

1996

No. 1933

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

ABDOOL YASSEEN

ABDOOL NAEM YASSEEN

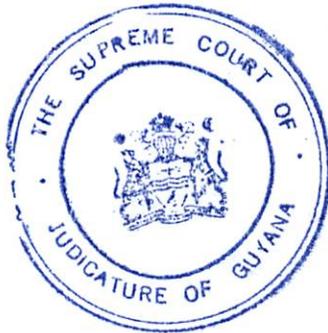
HALIMA BI YASSEEN

(Plaintiffs)

-and-

RICHARD SIMPSON

(Defendant)



BEFORE:

HON. MR. JUSTICE IAN CHANG – CHIEF JUSTICE (ag.)

Mr. S. Gunraj for the Plaintiffs

Mr. W. Sampson for the Defendants.

HEARD ON:

2012

JUNE 28

AUGUST 9, 12



DECISION

On the 30th April 1996, the plaintiffs by way of specially indorsed writ, brought this action against the defendant for the following remedies:

(1) *the sum of \$22,500,000 (twenty two million five hundred thousand dollars) being the balance of the full amount of the principal due under a certain bond and Deed of First Mortgage No. 552 of 1996 executed on the 10th day of April 1996 before Carolyn Paul, Deputy Registrar of Deeds by RICHARD SIMPSON of lot 38 High Street, Georgetown, Demerara, the defendant, in favour of the plaintiffs for the capital sum of \$22,500,000 (twenty two million five hundred thousand dollars) with which was vested with the right of FIRST MORTGAGE on*

(a) the North part of lot numbered 38 (thirty eight) also known as 34 (thirty four) High Street, Werk-en-Rust, in the city of Georgetown in the county of Demerara, Guyana the said north part being shown on a plan by H.O. Durhan, Sworn Land Surveyor dated 28th July 1925.

(b) lot numbered 639 (six hundred and thirty nine) containing an area of 3667.5 square feet part of Plot Lettered U part of Block numbered 1 (one, portion of tract of Government Land defined as Section G, part of Plantation La Penitence cum annexis situate on the east bank of the Demerara River in the county of Demerara, Guyana.

The plaintiffs claimed in their Statement of Claim that it was provided by and was term of the said mortgage that, in default of payment by the defendant of any of the instalments mentioned in the said mortgage, the plaintiffs might foreclose the said mortgage and bring the mortgage property to sale at execution and recover from the proceeds of such sale the full amount that might be due under the said mortgage at the time of such sale. They claimed that It was also provided in the said mortgage and was a further term thereof that, in default of payment by the defendant of any fines, premiums of insurance, cost of repairs, taxes, rates, special rates outgoings and assessments on the mortgaged properties the plaintiffs might pay the same and might foreclose the said mortgage, bring the mortgaged properties to sale at execution and recover from the proceeds of such sale the full amount that might be due under the said mortgage at the time of such sale with interest thereon.

According to the Statement of Claim, in breach of the terms of the said mortgage, the plaintiff failed or neglected to pay several instalments of capital on the dates fixed for payment and repayment under the mortgage and fell into arrears for months. As a consequence of those breaches, the plaintiffs became entitled to claim the aforesaid sum of \$22,500,000, to foreclose the mortgage, to bring the mortgaged property to sale at execution, and to recover from the proceeds of such sale the said sum of \$22,500,000. In the event of the sale of the mortgaged property not realizing sufficient funds, the plaintiffs would be at liberty to execute against any other property of the defendant.

In his Affidavit of Defence, the defendant deposed that he never requested nor received any loan and did not mortgage the properties to the plaintiffs at any time. He denied receiving any loan or money from the plaintiffs. He claimed that he was not aware of executing a mortgage in favour of the plaintiffs or that the plaintiffs were money lenders. He deposed that he entered into a hire-purchase agreement with the plaintiffs for a boat, M.V Uffee, at a purchase price of \$12,000,000 subject to a 6 month warranty from the date of purchase and that the plaintiffs were under contractual duty to maintain the said boat in serviceable condition during that time. He claimed that he was unaware of any obligation to the plaintiffs under any mortgage or of any obligation to pay the plaintiff any instalment. He denied that he executed any mortgage in favour of the plaintiffs or that the plaintiffs gave him any mortgage sum. But he admitted in his Affidavit of Defence that the plaintiffs delivered a boat to him valued at \$12,000,000. He claimed that any document purporting to be a mortgage deed would be illegal and unlawful and therefore could not be enforced by the court.

He further asserted that the plaintiffs were not the owners of the boat M.V. Uffee at the time of the execution of the agreement and therefore they could not have legally entered into any hire-purchase agreement with him. He claimed that the boat was *bona vacantia* since there was no evidence of legal succession to the said boat in the customs records and that any document purporting to show that the plaintiffs were

the legal owners of the boat would have been obtained by fraud on their part.

He further claimed that he had expended \$4,000,000 to repair the said boat because, when he had called upon the defendants to do so in accordance with the terms of the hire-purchase agreement, they had refused to do so. He denied having executed any mortgage in favour of the plaintiffs or having received any money from them. He denied that the hire-purchase agreement involved a mortgage.

