

CITATION: ABDIWAHAN v. RAJASINGHAM, 2011 ONSC 7553
COURT FILE NO.: 06-CV-313613PD1
DATE: 20120109

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MOHAMED ABDIWAHAN

Plaintiff

)
)
) *Mohamed Abdiwahan,*
) *in person*
)

-- and --

PATIIMANATHAN RAJASINGHAM

Defendant

)
)
) *Cameron D. Neil,*
) *for the Defendant*
)
)
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)
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HEARD: June 6, 7, 8, 9, 10, 2011

STEWART, J.:

Nature of the Proceedings

[1] In this action, the Plaintiff claims a declaration that he is the lawful lessee of 296B Rexdale Boulevard, Toronto where a primarily Somali flea market business was conducted under his management. He also claims to be the lawful owner of that flea market business, as well as owner of a Honda Pilot automobile used in connection with operating the business, and seeks declarations in that regard. The Plaintiff further claims damages from the Defendant totalling \$400,000.00 for alleged breach of fiduciary duty, breach of contract, defamation plus punitive and exemplary damages.

[2] The Defendant takes the position that the Plaintiff is not the lessee of the 296B Rexdale Boulevard premises, does not own the Honda Pilot and was only an employec of the flea market business. By way of counterclaim, allowed to be amended at the opening of trial, the Defendant seeks damages from the Plaintiff in the amount of approximately \$70,000.00 for alleged costs incurred relating to damage done to the Honda Pilot and improper retention of rents paid to the Plaintiff by the sub-tenants of the flea market business. The Defendant claims that his wife owns

the flea market business and therefore all rents are owing to her. The Defendant also claims punitive damages in the amount of \$50,000.00.

[3] At trial, the Plaintiff acted for himself. He had initially been represented by counsel, Alan G. McConnell. The Defendant had the benefit of trial counsel, Cameron D. Neil, who had been retained only a matter of months before the trial date.

[4] It is perhaps unfortunate that both parties did not choose to avail themselves of legal assistance at the outset of their relationship so that the terms of any commercial arrangement between them might have been set out clearly. No doubt they had their reasons for choosing not to do so. As it has turned out, their business and personal relationship has completely unraveled and it has fallen to the Court to sift through the various and contradictory accounts of their deal and the scant pieces of documentation (which the parties seldom agree are what they appear to be) to determine by inference what their deal, if any, actually was.

[5] After five days of evidence and argument, the issues which have emerged have now been decided by me, as follows.

Background Facts

[6] The plaintiff arrived from Somalia to Canada in 2002 seeking asylum. He settled in Toronto, worked briefly as a fork-lift operator, but was soon laid off. He then worked as a casual roofer and, through a roofing customer, met the Defendant.

[7] The Defendant ran a small gas station in Schomberg, Ontario and now operates one in Burlington. From time to time the Plaintiff worked as a pump attendant for the Defendant's Schomberg station for minimum wage.

[8] In 2004, steps were taken by the Defendant, with the Plaintiff's assistance, to acquire the lease for certain premises at 296B Rexdale Boulevard, where a Somali flea market was located and to take over the various sub-tenancies which comprise a flea market business carried on at that location. It is essentially the dispute over the nature and terms of that arrangement which gives rise to this litigation.

[9] The Plaintiff speaks the Somali language, and thereby was able to deal with the original lessee of the 296B Rexdale Boulevard premises and to communicate with the various sub-tenants. In this regard, his services were of value to the Defendant. The Plaintiff claims the flea market was "his" business. This assertion, as noted above, is denied by the Defendant.

Issues:

- A. Who is the lawful lessee of 296B Rexdale Boulevard, Toronto?
- B. Who is the lawful owner and operator of the flea market business carried on at the Rexdale Boulevard premises?
- C. Who owns the Honda Pilot?

D. Was the Plaintiff defamed by the Defendant and, if so, what are his damages?

E. Are there any amounts owing to the Defendant by the Plaintiff?

Issue A: Who is the lawful lessee of 296B Rexdale Boulevard, Toronto?

[10] A series of leases contained in the parties' Joint Document Brief demonstrates that the owner and lessor of 296B Rexdale Boulevard is 1183542 Ontario Limited. Allen Mills is noted as the President of that numbered company.

