

Plaintiff’s Submissions

[20] The Plaintiff submitted that both 1st and 2nd Defendants acted negligently and recklessly in all circumstances of this case. The Plaintiff further submitted that the action of both 1st and 2nd Defendants amounts to a “faute” in law in terms of Article 1382 and that both are liable to make good the losses and damages they have caused to the Plaintiff.

[21] The Plaintiff also submitted that there is a direct causal link between the actions of the Defendants and the loss and damages suffered by the Plaintiff in that the Plaintiff has suffered the permanent loss of her property as a direct result of the behaviour and action of the Defendants jointly and severally. Therefore, in terms of Article 1384, both Defendants are jointly and severally liable to the Plaintiff.

[22] The Plaintiff further submitted that the defence of the 1st Defendant contained a general denial and falls foul of the provision of Section 75 of the Seychelles Code of Civil Procedure (SCCP) as follows:

“The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff’s denied or they will be taken to be admitted.”

[23] The Plaintiff cited the case of Leon v Volcere SCA 2/2004, LC 266 where the Seychelles Court of Appeal held that the Statement of Defence must contain a clear and distinct statement of the material facts on which the Defendant relies to meet the claim. A mere general denial of the Plaintiff’s claim is not sufficient.

1st Defendant’s Submissions

[24] The 1st Defendant submitted that the onus is on the Plaintiff to prove her case that the action of the Defendant is not in compliance with the statutory duty amounting to faute that caused her damage and loss and/or that the Defendant committed fraud that caused her damage and loss which she had failed miserably. Exhibit P1 was executed by the deceased was in compliance with requirement to be valid and legal and effectively sold the vehicle on 7th December, 2011. The procedures followed by the 1st Defendant for third party transfer is a valid, legal and the only way of effecting transfer. The 1st Defendant therefore did not commit any error of conduct which would not have been committed by a prudent person in the circumstances in which the transfer of the vehicle was effected. (Helen Monthy v Government of Seychelles CS 106/04).

[25] The 1st Defendant also submitted that good faith is presumed vide Article 2268 of the Civil Code of Seychelles. There is no evidence of collusion between the Defendants in transferring the vehicle thus causing damage and loss to the Plaintiff.

[26] The 1st Defendant further submitted that the Plaintiff is attempting to fix liability on the Defendants feigning ignorance that her own son committed fraud and cheated her of her vehicle. The Plaintiff is aware that the 1st Defendant can only transfer vehicle but cannot

be the seller since this requires the signature of both the seller or authorised person and the buyer to effect transfer.

[27] Finally it is submitted that the 1st Defendant has not committed any faute and is therefore not liable to the Plaintiff for any damage.

2nd Defendant's Submissions

[28] The 2nd Defendant did not make any submissions.

Findings on Liability

[29] The evidence established that the 1st Defendant refused to effect the transfer of the vehicle in issue when the son of the Plaintiff first came to try to transfer that vehicle. The son of the Plaintiff who had the authorized possession of the vehicle had presented a document purported to be a written authority of the Plaintiff that authorised him to sell the vehicle and signed the transfer formality at the office of the 1st Defendant. That document had not been countersigned and stamped by a Lawyer as required by the 1st Defendant. He was explained the procedure of the 1st Defendant in the case where the actual owner who is not in the country had authorised a third party to do the transfer on his/her behalf. The son of the Plaintiff in pursuance of his endeavour to transfer the vehicle went to his Lawyer who then signed and affixed his stamp on it. The son of the Plaintiff later presented the document (Exhibit P1) duly signed and stamped by a Lawyer and the 1st Defendant caused the transfer to be proceeded with by the son of the Plaintiff and the buyer. The 1st Defendant took the added precaution of verifying the signature of the Plaintiff on the transfer form kept by them when she purchased the vehicle and the signature on the purported letter of authority and found the two to be similar. I cannot find any other action that the 1st Defendant was reasonably expected to take so as to prevent the son of the Plaintiff to transfer that vehicle.

[30] It is in evidence that it is the established procedure of the 1st Defendant that it is only an owner of a vehicle registered with them who can transfer his/her vehicle to a third party. Both, the owner of the vehicle and the prospective buyer must in normal circumstances

appear in person at the Office of the 1st Defendant to sign the Transfer Form that caused the vehicle to be legally transferred.

