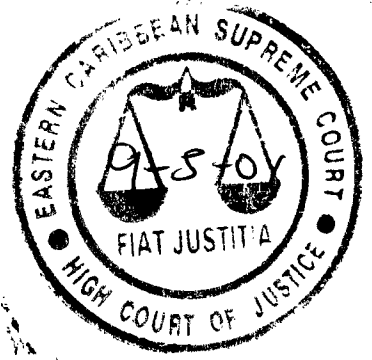


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(ADMIRALTY DIVISION)

CIVIL SUIT NO. 462 OF 2000



BETWEEN:

Beatrice Setzu Marcy
Charles Stewart

First Plaintiff
Second Plaintiff

and

Carlos Simmons and all other parties
Interested in the boat Carlos

Defendants

Appearances:

Richard Williams for the Plaintiffs
Emery Robertson for the Defendants

.....
2001: April 10, 11 and 30

May 1 and 9
.....

Recd.
16/5/01
SND
COURT

JUDGMENT

- [1] **Webster, J.** (acting). In June 1996 the First Plaintiff was a guest on board the catamaran "Typhoon" on a day trip sailing in the Grenadines. She met and became friendly with the Defendant, Carlos Simmons, who was the skipper of the Typhoon. They spent time together over the next two weeks and fell in love. The First Plaintiff then returned to Belgium where she was living. She and her husband had separated two years earlier. She returned to the Grenadines in September 1996. By that time the Defendant had lost his job on board the "Typhoon". The relationship between the First Plaintiff and the Defendant intensified and he left his girlfriend and two children and moved into an apartment with the First Plaintiff at Bargainvillea in Union Island.

- [2] The First Plaintiff and the Defendant decided to purchase a boat which the Defendant would use to do day charters in order to have a job and earn a living. They would also use the boat for their own purposes. During the first week of October 1996 they went to Bowens Marine in Trinidad and agreed to purchase the 32 foot commercial fishing pirogue motor boat which is at the heart of this case. It is not disputed that the purchase price of US\$23,366 was paid entirely by the First Plaintiff.
- [3] The First Plaintiff returned to Belgium shortly after the trip to Trinidad. In December 1996 the Defendant returned to Trinidad to take delivery of the boat. The expenses of the trip, and of transporting the boat to Union Island, were paid by the First Plaintiff.
- [4] The boat was used by the Defendant to do day charters. It enjoyed moderate success until 1998 when the Defendant secured a contract with the Antillean Tours to provide barbecues on Tobago Cays for the guests of Antillean Tours. The boat was used to transport the food and drinks from Union Island to Tobago Cays. This operation provided a steady stream of income from 1998 to the end of 1999.
- [5] The relationship between the First Plaintiff and the Defendant ended in November 1999. She returned to Union Island in February 2000 and took possession of the boat. On February 26, 2000 she sold the boat to the Second Plaintiff for US\$15,000.
- [6] In May 2000 the Defendant, who was then living in Bequia, went to Union Island, took possession of the boat, and took it to Bequia.
- [7] On October 20, 2000 these proceedings were initiated and the boat arrested by the Admiralty Marshall at the request of the Plaintiffs.
- [8] The Plaintiffs' main claim is for a declaration that the sale of the boat to the Second Plaintiff is valid, or that one of the Plaintiffs is the owner of the boat, and for possession of the boat.

- [9] The defence is that the boat was purchased by the First Plaintiff as a gift for the Defendant, and was in fact given to him. Consequently, the First Plaintiff had nothing to sell to the Second Plaintiff in February 2000, and the purported sale is a nullity. He also counter claimed for an account of the profits made by him in connection with the business generated by the Antillean Tours contract. On March 28, 2001 this Court made an order that the issues relating to the account be tried separately from the issues relating to the ownership of the boat. This judgment is concerned with the ownership of the boat.

ISSUES

- [10] The main issue before the Court is whether there was a gift of the boat to the Defendant when it was purchased in October 1996. If there was a gift that is the end of the case and the Defendant is entitled to judgment. If there was no gift, the secondary issues are whether there was a sale of the boat by the First Plaintiff to the Second Plaintiff in February 2000, and whether the Defendant is entitled to wages as the skipper of the boat.

THE GIFT

- [11] In order to establish the gift, the Defendant must prove that the First Plaintiff intended to give him the boat, and that it was delivered to him. There is no difficulty regarding delivery because it is common ground that the boat was delivered to the Defendant in Trinidad in December 1996 at the request of the First Plaintiff, and that he kept possession of it until February 2000. The disputed issue is whether the First Plaintiff intended to give the boat to the Defendant.
- [12] The Defendant's case is that he lost his job on the Typhoon because of his relationship with the First Plaintiff. He then left his girlfriend and children and moved in with the First Plaintiff. She decided to purchase the boat for him so that he would be gainfully employed. He supported his position by reference to the fact he is the person who negotiated the terms of purchasing the boat from Bowens Marine; a letter dated October 3, 1996 from Bowens Marines addressed to him setting out details of the terms of sale; the shipping invoice and warranty in his name; and a letter he wrote to Bowens Marine on

December 21, 1996 regarding the engines that were installed in the boat. He also relied on the fact that the boat was named "Carlos".

[13] The First Plaintiff's position is that she never intended to give the boat to the Defendant. He conducted the negotiations with Bowens Marine because she spoke very little English and did not know anything about boats. When she saw that the letter of October 3, 1996 was addressed to the Defendant she protested to Bowens Marine, and subsequent documents from Bowens Marine such as the pro-forma invoice dated October 4, 1996 and the fax dated November 25, 1996 confirming that the boat was ready for delivery, were issued in her name. Further, the shipping invoice and warranty were issued in the name of the Defendant only because he was the person importing the boat into St. Vincent. Finally, the boat was named "Carlos" because the Defendant was well known in the Grenadines where the boat would be doing charters.