[11] By means of a lease dated July 31, 2002, the Rexdale Boulevard premises were leased to Abdikarim Omar Isse, carrying on business as Indian Ocean Business Centre.

[12] By means of an Assignment of Lease dated October 2003, the lease for the Rexdale Boulevard premises was assigned to 1588145 Ontario Inc., the signing director of which was Mohamed Abdi. Mr. Mills executed a consent dated October 1, 2003, to this assignment on behalf of 1183542 Ontario Limited.

[13] By further Assignment of Lease dated August 1, 2004, Mr. Abdi's numbered company assigned its interest in the lease to Pathmanathan Rajasingham, carrying on business with his wife as Karapa Service. By consent dated August 1, 2004, Mr. Mills on behalf of 1183542 Ontario Limited agreed to this further assignment.

[14] The Plaintiff claims that it was always intended by the parties that he would be the actual lessor of the Rexdale Boulevard premises. He was the one, he says, who brought the idea to the Defendant. The Plaintiff maintains that the \$45,000.00 required to obtain the assignment of the lease was intended to be a loan from the Defendant to the Plaintiff.

[15] The Plaintiff asserts this \$45,000.00 loan has now been fully paid off by him and he is therefore the lawful lessee of the premises.

[16] There is no loan agreement and no documentation proffered by either party to support the Plaintiff's assertion that the funds used to acquire the assignment of the lease was by way of a loan from the Defendant to the Plaintiff.

[17] Further, it is evident that the Plaintiff did not have the financial means to retire a loan of this magnitude. The rents obtained from the sub-tenants were modest and did not and would not have generated enough income to pay off any such loan. The business records produced by the Defendant reveal that the operating expenses caused the business to run at a loss. Although there are no income tax returns which clearly set out the Plaintiff's income over the time frame in question, his activities and living circumstances support a conclusion that his financial resources were minimal.

[18] Throughout the relevant period of time, Karapa Service paid the rent and all major related expenses for the leased premises and continues to do so.

[19] There is documentation proffered by the Plaintiff and signed by the Defendant, indicating an assignment of the lease and the business in October, 2005 by the Defendant to the Plaintiff. The Defendant now says this was done only to assist the Plaintiff with his permanent residency application and to obtain credit from the bank. Despite the peculiar and suspicious circumstances surrounding this purported assignment of the lease to the Plaintiff, a transaction which has since been quickly reversed by the Defendant, I accept the Defendant's evidence on this issue. As a result I am of the view that the lawful lessee of the Rexdale Boulevard premises remains the Defendant (carrying on business as Karapa Service).

Issue B: Who is the lawful owner and operator of the flea market business carried on at the Rexdale Boulevard premises?

[20] As noted above, the available documentation provided by the Defendant amply demonstrates that it was Karapa Service, or the Defendant acting on its behalf, which paid the rent, utilities and other associated expenses and costs of carrying on business at the Rexdale Boulevard premises.

[21] The financial documentation provided by the Defendant, although not entirely complete or perfect, supports his assertion that Karapa Service owned the flea market operation. The Plaintiff operated as its manager at a monthly wage of approximately \$2,000.00, a sum which is reflected in the documentation as having been paid to him at regular intervals. The fact that the Plaintiff generated correspondence and documentation under the name "African Business Centre" to deal with tenants does not establish any ownership interest.

[22] As much as the Plaintiff viewed the flea market operation as "his" business or one in which he held an ownership interest, I conclude that this must be seen as wishful thinking on his part. He was an employee only of the lawful lessor and had no proprietary interest in the business.

[23] The claims by the Plaintiff for declarations in his favour with respect to both Issues A and B must therefore fail.

Issue C: Who owns the Honda Pilot?

[24] The Plaintiff claims that he paid for and owns the Honda Pilot vehicle driven by him while carrying out his duties at the Rexdale Boulevard premises. Again, he asserts that the funds -- another \$45,000.00 -- used to purchase the vehicle were advanced to him as a loan and have been repaid out of the flea market rents.

[25] There is no reasonable basis upon which to conclude that the Plaintiff ever owned the vehicle in question. Rather, the explanation offered by the Defendant -- that it was purchased for use in the business and the Plaintiff was allowed to drive it -- makes more commercial sense.

