TEBONI & 2 OTHERS -v- SAWANE

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 25 of 1991
Hearing: 26 April 1993
Judgment: 14 May 1993

J. Remobatu for Plaintiffs
A Nori for the Defendant

PALMER J: The dispute in this case relates to the question of what sort of agreement was made between the 3 plaintiffs and the defendant for the use of their land by the defendant for the construction of two boats (the Vele and Marona).

The land is situated on an artificial island constructed by the plaintiffs and Jacineth Ramoiluna and their respective families.

The ownership of the island also appears to be in dispute. The plaintiffs claim collective ownership or joint ownership of the island. The Defendant on the other hand alleges that the plaintiffs and Ramoiluna have separate and distinctive ownership of various parts of the island. He says that the first agreement was made with Ramoiluna for use of his stonewall to construct the first shipyard for the construction of the ship, (Vele). The consideration for that agreement was 40 pieces of roofing iron bought by the Defendant.

The plaintiffs on the other hand claim that there was a different verbal agreement. The exact terms of that agreement is not clear. In the statement of claim it stated inter alia that the ship, Vele was to be owned collectively by them.

In Thomas Ilalatofea's evidence he stated that one of the terms of the oral agreement was that the plaintiff's were to receive half share of the proceeds of sale of the boat.

In David Nolitofe's evidence, he stated that the arrangement made with the defendant for the construction of the shipyard and the subsequent building of the ship Vele was for rental to be paid to him. This he says was confirmed by the letter received from Inland Revenue about rentals that were supposed to be paid to him.

And in Timeos Teboni's evidence he stated that the ship was to be built for their use and if it was to be sold that they would be entitled to a half share of the sale proceeds of the ship.

Mr Nori is correct in saying that where the terms of an agreement are so vague or uncertain then such agreement or contract must fail. *(see* ***G. Scammell & Nephew Ltd -v- Ouston [1941] A.C.251).***

This is so because the crucial element in a legally binding agreement is that there is a meeting of the minds or a 'consensus ad idem'. And there cannot possibly be a meeting of the minds if the terms are uncertain. But the situation in this case is different. The parties in this case have acted on the agreement between them.

The court is therefore placed in the unenviable position of having to identify the terms of that agreement and construe them fairly and broadly. The court in such circumstances has to apply the old maxim of English law, ***verba ita sunt intelligenda ut res magis valeat quam pereat'*** (Words are to be understood that the object may be carried out and not fail).

So what was the agreement between the parties?

The Defendant stated clearly in court that the decision to build a ship was of his own making. He chose Kalagwata Island because it was suitable. He did not know who were the owners and so in November of 1981 he made enquiries and was told that the particular stonewall belonged to Ramoiluna. He stated that this was said by Timeos Teboni, one of the plaintiffs. So he made an agreement with Ramoiluna for his stonewall. The consideration was 40 pieces of roofing iron.

Thomas Ilalatofea however stated that the agreement was made with the Defendant to use their stonewall and in return that the Defendant would pay them some money when the ship was sold. The agreement stipulated a half share.

The first issue to look at is whether there was an agreement for joint ownership of the ship and for a half share in the sale proceeds of the ship.

The only evidence of such terms in the agreement was given by Thomas Ilala and Timeos Teboni.

When the agreement was performed however there was hardly any evidence to show that the ship was jointly owned. The evidence showed that the ship was constructed by

the Defendant. He was responsible for all the costs incurred. He provided the labour and the materials. He supervised the business venture. When he sold the ship, the plaintiffs were not even aware of it, nor how much the ship was sold for. He provided the funds by way of a loan.

It seems to me that the actions of the plaintiffs do not fit in or correspond to the actions of a person who could be regarded as a joint owner. The level of involvement in the planning, construction and supervision of the boat by the plaintiffs has been the barest minimal. There is no evidence of any partnership agreement or joint venture arrangement.

On the question of credibility therefore I find their terms unconvincing.

There is also the question of probability of those terms. Would a reasonable businessman enter into such a vague arrangement with the plaintiffs, the effect of which could leave him with little or no profits, or greatly reduced profits simply in exchange for the use of the land?; or could he more realistically enter into an arrangement for rental for the use of the land?

It is more probable that a reasonable businessman would enter into a rental agreement or sale and purchase agreement with the plaintiffs than to enter into such dubious and risky arrangements as giving a half share of the sale proceeds to the plaintiffs. For instance, the sale price of the boat was $400,000.00. Is the value of that land used for the boat building worth $200,000.00? I do not think so. But had the Defendant entered into such an agreement, that would be the amount that he would have to pay out. He has clearly stated in court, that he financed the construction of the boat from a loan. He further stated that the boat had to be completed by further advance payments by the buyer, the Solomon Islands Government. So it was not a simple sale and purchase case but one wrought with financial difficulties to get the job done. He stated it was an expensive job.

On plain common sense, it seems more probable that he would have entered into a rental arrangement than one for a half share which would have had the effect of rendering him financially incapacitated.

Further, it is my view that the expression a half or a half share is a term that is so vague or uncertain to be meaningful. Is it a half of the gross value? or a half of the net proceeds? What about the situation where the ship was partly completed through part of the proceeds of the sale price?

