

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV 2016-3458**

BETWEEN

**BALMATEE MATHURA
RALPH MATHURA**

Claimants

AND

SHIRLEY SONNYRAM

Defendant

Before the Hon. Madam Justice C. Gobin

Date of Delivery: November 28, 2018

Appearances: -

Mr. Irshaad A. Ali, Attorney at law for the Claimants

Mr. Arif A. Rahman, Attorney at law for the Defendant

REASONS

Background

1. The Claimants claim was for the return of the full purchase price of two hundred thousand dollars (\$200,000.00), which they paid to the Defendant for the sale of a piece of land. It is not in dispute that the monies were paid or that the Defendant was unable to complete because she had no title to the parcel of land she had agreed to sell. The Defendant claimed that she refunded the purchase price to the Claimants' duly appointed agent, their son-in-law, Mr. Ranbir Singh and that the Claimants subsequently signed a receipt dated 17th April 2013, acknowledging that they had been repaid.
2. At the first case management conference (CMC), I ordered the Defendant to file particulars of how the alleged repayment was made and by what means, if not made directly to the Claimants then

to whom, and under what authority and upon whose directions. The Defendant subsequently filed an amended Defence to include the particulars. At paragraph 8 (a) this is what was pleaded: -

(a) On 2nd November 2012, the Defendant started by repaying the said Ranbir Singh as authorised by Ralph Mathura, transferring the sum of seventy thousand dollars (\$70,000.00) into Ranbir's account at Eastern Credit Union. This is evidenced by Eastern Credit Union, deposit voucher dated 2nd November 2012;

(b) The amended Defence continued to alleged various cash payments with a final payment being made on 16th April 2013 and the issuance of the receipt and which she claimed was produced by Ranbir Singh which purported to bear the Claimants' signature. The receipt stated:

*17th April 2013,
Received from Ranbir Singh (son in law) the full sum
of two hundred thousand dollars (\$200,000.00).
The sum of as full refund of monies that I directed
him to collect from Shirley Sonnyram in the
presence of me and my wife Balmatie Mathura.*

3. At a CMC on 23rd April 2018, the following issues were identified: -

“Whether Ranbir Singh was appointed agent by the Claimants to receive the sum of two hundred thousand dollars, (\$200,000.00) representing the purchase price and whether in fact he did receive the money.”

Witness Statements were ordered and filed. The trial took place on 24th July 2018 and I determined the issue in favour of the Claimants. I ordered the Defendant to repay the sum of twenty thousand dollars (\$20,000.00) with interest at the rate of 5% per annum from 14th October 2016 to 24th July 2018.

4. The matter turned on my assessment of the credibility of the witnesses. Ranbir Singh gave evidence on behalf of the Claimants denying that he was their agent or indeed that he had received the refund of the purchase price on their behalf from the Defendant.
5. I found the Claimant, Mrs. Mathura to be a credible witness. When confronted with the copy of the receipt dated 17th April 2013, she very honestly said it looked like their signatures but that she did not sign any document other than the one by the Justice of the Peace when they entered into the agreement.
6. The original of the receipt was not produced. Had the Claimants issued the document, I would have expected the Defendant to retain same. She would treat it as important documentary proof of the discharge of her obligations. She did not do so.
7. More fundamentally the question arose as to why in April 2013, long before this litigation commenced, why the Claimants would issue a receipt to their son-in-law, their agent instead of issuing it in the name of the Defendant. More importantly in my view, on the face of it the wording of the receipt did not reflect any notice to or reminder to the Defendant, that Ranbir Singh had been appointed their agent to collect, what for them must have been a substantial sum of money.
8. The receipt in my view was a concoction of the Defendant's to support what was confirmed on her cross-examination to be a preposterous case. Having closely examined the "receipt" and on my assessment of the Defendant's character and credibility I am inclined to believe, even in the absence of formal forensic evidence, that the signatures on the copy of the receipt are those that the Claimants signed on the agreement for sale, which may have been copied and affixed on that receipt. It also explains the Defendant's failure to produce the original. In any case I do not believe on a balance of probabilities that the claimants received the refund.
9. The evidence of Ranbir Singh did not impress in some aspects. His relationship with the Defendant who happens to be his aunt, involved it seems a few transactions for the sale of land and some alleged loans for not insignificant sums of money. There were no supporting documents. Some of

this was disputed by the Defendant. Some of these transactions I consider to be dubious and not fully explained but these were immaterial to my acceptance of Ranbir's evidence that he was not appointed the Claimants agent to receive the refund from the Defendant nor did he receive and pay over such to them.

