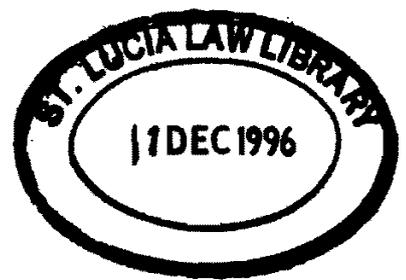


SAINT LUCIA



IN THE HIGH COURT OF JUSTICE
(CIVIL)

Suit No. 20/1996

Between:

Matthew Pascal

Plaintiff

VS

- (1) Courts (St. Lucia) Ltd
- (2) Francis Flavius

Defendant

Mr. R. Frederick for Applicant
Mr. Marcas Foster for Second Respondent
First Respondent unrepresented

1995: January 19
January 26

J U D G M E N T

d'Auvergne J.

On the 10th January 1996 the Applicant filed a writ of Summons endorsed with Statement of Claim and claimed the following:

- (1) a 1995 Suzuki Vitara
- (2) \$40,000.00 in cash
- (3) Costs hereof

On that same day an Ex parte application for an order of injunction under Articles 841 and 850 (17) of the Code of Civil Procedure of the Revised Laws of Saint Lucia 1957 with supporting affidavit was filed.

This Ex parte application was heard on the said 10th January, 1996 and an order was given in those words.

MATTHEW, PASCAL
COURTS (ST. LUCIA) LTD.

It is hereby ordered

- (1) That the 1st named defendant be restrained from handing over the balance of the prize winnings to the second named defendant.
- (2) That the 1st named defendant repossess the other part of the prize winning to wit -- in the Suzuki Vitara referred to above for the second defendant.

Returnable date 17th of January.

On the 16th January 1996 the Second Respondent filed a Summons supported by affidavit seeking an order of the Court discharging the injunction granted on the 10th day of January 1996.

In order to fully appreciate the subject matter in dispute and what took place at the hearing I have reproduced the affidavits of Mathew Pascal and that of the Respondent Francis Flavius.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR INJUNCTION

I, **MATHEW PASCAL** of Marchand Road, Castries, St. Lucia, hereby make oath and say as follows:-

1. That I know both defendants aforesaid.
2. That on November 24th 1995, I requested the second named defendant to obtain by way of hire purchase a four burner cooker and a grill from the first named defendant.
3. That the second named defendant and I fully agreed that his only participation would be to transact on his named but I would be fully responsible for all instalment payment.

4. That the second named defendant demanded the sum of \$600.00 to undergo the transaction referred to in paragraph 2 above.
5. That I to date have paid the second named defendant \$470.00 out of \$600.00 which he demanded.
6. That on the said November 24th 1995, myself and the second named defendant proceeded to the business place of the first named defendant on Chaussee Road, in the City of Castries, First Judicial District of this State where he undertook the transaction and I paid the deposit and all dues at the time.
7. That at the time I filled in coupons which were handed to me by the first named defendant in my own handwriting but in the name of the second named defendant which he signed.
8. That I personally placed the said coupon in a box provided for that purpose at the first named defendant.
9. That on Thursday the 4th day of January 1996 between 9.00 a.m. and 9.30 a.m. my wife viz: **VERONICA PASCAL** paid the first instalment as per the hire purchase agreement referred to in paragraph 2 above.
10. That on the said Thursday the 4th of January 1996 about 1:00 p.m., the second named defendant informed me that the said coupons were drawn as winning ones from a monthly draw by the first named defendant.
11. That the second named defendant immediately requested my payment card so as to proceed to the first named defendant.
12. That to date, I am in possession of the goods referred to in paragraph 2 above which were bought on hire purchase.

13. That I know and verily believe that the wining prize referred to in paragraph 10 above is a 1995 two door Suzuki Vitara plus \$40,000.00 in cash.
14. That the second named defendant has blatantly refused to share the prize winnings with me.
15. That I know and verily believe that the seconds named defendant has collected part of the prize wining from the first named defendant to wit:- a 1995 Suzuki Vitara.
16. That I know and verily believe that the second named defendant is due to receive the \$40,000.00 in cash on Thursday the 11th day of January, 1996.
17. That in the circumstances I ask this Honourable Court to restrain the first named defendant from handing over the balance of the prize winnings to the second named defendant.
18. I also ask this Honourable Court to order the first named defendant to repossess the other part of the prize wining to wit;- the Suzuki Vitara referred to above from the second named defendant pending determination of Civil Suit which I have already filed.

AFFIDAVIT

I, **FRANCIS FLAVIUS** of Marchand Road, Castries, St. Lucia hereby make oath and say as follows:-

1. That I know the Plaintiff in this matter.
2. That I resolutely deny any request as mentioned in the second paragraph of the Plaintiff's affidavit and state as follows that the purchase of the items were my money and these items

were to be my contribution to a venture to sell chicken on the William Peter Boulevard.

