

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 490 OF 2004

BETWEEN:

VINCENT McDONALD

Claimant

v

LAWRENCE DABRIEL

Defendant

Appearances:

Mr. Joseph Delves for the Claimant

Mr. Jaundy Martin for the Defendant

2007: May 30
December 17

JUDGMENT

- [1] **THOM J:** The Claimant and the Defendant were business partners in the cultivation and sale of bananas.
- [2] The Claimant is the owner of 11 ½ acres of land at Grand Sable in the State of Saint Vincent and the Grenadines.
- [3] In 2001 the Claimant and the Defendant verbally agreed that the Defendant would cultivate bananas on the said land. They agreed that the bananas would be sold to the Banana Growers Association and the money paid into an account in the name of the Claimant at the National Commercial Bank. The Claimant and the Defendant agreed to share the profits fifty percent (50%) each.

- [4] In 2002 the Claimant bought a truck in the United States using his own funds and shipped it to Saint Vincent and the Grenadines. The truck was registered in the name of the Defendant. This truck was used in the cultivation of the bananas.
- [5] In 2003 the Defendant ceased to cultivate the Claimant's land.
- [6] In 2004 the Claimant sought to collect the said truck from the Defendant. The Defendant refused to hand over the truck and the Claimant instituted these proceedings in which he sought inter alia a declaration that he is the sole owner of the Ford 150 vehicle.
- [7] The Defendant in his counterclaim sought inter alia a declaration that he is the lawful owner of the vehicle and an order that the Claimant account for all monies paid into his bank account by the Banana Growers Association from the sale of the bananas.
- [8] The Claimant gave evidence on his own behalf and called three (3) witnesses being Randy Lawrence, Gemma Crichton and Godfrey Burke.
- [9] The evidence on behalf of the Claimant is that in 2001 the Claimant who resided in the USA entered into a verbal agreement with the Defendant for the Defendant to cultivate the Claimant's land. They agreed that the Defendant would plant, reap and sell the bananas to the Banana Growers Association. The proceeds were to be deposited into an account in the name of the Claimant at the National Commercial Bank. The profits would be shared 50% each. During the period 2001 – April 2003 the Claimant provided the Defendant with the money required for the cultivation of the bananas. The sum was in excess of nine thousand dollars East Caribbean currency (E.C. \$9,000). The Claimant also provided the Defendant with parts for the Defendant's jeep which was being used for the cultivation of bananas on the Claimant's land and the Defendant's private lands which amounted to about three (3) acres. Some time between the months of February and March 2002, the Defendant's jeep broke down and the Defendant requested the Claimant to provide parts for the jeep. The Claimant decided to purchase a vehicle and ship it to Saint Vincent. They agreed it was an urgent matter. The Defendant had a farmer's

concession for Customs duties and they agreed that the vehicle would be registered in the name of the Defendant. The Claimant purchased the vehicle for US\$4,200, repairs to the vehicle amounted to US\$3,700 and shipping US\$2,800. The Claimant also paid for the insurance; the inspection and valuation fees. He also contributed \$5,700 towards the Customs duties. In June 2003 in response to enquiries from the Claimant, the Defendant informed the Claimant that bananas were not doing well and he did not wish to continue cultivating the Claimant's land. The Claimant returned to Saint Vincent and the Grenadines in June 2004 and he found his land covered with bushes. The Claimant took his vehicle from the Defendant. The Defendant subsequently laid claim to the vehicle. The Claimant then instituted these proceedings to recover the vehicle and also sought other reliefs.