In the evidence of Thomas Ilala, he stated that some money should be paid for the use of their land. He then stated 'this meant that he would give us a half share in the sale proceeds'. The impression I have is that the figure or portion of a half share was the interpretation or meaning applied by the plaintiffs themselves to the arrangement made by the Defendant to pay some money. The Defendant did not agree to a half share. It was a term imposed by the plaintiffs themselves!

Accordingly I rule that there was no such contractual term.

The performance of the agreement and the evidence of the parties is more consistent with the version of the Defendant as to the terms of the agreement.

What were those terms?

The terms of the agreement as described by the Defendant inrespect of Thomas Ilala was that the stonewall on which he would build his second ship, the Marona, would be purchased for the sum of $600.00. He submitted two documents. The first one is an agreement made with Thomas Dala.

The agreement read:

"That in June 1984 Toma Ilala has sold a stone shipyard which he (Toma Ilala) owned to Francis Sawane for $600.00 (cash) for the purpose of boat building. The said stone shipyard is located on the sea front of Kalagwata in the Langalanga Lagoon."

This agreement is marked exhibit 2.

A literal interpretation would seem to indicate that there has been a transfer of ownership.

This is the same thing that was said in the cautioned statement of Thomas Ilala to Police dated 15/6/92. (the second document).

I quote from that cautioned statement (marked exhibit 7):

> *"So wallstone ia Francis hem already payim for me finish and me nao owner blong wall stone ia so this time me declarem that Francis Sawane (defendant) nao hem owner belong wall stone ia."*

These documents were submitted to prove what the terms of the agreement was between the Defendant and Thomas Ilala.

The plaintiff, Thomas Ilala was asked about those two documents, but his answers I find to be unconvincing. He did say that the $600.00 paid was for his labour in helping with work related to the construction of the ship. Mr Sawane, however explained that he never employed the plaintiff on any casual basis whatsoever. He stated he did sub-contract out certain parts of the job to certain people, and it is possible the plaintiff may have been employed by them. However, the payment he made he says was for the Wall stone of the plaintiff.

The documentary evidence and the explanation provided by the Defendant in my view are more convincing on the balance of probability than that of the plaintiff. The plaintiff I find to be unreliable. His memory of events, dates and happenings is scanty. He himself admitted that he doesn't remember much or that he is not too bothered about details.

I am satisfied that there was a transaction between the Defendant and Thomas Ilala in which the $600.00 was paid for the use of Thomas Ilala's Wall stone. This was inrespect of the shipyard in which the ship 'Marona' was constructed.

In the case of Timeos Teboni and David Nolitofe, the question is whether the terms of the agreement was that the defendant would rent their place and that he would allow them free passage in his ship.

Both Nolitofe and Teboni confirm that they and their families have travelled freely in the Defendant's ship, the 'Suinanita' on various occasions. Both however deny that it was a term in their agreement for the use of their place.

It is perfectly valid to make an agreement whereby one makes a promise to provide free passage for the use of the Wall stones.

The question really before me is whether I accept the version of the Defendant as against that of the 2 plaintiffs.

David Nolitofe submitted a letter from the Inland Revenue Division dated 2 July 1922 (exhibit 1) to prove that rental should have been paid to him but was not. The Defendant however explained that the figures for 1985 - 1987 were obtained from the total fares chargeable to the plaintiff for the free passage given to him in those years. This he says was calculated by his accountant.

The explanations do make sense and the plaintiffs do confirm that they did travel freely in the defendant's ship. They both confirm that this free passage was not accorded to anyone else.

Normally, such transactions are done on a rental basis. However, in these two plaintiffs case, there is no evidence whatsoever about what that rental figure would be. The only other alternative explanation is the arrangement as propounded by the Defendant he made with the plaintiffs.

Accordingly, I accept and find that there was a valid arrangement made between them for use of the wall stones in exchange for free passages in the ship of the defendant. The evidence is clear that the defendant allowed free passages, but then he calculated the total at the end of each year and entered this as rental payment, in favour of Nolitofe. This arrangement supports his version in my view.

There has been no breach of the above agreements by the defendant and accordingly no damages can be allowed.

The claim for payment of $8,000.00 for any further ship to be built must be dismissed as there is no evidence to support it. In the evidence of the plaintiffs - they stated that the sum of $8,000.00 was claimed for full settlement of their claim. It was not part of any agreement entered into by the parties.

On the question of injunction, an important issue of ownership and the respective boundaries of the plaintiffs and Ramoiluna needs to be addressed.

A diagram marked exhibit 3 in the court's list of exhibits was drawn by the defendant and purports to show that the area of land in which the first defendant built his first ship belonged solely to Ramoiluna. The plaintiffs deny this. They allege that Ramoiluna's area is only about 20 feet by 20 feet. They say that the shipyard encroaches onto their respective lands and accordingly they are also entitled to rent.

Further, they claim damages for breach of a notice to quit.

I am of the view that there is not enough evidence before me to make a decision as to the above issues, as the boundaries and ownership of the various plots of land is disputed. There may be issues of custom raised, as the island is an artificial island.

Accordingly, I will direct the local court at Malaita to make findings on the following questions and submit to this court for final determination of this case!

(1) Is Kalagwata island jointly owned or separately owned?

(2) Who are the owners?

(3) What are the boundaries of the owners?

(4) On whose land was the shipyard in which the ship Vele was constructed?

(5) On whose area of the land is the Defendant carrying out shipbuilding now?

(A.R. PALMER)
JUDGE