[26] All expenses relating to the vehicle were paid by the Defendant. The Plaintiff lacked the financial ability to repay any alleged loan of that magnitude and the proof of that ever having occurred is lacking. There is no documentation evidencing the making of any such loan or its repayment.

[27] The available documentation indicates that the Honda Pilot was purchased by the Defendant and the funds to do so were advanced by him. The sale documentation, bank drafts and plate registration all refer to the Defendant.

[28] I find that the transfer of ownership of the Honda Pilot, engineered and executed by the Plaintiff was done so without the Defendant's authority and is of no effect.

[29] Accordingly, there is no basis on this evidence to declare the Plaintiff to be the owner of the Honda Pilot and that part of his action must fail as well.

Issue D: Was the Plaintiff defamed by the Defendant and, if so, what are his damages?

[30] The Defendant appears to admit that he referred to the Plaintiff as a fraud in front of a group of sub-tenants at the Somali Flea Market after the Plaintiff's services had been terminated in March, 2006. He also wrongfully and intentionally told police that the Plaintiff had forged the documents upon which the Plaintiff relied to support his claim of ownership of the flea market business, knowing this allegation of forgery was false. This falsehood was repeated by the Defendant in a letter to the Ministry of Government Services. To this extent, I agree that the Defendant has defamed the Plaintiff.

[31] The Plaintiff has not proven any concrete actual damages or losses as a result of having been so defamed by the Defendant. No criminal charges were proceeded with in this particular regard. The damages suffered or sustained by the plaintiff therefore have been to his reputation only.

[32] In all of the circumstances, including the acknowledgement and apology extended by the Defendant, I consider that the sum of \$10,000.00 is a fair and reasonable amount to assess the damages claimed by the Plaintiff under this heading.

Issue E: Are there any amounts owing to the Defendant by the Plaintiff?

[33] The Plaintiff admits that he is responsible for the accident which resulted in damage to the Honda Pilot vehicle. Although the Plaintiff takes issue with the cost of repair, the Defendant has provided an invoice from a repair company in the amount of \$13,789.00. There is no documentation which actually proves the cost of any repairs that were in fact carried out.

[34] The Defendant also claims that various funds were extended by him to the Plaintiff by way of loans for personal reasons which included the cost of a wedding and a truck drivers'

licence. The documentation produced by the Defendant establishes the making of a loan for a licence in the amount of \$1,400.00, and another loan to the Plaintiff for \$3,500.00. These loans have not been repaid.

[35] The Defendant also says that the Plaintiff has not turned over all of the rent moneys collected by him in the course of managing the flea market. The operation of the system of rents for the various stalls was a cash-based, paperless system – perhaps deliberately so – and it is difficult, if not impossible, to determine whether there is any substance to that allegation or the precise quantum allegedly withheld. Further, I would consider that any such claim would be subject to setoff against back wages owed to the Plaintiff and/or pay in lieu of notice of termination. I therefore find that the Defendant has failed to prove that aspect of his counterclaim.

[36] As a result, on the basis of this evidentiary record and in light of the admissions made by the Plaintiff, I find that the global amount owing to the Defendant by the Plaintiff for car repairs and loans is \$12,000.00.

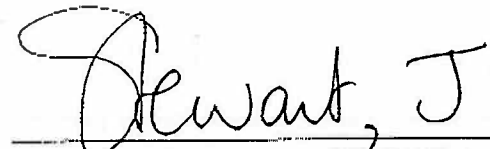
Conclusion

[37] Judgment shall issue in favour of the Plaintiff for damages for defamation in the amount of \$10,000.00 plus interest in accordance with the *Courts of Justice Act*. In all other respects, this action is dismissed.

[38] The Defendant shall have judgment on his counterclaim against the Plaintiff in the amount of \$12,000.000 for money owing, plus interest in accordance with the *Courts of Justice Act*.

Costs

[39] I note that the amounts recovered by each party against the other are within the jurisdiction of the Small Claims Court. In the circumstances, it would appear that there should be no costs awarded to either party. However, if there is any request to be made by the parties for a different order as to costs, written submissions in that regard may be delivered to me within 30 days of today's date.


STEWART, J.

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Plaintiff

and -

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Defendant

REASONS FOR JUDGMENT

STEWART, J.

Released: January 09, 2012