- [31] When the owner of a registered vehicle cannot appear in person, he/she can authorise another to sign the Transfer Form on his/her behalf to transfer the vehicle. In such circumstances the registered owner must give the person signing on his/her behalf a written authorization to do so duly signed and stamped by a Lawyer.
- [32] The deceased first called at the Office of the 1st Defendant on 5th December, 2011 with Exhibit P1 which was not signed and stamped by a Lawyer. He was advised that Exhibit P1 must be signed and stamped by a Lawyer and he was asked to go and comply with that requirement.
- [33] The deceased returned to the 1st Defendant on 7th December, 2011 and produced Exhibit P1 duly signed and stamped by the 2nd Defendant who is an Attorney-at-Law. The 1st Defendant verified the signature of the person who had signed as owner on Exhibit P1 against the signature of the owner on the Transfer Form previously signed when the vehicle was transferred onto her name, in this case the Plaintiff. Both witnesses for the 1st Defendant, Ms. Sham Mane and Ms. Contoret verified the signature on Exhibit P1 as against the Transfer Form held by the 1st Defendant and they were both satisfied that the signature was similar. The transfer onto a third party was then allowed to take place.
- [34] I find and conclude that the 1st Defendant acted in good faith and had taken all the necessary precautions to ensure that the transfer of vehicle S18870 was done in good faith and in accordance with laid down procedures. It was not incumbent on the 1st Defendant to go further in investigating whether the deceased was acting fraudulently and in bad faith.
- [35] In the light of the reason stated, I find that the action of the 1st Defendant in relying on Exhibit P1 to allow the transfer of motor vehicle S18870 to a third party, by the son of the Plaintiff does not constitute a “faute” in law in terms of Article 1382 of Civil Code of Seychelles.

- [36] In view of my finding that the Plaintiff had not made her case against the 1st Defendant I therefore find that the action of the 1st Defendant had not caused any injury to the Plaintiff thus did not make her to suffer any loss and damages as a result.
- [37] For reasons given above I find that the 1st Defendant is not liable in law to the Plaintiff and her claim is accordingly dismissed.
- [38] With regard to the 2nd Defendant, I find that his Statement of Defence does not transgress the provision of the Section 75 of the Seychelles Code of Civil Procedure (SCCP) in the circumstances. The 2nd Defendant sufficiently responded to the allegations made against him and had made pertinent averments.
- [39] I find that the 2nd Defendant having previously known the deceased as a client of his Chambers, the 2nd Defendant relied on the declaration of the deceased to him, that her mother had already signed Exhibit P1, as being one of a honest and truthful person wanting his signature and stamp on Exhibit P1 as a matter of formality. The 2nd Defendant had no reason to doubt that the signature thereon was indeed not that of his mother who had gone overseas at the time and who had authorised him to sell her car. There was nothing that could reasonably alert the mind of the 2nd Defendant that the deceased was acting fraudulently to defraud his very own her mother who had allowed him use of her car.
- [40] I accept the contention of the 2nd Defendant that by signing, dating and stamping Exhibit P1 he was not attesting that the Plaintiff actually signed Exhibit P1 in his presence and that the said signature is indeed that of the Plaintiff. I also find that there was no collusion between the 1st and 2nd Defendants to in any way defraud the Plaintiff.
- [41] The employees of the 1st Defendant before proceeding with the transfer of the vehicle had taken precaution to verify the signature of the Plaintiff on both documents and found them to be similar. This shows that the deceased had efficiently forged the signature of her own mother and that forgery passed the test or normal verification and scrutiny.
- [42] In the circumstances and for reasons stated, I find that the 2nd Defendant did not commit any error of conduct which would not have been committed by a prudent person in the circumstances in which the transfer of that car was effected. In the circumstances the 2nd

Defendant cannot be held liable for the fraudulent act of the deceased in defrauding her mother of her car.

[43] In view of my finding that the Plaintiff had not made her case against the 2nd Defendant I therefore find that the action of the 2nd Defendant had not caused any injury to the Plaintiff thus did not make her to suffer any loss and damages as a result.

Damages

[44] Learned Counsel for the Plaintiff submitted that both Defendants are liable to make good the losses and damages they have caused to her. It is not in dispute that the Plaintiff has been deprived permanently of her car. But that was neither as a result of the direct or indirect action of the Defendants but rather it was due to the fraudulent act of her son, the deceased who forged her signature on Exhibit P1. The claim of the Plaintiff for loss and damage is accordingly dismissed.

Conclusion

[45] In conclusion, it is abundantly clear that was it not for the fraudulent actions of the deceased the Plaintiff would not have suffered the losses and damages she is now claiming from the Defendants. The Plaintiff has failed to prove her case against both Defendants on a balance of probabilities. This suit is accordingly dismissed.

[46] I make no order as to costs in view of the particular circumstances of the unfortunate matter.

Signed, dated and delivered at Ile du Port on 29 November 2016

B Renaud
Judge of the Supreme Court