- [10] The evidence led on behalf of the Defendant is that between September and October 2001 the Defendant commenced clearing the Claimant's land at Grand Sable pursuant to an oral agreement between the Claimant and the Defendant. The Defendant does not dispute the terms of the agreement as outlined by the Claimant. After the Defendant had worked the Claimant's land for more than one year using his (the Defendant's) jeep, the jeep broke down. At that time the Defendant was paying the workers and buying inputs for the banana cultivation from his own funds. He notified the Claimant that it would cost \$4,000 to repair the jeep and suggested to the Claimant that the sum be paid from the Defendant's share of the profits. At that time the Defendant had not received any part of the profit from the sale of the bananas which was in excess of fifty thousand dollars East Caribbean Currency (EC\$50,000). The Claimant then suggested that he would purchase a vehicle for the Defendant in the United States and that would be the compensation for the Defendant's share of the profits. The Claimant purchased and shipped the vehicle to Saint Vincent and contributed to the payment of the Customs duties and registration. There was no arrangement for the vehicle to be returned to the Claimant if the Defendant stopped working the Claimant's land. It was specifically agreed that the vehicle would belong to the Defendant. The Claimant continued to make no contribution towards the expenses related to cultivation of the bananas and did not give the Defendant his share of the profits. As a result he stopped cultivating the Claimant's lands. During the period 2001

– 2003 the bananas sold from the Claimant's land amounted to \$61,369.49. In 2004 the Claimant returned to Saint Vincent and the Grenadines and borrowed the jeep. When the Defendant sought to recover the jeep the Claimant refused to hand it over. The jeep was subsequently seized from the Claimant.

[11] The issues to be determined are:

- (a) Who is the owner of the Ford truck?
- (b) Should the Claimant account to the Defendant or the Defendant account to the Claimant?

[12] Learned Counsel for the Claimant submitted that the issues to be determined by the Court are entirely matters of fact. Learned Counsel submitted that the Defendant was not a credible witness. There were several inconsistencies in his evidence.

[13] Learned Counsel for the Defendant submitted that:

- (a) The agreement was void for illegality since it was a deception upon the revenue of the State being a misrepresentation that the vehicle was for the Defendant; when in fact it was for the Claimant. The agreement is therefore not enforceable.
- (b) The truck represented the Defendant's share of the profits pursuant to the agreement between the Claimant and the Defendant.
- (c) The Defendant was a credible witness. The Claimant had sole control of the account into which proceeds from the sale of bananas were deposited. The Defendant had no direct access to this account. The Defendant should therefore be made to account to the Claimant for the proceeds from the sale of the bananas.

[14] It is not disputed that the truck was purchased, repaired and shipped to Saint Vincent and the Grenadines by the Claimant using the Claimant's funds. It is also not disputed that the Claimant also paid for the registration, insurance and a part of the Customs duties. The

Defendant had a farmers' concession and as a consequence the Customs duty payable was reduced. The truck was registered in the Defendant's name.

- [15] On the issue of illegality Learned Counsel for the Defendant referred the Court to several legal authorities including **Universal Caribbean Establishment v Egg-Hill Holding Co Ltd** (1992) 41 WIR p. 125; and **Azucena v de Molina** [1991] 50 WIR p. 85. I agree with the submission of Learned Counsel for the Defence that where a contract is illegal the Court will not enforce it. However, where the party seeking to enforce the contract does not have to rely on the illegality in establishing his claim the contract is enforceable. The issue of illegality was considered in the case of **Bowmakers Ltd v Barnet Instruments Ltd** [1945] 1 K.B. p. 65, the Court held:

"No claim founded on an illegal contract will be enforced by the Court, but as a general rule a man's right to possession of his own chattels will be enforced against one who, without any claim of right is detaining them or has converted them to his own use, even though it may appear from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract, or to plead its illegality in order to support his claim. An exception to this general rule arises in cases in which the goods claimed are of such a kind that it is unlawful to deal in them at all."

- [17] The issue of illegality was also discussed in the case of **Murphy v Quigg** [1996] 54 WIR p. 162. Sir Vincent Floissac in delivering the judgment of the court stated at p. 169:

"In any case, the fact that a contract, trust or other transaction is illegal in the sense that it is prohibited by statute or at common law does not necessarily invalidate every claim or title which is contaminated by the illegal transaction. A plaintiff's claim is enforceable if it is based on a legal or equitable title or on facts which generate such a title and if the plaintiff can sustain the claim solely by reference to that title or to those facts and without the need to disclose, invoke or rely on illegality."