10. I rejected the Defendant's evidence completely. The particulars of repayment which had been ordered alleged a first repayment of seventy thousand dollars (\$70,000.00) to the account of Ranbir Singh at the Eastern Credit Union.
11. When the Defendant was cross examined it emerged that what was being put forward was that on 9th November 2012 the very day that she received the Claimants' cheque for one hundred and thirty-two thousand dollars (\$132,000.00).
12. Just before I intervened, I specifically asked Counsel whether he understood that what the Defendant was now saying was that the first substantial installment on the refund was paid to Ranbir Singh on the day that she received the Claimants' cheque as payment of the purchase price. Her story was that she collected the balance of the purchase price and deposited it on 2nd November 2018, in the sum of one hundred and thirty-two (\$132,000.00) in a manager's cheque. Having collected same from the Claimants' she proceeded to the Eastern Credit Union where she deposited part into her account and part to repay the Claimants. According to paragraph (4) of her amended Defence she knew by the end of October 2012, that she had no title to the parcel of land she had agreed to sell. The obvious question was why accept a cheque after that at all but in any case why not simply return the Claimants cheque with all of the funds in tact. Why retain part of the money in her own account, why place some into Ranbir's account.
13. It was so preposterous a story, I addressed, Defence Counsel indicating my understanding of what the Defendant was setting up and how it was coming across to me – the exchange is set out here:

Mr. Ali (Counsel for the Claimant):

Ms. Sonnyram I am stating to you when you said that the cheque that you deposited for \$132,000.00 that you proceeded to transfer some to Mr. Ranbir Singh and

\$60,000.00 went to yourself, I am saying that that transaction at Eastern Credit Union resulted from you requesting Mr. Ranbir Singh to assist you with depositing the cheque for \$132,000.00, at your request that Mr. Ranbir Singh assisted you with depositing this cheque for \$132,000.00, is that correct?

A: Hello, he was there when the Claimant gave me the cheque, he was present in the car park waiting for me and he went with me to Eastern Credit Union

Court: Well, I don't understand, so the Claimant went with you with her cheque for \$132,000.00 when she could have just taken it back from you and said this transaction gone through?

A: No M'am the Claimant

Court: Was the Claimant there with the cheque to deposit into Eastern Credit Union?

A: No, no the Claimant wasn't at Eastern Credit Union, Ranbir Singh

Court: What car park you talking about?

A: Am

Mr. Ali: Ms. Sonnyram is it correct you say the First Claimant, Ms. Balmatee Mathura wasn't even talking to you, wasn't have any relation with you, but that is when, you say they were outside the bank issuing you this \$132,000.00 cheque and she is refusing to –you said it in this Court- she was refusing to take it back?

A: Exactly- when I told her I say I don't have

Mr. Ali: That transaction took place within 5 minutes 10 minutes from giving you the cheque?

Court: Do you understand this case now to be that on the day that this cheque was paid, and deposited that is the day for the refund, when the refund started?

Mr. Rahaman: Yes My Lady

Court: Does that make any sense to you?

Mr Rahaman: These are my instructions my Lady?

Court: Well it doesn't make any sense I have had enough of this? This is completely ridiculous? I don't understand how

anybody can be bringing a case that is so highly implausible that you tell these people that you can no longer complete a transaction, yet they gave you a cheque after you had taken that, for you to run through your account for what purpose, does that make any sense to you?

Mr. Rahaman: No please my Lady

Court: Sorry

Mr. Rahaman: I was also confused by it, but this was instructed to me

14. The cross examination of the Defendant had by that stage completely destroyed her credibility. I considered that in order to achieve the overriding objective, I needed to intervene to save valuable Court time. Further cross-examination would only have been necessary if the Claimant or indeed the Defendant had left me in any doubt as to the latter's credibility. If it was open to anyone to complain about the Court's intervention to stop the evidence at that time, it would have been the Claimant, not the Defendant. Her evidence in chief had been before the Court. Her credibility was being tested.
15. The power to control the evidence under Part 30 CPR includes the power to limit the time for cross examination where it is necessary and where it is done in furtherance of the overriding objective. There is no right in the Defendant to insist on cross examination or of extensive cross examination in the hope that such would salvage an unsalvageable case.
16. The determination of the issue which was before the Court effectively concluded the case in the Claimants' favour.

CAROL GOBIN
Judge