At the hearing, the 2nd named defendant, Abdool Naem Yasseen, testified that he was then living at lot 5 Railway Line, Kitty and, before that, he lived at lot 23 Da Silva Street, Newtown, Kitty. He knew the defendant, Richard Simpson, and was personally aware of a business transaction between the defendant and himself, his father, Abdool Yasseen (the 1st named defendant) and his mother, (the 3rd named defendant). His father later died and his mother became the administratrix of his estate. He was the attorney of his mother. He tendered in evidence a copy of the Probate (Exhibits B1 – 4). He testified that, in April 1996, the defendant bought the boat, M.V. Uffee, which was owned by his father and he executed Mortgage No. 552 in favour of himself (the 2nd named plaintiff), his father and his mother on his immovable properties to secure a debt in the sum of \$22,500,000. He tendered in evidence a copy of the mortgage deed (Exhibit A). The mortgage related to two properties (Exhibits C1 – 4 – Transports). In the said mortgage, the defendant was required to insure the properties

and he did so and had assigned the benefit of the insurance on the properties to 1st, 2nd and 3rd named plaintiffs. He tendered in evidence copies of the said assignments (Exhibits D1 – 2). The defendant never repaid any of the money owed either to himself, his father or mother (the plaintiffs) and the entire sum was still unpaid.

Under cross-examination, the 2nd named plaintiff admitted that the debt was not mentioned in the Declaration of Assets of the estate of the deceased (1st named plaintiff). He asserted that the boat was registered with the Harbour Master for 1995 – 1996. He first admitted that he swore to two affidavits dated 22nd January 2008 and 23rd January 2008. He then recanted and stated that he swore to one affidavit on the 22nd January and was unsure as to whether he swore to another. He admitted that the action was dismissed but stated that it was later restored by Order of Court of the 8th June 2009. He admitted that neither he, his father nor his mother was a moneylender in 1996 and that none of them had a moneylender's licence in 1996.

Cyril Walker, who was the attorney for the defendant (Exhibit E) was called to testify for the defendant. He testified that he was the defendant's attorney to conduct the defendant's business. He stated that he was told that there was an arrangement between the defendant and the 1st named defendant.

Under cross-examination, he admitted he did not know of the nature of the transaction and did not know if the defendant paid the 1st named plaintiff any money.

Stephen Thomas, the Director of Maritime Safety was called for the defence. He testified that he was the acting Director General and Registrar of Ships. The registration of ships are done by his department. He stated that he checked for the registration of motor vessel M.V. Uffee and it is recorded in the Register that Mr. Richard Simpson was the owner of that vessel as from the 25th March 1996 and that the previous owner was Mr. Abdool Yasseen (the 1st named plaintiff).

Mr. Mohamed Bacchus, the acting Principal Clerk of Georgetown Magistrate's court was also called for the defence. He testified that he was the keeper of the records for applications and grants of money lending licences. He checked the available records for moneylending licences in the names of the three plaintiffs between 1995 and 1996 or at any time. He found no records relating to 1995 – 1996 but there were records from 2002. He found no records showing that any of the plaintiffs was licensed moneylenders.

It should be noted that the Defence closed its case with out calling the defendant to testify.

On a review of the evidence, it does appear to the Court that in April 1996, the defendant bought from the 1st named plaintiff the motor vessel M.V. Uffee from its owner, Abdool Yassen (1st named plaintiff) on credit for the sum of \$22,500,000. In order to provide the vendor with security for the debt, the defendant executed a first mortgage (Exhibit A) on his two immovable properties (Exhibits C1 – 4). Under that mortgage deed, the defendant had covenanted to pay to the 1st, 2nd and 3rd named defendants.

“the sum of \$468,750 (four hundred and sixty eight thousand seven hundred and fifty dollars) per month for a period of 48 (forty eight) months commencing from the 1st day of March 1996 and continuing on the last day of each and every month until the sum was fully paid.”

The court makes the finding that the defendant paid no instalment in accordance with the above covenant since it was denied that he was even indebted to the plaintiffs. As such, under the mortgage, the 1st, 2nd and 3rd plaintiff were entitled to approach the court for an order of sale of the properties to recover the entire amount due and owing from the proceeds of sale. The court so orders.

The mortgage deed mentions no interest on the principal sum owed. However, the court sees it fit to award to the plaintiff the sum of $\$468,750 \times 48 = \$22,500,000$ together with 6% interest thereon commencing from the date of the filing of this action on the 3rd May 1996 to the date of this judgment. The interest should be deducted from the proceeds of sale of the properties. Costs to the plaintiffs in the sum of \$35,000.

In the view of this court, there was a sale on credit of the vessel and not a money lending transaction. In any event, there is no evidence that any of the plaintiffs were carrying on the business of moneylending to attract the application of any provision of the Moneylenders Act. No evidence was adduced to dispute any aspect of the plaintiffs' case and, at the end of the day, the court could not but accept the evidence for the plaintiffs.




.....
Ian N. Chang, C.C.H, S.C
Chief Justice (ag.)

Dated this 01st day of March, 2013.