- [18] Thus in **Universal Caribbean Establishment v Egg-Hill Holding Co Ltd** the Respondent's counterclaim failed because in order to prove ownership of the machine it had to rely on the illegal contract. Similarly, in **Azucena v de Molina** both the plaintiff and the defendant were aware that a false figure had been inserted as consideration into the deed of transfer in order to reduce the amount payable as stamp duty. The plaintiff's claim

for sums owing pursuant to the agreement were dismissed. The plaintiff could have only established his claim by relying on the illegality.

[19] I believe the evidence of the Claimant that the Defendant telephoned the Claimant in the United States seeking his assistance in providing further parts for the vehicle which would cost approximately \$4,000. The Defendant's vehicle was used both on the Defendant's land and the Claimant's land. The Claimant decided to purchase a vehicle instead and shipped same to the Defendant. It was agreed that in the event that the Defendant cease to work the Claimant's land he would return the vehicle to the Claimant. The Defendant was in a hurry to have the vehicle and he already had a farmer's concession. The vehicle was imported and registered in the Defendant's name. There is no evidence to suggest that the parties agreed to import the vehicle in the name of the Defendant to evade payment of the full customs duties payable. In fact it is not disputed that both parties are registered farmers and were entitled to the duty concession.

[20] I find that the Claimant's claim to the vehicle is based on the fact that he purchased the vehicle and shipped it to Saint Vincent. He paid the registration, insurance and the majority of the customs duties.

[21] In relation to the Defendant's submission that the truck represented his share of the profits, it is not disputed that in August 2002 when the truck was imported the Claimant had expended approximately thirty four thousand seven hundred and seventy dollars (EC\$34,770) in acquiring the truck.

[22] The documents from the Banana Growers Association show that for the years 2001, 2002 and 2003 bananas sold from the Claimant's land was to the value of approximately sixty-one thousand dollars East Caribbean Currency (EC\$61,000) being:

2001 -	40,885 lbs -	\$16,141.31
2002-	87,971 lbs -	\$33,238.00
2003-	34,029 lbs -	\$11,990.31

It is not clear whether the sum is net or gross. I am of the opinion that in relation to the issue of ownership of the truck it is not necessary to determine that fact.

[23] It is not disputed that the Defendant commenced working the land between September and October 2001. Taking into account the time that it would take for the bananas to be planted and reaped which is approximately seven to nine months this period was not disputed, the Defendant could not be entitled to any share of the profits from bananas sold in 2001 since in September to October 2001 the land was in bushes and had to be cleared and then planted. I find that the earliest period for which banana could be sold as a result of the cultivation by the Defendant would be the month of June 2002. The Defendant agreed that he stopped working the land in March 2003. Based on the agreement the Defendant would be entitled to fifty per cent (50%) of the profit from the sale of bananas between June 2002 and March 2003.

[24] Having seen and heard the witnesses I believe the testimony of the Claimant. The Defendant's testimony had several inconsistencies. The Defendant in his witness statement stated at paragraphs 9 – 12 and 17 as follows:

- "9. After the lands had been under cultivation for more than a year I began having problems with my Isuzu Trooper jeep. It eventually broke down completely and I drew this to the attention of the Claimant. He asked me how much it would cost to repair the vehicle and I told him it would be in the region of \$4,000.
10. Up to that time I had been selling bananas to the Association which was paying all proceeds into the Claimant's bank account. I had not received any part of my share and was actually paying workers from my own pocket. I expected that the defendant would pay me my share.
11. As we were discussing the repair of my vehicle I reminded the Claimant that I had not received any part of my half share. I suggested to him that the \$4,000 can be paid from my share. I told him that I was paying workers and buying inputs from my own pocket and that because of this the bananas were not getting the care that they need. I further told him that this situation meant that I could not cultivate the full acreage.
12. The Claimant then suggested that instead of repairing my vehicle he would source a good vehicle for me in the USA. He said that he would give me the vehicle as compensation for my share of the proceeds from

the sale of bananas. It was agreed that I would sell my vehicle. I did so and obtained \$2,000 for it.