[14] Counsel for the Plaintiffs, Mr. Richard Williams, quite rightly drew the Court's attention to the Defendant's spontaneous evidence in examination in chief when he said that he could see that the First Plaintiff was not happy when she saw that his name appeared on some of the documents relating to the boat. He repeated this evidence under cross-examination. This evidence is consistent with the First Plaintiff's evidence that she objected to his name being on any of the papers, and inconsistent with an intention to give the boat to the Defendant.

[15] I am satisfied on the totality of the evidence, in particular the Defendant's concession that the First Plaintiff was unhappy that his name was on some of the papers, that the First Plaintiff did not intend to give the boat to the Defendant, and I so find. This finding is reinforced by the fact that the First Plaintiff insured the boat in her name from September 1997 with no protest from the Defendant. The Defendant's claim for the gift therefore fails.

SALE TO SECOND PLAINTIFF

[16] On February 26, 2000 the first Plaintiff sold the boat to the Second Plaintiff for US\$15,000. The purchase money of \$15,000 was paid to the First Plaintiff in cash. She took the

\$15,000 cash to Belgium and gave it to her husband. The only written record of the sale is a handwritten receipt for \$15,000 signed by both Plaintiffs. Shortly after the sale the First and Second Plaintiffs started a romantic relationship which is continuing.

- [17] I have considered all the circumstances of the alleged sale, and the demeanour of the Plaintiffs in giving their evidence, and I am not satisfied that the sale to the Second Plaintiff took place. I reject the claim for a declaration that the Second Plaintiff is the owner of the boat.

WAGES

- [18] During the final stages of his examination in chief the Defendant gave evidence that he was paid wages of \$3,000 per month as the skipper of the Typhoon, and that he was not paid for operating the boat. He claimed wages for operating the boat of \$3,000 per month for 42 months, being the duration of his relationship with the First Plaintiff. Nothing more was said about the matter until his Counsel, Mr. Emery Robertson, was completing his final submissions. In response to a question from the Court he applied to amend the Counterclaim to include an alternative claim for 42 months wages at \$3,000 per month. Mr. Williams objected to the application on the following grounds:

- (a) The Plaintiffs would be prejudiced by having to answer a new claim at the very end of the case because there was no possibility of cross-examining the Defendant as to the monthly rate of \$3,000
- (b) There is no evidence of wages for the skipper of a speed boat
- (c) There was no agreement for the Defendant to be paid wages
- (d) The Defendant benefited from the income derived from the boat
- (e) In any event the claim for wages could be more conveniently dealt with in the second stage of the trial dealing with the claim for an account.

- [19] The Court also referred Mr. Robertson to the Defendant's evidence in chief that the First Plaintiff bought the boat so that he (the Defendant) could be self employed, and to his evidence in cross-examination that there was no agreement for his employment, and that he did not discuss salary with the First Plaintiff.

[20] Mr. Robertson relied on the principle that the court will allow an amendment at any stage of the proceedings if it is in accordance with the evidence and will help to determine the real question in controversy between the parties. In the words of the Chief Justice Sir Dennis Byron in **Thomas v Stoutt & Others** (1997) 55 WIR 113 at page 121:

"It is well settled that the guiding principle on the question of amendments is that, generally speaking, such amendments should be made for the purpose of determining the real question in controversy between the parties to any proceedings or correcting any defect or error in the pleadings. The court's main concern is to decide the rights of the parties and not to punish them for mistakes made in the conduct of the case"

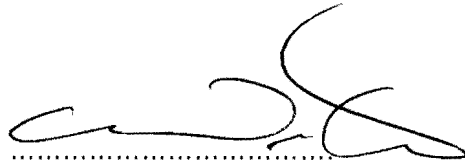
In dealing with this general principle the learned editors of the **Supreme Court Practice 1997** were careful to point out at paragraph 20/5-8/6 that:

"On the other hand, it should be remembered that there is a clear difference between allowing amendments to clarify the issues in dispute and those that provide a distinct defence or claim to be raised for the first time (see, per Lord Griffiths in **Ketteman v Hansel Properties Ltd.** [1987] A.C. 189, at p. 220).

[21] I find that the proposed amendment is to add a new claim, and not to help to determine the real issue in dispute between the parties. The issue in dispute relates to the ownership of the boat. Further, the claim for wages cannot be justified on the ground that it is in accordance with the evidence. There is no evidence that the Defendant was employed as a seaman. His own evidence is that he was self-employed and there was no agreement to pay him wages. I also find that the new claim would prejudice the Plaintiffs at this late stage. There has been no opportunity to lead evidence on what is a reasonable wage for the skipper of a speedboat. Finally, the claim for wages can be more conveniently dealt with in the second stage of the trial as an alternative to the claim for an account.

[22] In all the circumstances the application to amend the counterclaim is denied without prejudice to the Defendant's right to apply for the amendment in the second stage of the trial.

[23] The order of this Court is that the First Plaintiff is declared to be the owner of the boat "Carlos" with all her tackle, apparel and trailer. The boat is to be released from the custody of the Admiralty Marshall and delivered to the First Plaintiff forthwith. The Defendant is ordered to deliver the keys of the boat to the First Plaintiff forthwith. The Defendant will pay the taxed costs of the First Plaintiff, and the Second Plaintiff will bear his own costs.

A handwritten signature in black ink, appearing to be 'Paul Webster', written over a dotted line.

Paul Webster
High Court Judge [Ag.]