3. That I resolutely deny and refute the Plaintiff (as stated in paragraph 3 of his affidavit) was to be fully responsible for any or all instalment payments as this was my responsibility to be paid from my share of the profits from sales.
4. That I resolutely deny and refute that I demanded \$600.00 to undergo any transaction referred to by the Plaintiff. Indeed I further state the proposition to be exceedingly curious since the two items amounted to \$1,400.00 in all.
5. That I most resolutely deny any payment made to me by the Plaintiff paid me \$470.00.
6. That I most resolutely deny that the Plaintiff paid any deposit whatsoever for me. I did the entire interview and payment with Court's employees by myself.
7. After the transaction I was handed fifteen coupons by the Courts personnel.
8. I then approached the Plaintiff and asked him (to expedite matters to fill out some of the coupons and I would fill the rest.
9. I resolutely and emphatically deny that the Defendant ever placed any coupon in the box. I collected from him, those he had filled out and those I had done and deposited them in the box.
10. That I paid the first instalment on the 4th January, 1996.

11. That I being the owner of the items, I and the one liable and responsible for payments, I kept my payment card in my possession.
12. That the only reason the goods are not at my home is because I live in a single room measuring six feet by eight feet with no space whatsoever to accommodate the items.
13. That the days after it was announced that I was the winner, the Plaintiff approached me demanding first one-half, their one fourth of the prize-money and their finally \$5,000.00.
14. That in addition to all of the above I reiterate that I never and would never enter into any arrangement of obtaining credit by false pretenses and so I refute every allegation made by the Plaintiff that I did such. I verily believe that Plaintiff to be actuated by envy and avarice.
15. I therefore humbly ask this honourable court to discharge the injunction on the 10th, January, 1996.

At the hearing on the 17th of January 1996 the first Respondent was absent and unrepresented. Learned Counsel for the Second Respondent argued that there was no privity of contract between the Applicant and the first Respondent and that the Applicant was a stranger to the contract between the two Respondents.

Tweddle v Atkinson (1861) 121 E R 762 .

Price v Easton (1833).

He tendered two exhibits which indicated the contract between the Respondents. He argued that those exhibits (forms) showed:

The name and signature of only the Second Respondent and that the name of the Applicant was most definitely not on the exhibits.

He said that it must be remembered that an injunction is a judicial remedy of an equitable nature and that "he who comes to Equity must come into clean hands."

He strenuously argued that the issue before the Courts was similar to **Berg v Sadler and Moore 1937 KB 158**, the facts of which are as follows:

B, a Tobacconist, who broke the rules of a Tobacco Association, was put on a stop list. Concealing his identify he persuaded S to sell him cigarettes through an agent and paid L72.19s for them. S discovered the trick and refused to deliver the cigarettes or return the money. B sued S for the Return of his Money.

Held B could not recover the money because it was paid for an illegal purpose, to get supplies of cigarettes from S by false pretences. The Courts will not entertain any action based on an illegal contract.

Learned Counsel contended that as paragraph 14 of Second Respondent's affidavit states he never entered into any arrangement or agreement of obtaining credit by false pretences which is infact the sum total of the Applicant's case.

He concluded his arguments by beseeching the Court to discharge the injunction and that the applicant do pay costs to the Second Respondent.

Learned Counsel for the applicant contended that while he appreciates "Privity of Contract" there are exceptions e.g. Agency. **Cheshire Fifefoot and Stone Page 473 11th Edition.**

He conceded that the name of the Second Respondent was the name on the exhibits, the records of contract between the Respondents but vociferously argued that the Applicant was the owner of the items

bought and that the Second Respondent's only participation was to transact in his name at a fee of \$600.00, \$470.00 of which had already been paid by the Applicant and received by the Second Respondent.

He argued that the Second Respondent has been enriched at the applicant's expense and it would be unjust and unequitable to allow him to retain the benefit.

He quoted the oft cited Case of **American Cyanamid Co. vs Ethicon** 1975 1 ALL ER 504 and reiterated the guidelines set down.

Learned Counsel replied adhering to his former arguments. He also said that damages would be an adequate compensation should it be later found that the Second Respondent was at fault.

CONCLUSION

In my judgment there is a substantial question to be investigated and the Status quo should be preserved until that question can be finally disposed of.

I cannot foresee either party being inconvenienced in anyway since the entire subject matter is a winning of two items, albeit, expensive commodities which neither the Applicant nor the Second Respondent had any claim to before the 4th January 1996.

As I see it the question to be decided is who is entitled to the winning. Since this is my opinion I will maintain the injunction granted on the 10th January 1996 until further order of the Court.

Matter adjourned to the 2nd of February 1996.

SUZIE d'AUVERGNE
PUISNE JUDGE