17. It was always our agreement that the vehicle would represent my half share of the proceeds from sale of bananas. At that time I had sold more than \$50,000 worth of bananas all of which was paid into the Claimant's account. It was our specific agreement that the vehicle would always belong to me whether or not I stopped working the lands. There was absolutely no agreement for me to return the vehicle."

[25] The Defendant's statement in paragraph 9 that his vehicle broke down more than a year after he was working the Claimant's land cannot be correct since the Defendant agreed that he commenced clearing of the Claimant's land in September to October 2001 and the truck was imported in August of 2002. I also find the Defendant's contention that the vehicle was given to him as compensation for his share of the profits and at that time he had sold more than \$50,000 worth of bananas, to be untenable, since at that time the documents from the Banana Growers Association show that the total sales for 2001 and 2002 amounted to \$49,379.71 and bearing in mind the Claimant was not entitled to any of the profits for 2001. I also do not believe his evidence that he paid for inputs and paid the employees. Under cross-examination he agreed that inputs were credited from the Association and he collected several sums from Randy Lawrence, the Claimant's agent to pay workers. Based on the Defendant's contention, the Claimant would have agreed to give him a truck which cost approximately \$34,000 in compensation for his share of profits which did not amount to \$25,000. In fact, in August 2002 the Defendant was only entitled to a share of the profit from bananas sold between June 2002 and August 2002. In any event the total sales from 2001 to 2003 amounted to \$61,000.

[26] In relation to the issue whether the Claimant should account to the Defendant or the Defendant should account to the Claimant, it is not disputed that the Claimant had sole control of the account. There is no evidence from the Claimant to show that the Defendant was paid his full share of the profits pursuant to the agreement. During his cross-examination, the Defendant did state that the Claimant does not owe him anything. I find that this was said in the context that he was claiming the vehicle as compensation for his share of the profits. It is not disputed that several sums were paid to the Defendant during

the period he worked the Claimant's land. It is not disputed that the Claimant sent several spare parts for the Defendant's vehicle to the Defendant. I find that these were gifts from the Claimant to the Defendant. At that time the Defendant was using his (the Defendant's) vehicle in the cultivation of the Claimant's land along with his personal land.

[27] It was agreed between the parties that they would share the profits equally, thus all expenditure in relation to the cultivation of the bananas must be deducted.

[28] The Claimant had sole control of the account. He made and authorized withdrawals from the account. The Defendant had no access to the account. I find that the Claimant should account to the Defendant for the proceeds from the sale of the bananas.

[29] In conclusion I find that the Claimant is the owner of the truck and is entitled to possession thereof. I also find on the counterclaim that the Defendant is entitled to an account from the Claimant of the proceeds from bananas sold. Since each party was partially successful I will make no award of costs.

[30] It is hereby ordered that :

- (1) A declaration is hereby granted that the Claimant is the sole owner of the Ford Truck F 150 and is entitled to possession of the said vehicle forthwith.
- (2) The order made on November 26, 2004 is hereby discharged.
- (3) The Claimant account for all sums paid by the Banana Growers Association for bananas sold to the Association from the land at Grand Sable during the period June 2002 to March 2003. The account to be taken by the Registrar.
- (4) The Claimant do pay to the Defendant the amount if any found to be due to Defendant on the taking of such account.
- (5) The Claimant do pay the Defendant interest on the sum payable if any at the rate of 5% per annum from the date of judgment until payment.
- (6) Each party shall bear their own costs.

.....
Gertel Thom
HIGH COURT JUDGE