

IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY

CV 22 of 2016
Writ of Distress 11 of 2017

Solicitor General

15/06/18

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BETWEEN: Tonga Development Bank

Judgment Creditor

AND: 1 Young Farmers Federation Limited

2 Talosia Seluini

3 Siosifa Koloti Seluini

Judgment Debtors

AND: The Bailiffs' Office

Interpleader

BEFORE THE LORD CHIEF JUSTICE PAULSEN

Counsel: Mrs. F Vaihu for the judgment creditor
Crystaline Seluini in person for herself and for Daniel
Seluini, Tupou Seluini and Manavahe Seluini

Date of Hearing 8 June 2018
Date of Ruling: 11 June 2018

RULING

Bailiffs' interpleader

[1] This is a bailiffs' interpleader proceeding pursuant to s 13 of the Bailiffs Act. In issue is the ownership of certain appliances and household furniture seized pursuant to a writ of distress issued out of the Supreme

rec'd 14/06/18
HLC

Court in respect of the judgment obtained by the judgment creditor (TDB) against the above-named judgment debtors.

The background

- [2] TDB obtained a default judgment in CV 22 of 2016 against the judgment debtors on 15 November 2016 for TOP\$86,526.19 along with interest and costs.
- [3] On 2 November 2017, a writ of distress was issued by the Supreme Court commanding the bailiffs to seize any property of the judgment debtors and to sell the same by public auction. The total amount to be levied was TOP\$87,733.19.
- [4] On 9 March 2018 bailiff officers went to the property where the second and third judgment debtors are living at Kolomotu'a and executed a special seizure pursuant to s 8 of the Bailiffs Act of the following goods:
- (a) Refrigerator.
 - (b) Two sofas.
 - (c) Gas Stove.
 - (d) Table.
 - (e) Four double beds.
 - (f) Two single beds.
 - (g) Five dressers.
 - (h) Three tall boys.
 - (i) Twelve Chairs.

(j) Motor vehicle, Registration J8528.

[5] In accordance with ss 8(2) and (5) of the Bailiffs Act, the third judgment debtor signed an undertaking on Form 1.

[6] On 20 March 2018, Crystalline Seluini, Daniel Seluini, Tupou Seluini and Manavahe Seluini (the claimants) gave notice under s 12 of the Bailiffs Act claiming ownership of the goods seized and commencing this proceeding.

[7] The claimants are all children of the second and third judgment debtors but have no responsibility for the judgment debt.

[8] Prior to the hearing the claimants provided to the Court and TDB a significant number of documents to support their claim to ownership of the goods. At the opening of the hearing Mrs. Vaihu advised the Court that TDB:

(a) Accepts that Crystalline Seluini is the owner of the van (item j in paragraph 4 above); and

(b) Does not accept the claimants' title to the other items seized (items (a) to (i) in paragraph 4 above).

The witnesses

[9] Crystalline Seluini gave evidence on behalf of the claimants. She identified each item seized as owned by the claimants and explained how and when it was acquired. In the case of items that the claimants say they purchased or were gifted overseas she produced shipping, customs and quarantine documents and where items were purchased from merchants (overseas or in Tonga) she produced sales documents. I found Miss. Seluini to be an

entirely honest and plausible witness and have no hesitation in accepting her evidence in its entirety.

[10] Miss. Seluini was cross-examined only very briefly by Mrs. Vaihu and nothing resulted from that to make me doubt anything she had said in her evidence in chief.

[11] Mrs. Vaihu frankly and properly conceded that TDB knew nothing about the circumstances under which the goods seized were acquired and she did not call any witness from TDB to give evidence. She said that her client would rely on the evidence of the bailiff officer.

[12] Mr. Mosese Manufekai was the bailiff officer who executed the writ of distress. He gave evidence about the steps taken when the goods were seized. Understandably, he no personal knowledge of how or when or by whom the goods were acquired. He said that the goods were seized because they were found in the possession of the judgment debtors and that is the bailiffs' office's policy. Importantly, he supported Miss. Seluini's evidence in important respects.

Discussion

[13] The effect of s.109 of the Evidence Act is that the burden of proving that the judgment debtors are not the owners of the goods rests upon the claimants. The standard of proof is the civil standard of on the balance of probabilities. The claimants have discharged their burden for the following reasons:

- (a) As noted, I accept Miss. Seluini's evidence. She was a reliable witness;
- (b) Miss. Seluini's evidence was almost entirely undisputed;

- (c) TDB did not call any evidence to cast doubt on Miss. Seluini's evidence that the claimant's own the goods;
- (d) Miss. Seluini's oral evidence was supported with documentary evidence of purchase and/or shipment of the goods to Tonga;
- (e) The bailiff officer, Mr. Manufekai confirmed Miss. Seluini's evidence in important respects.

[14] The facts as I find them are as follows. The house from which the good were seized is a relatively new one that was built by the claimants for themselves on their mother's land in 2015/2016. The claimants provided invoices for building materials to confirm this and also insurance documents showing that the house is insured in the name of the claimant, Daniel Seluini. Consistent with this, the items seized were acquired in Tonga and New Zealand in June, July and August 2016 when the house was nearing completion and to furnish the house for the claimants' occupation.

[15] The judgment debtors had been living in another building on the same land until that building was damaged by Tropical Cyclone Gita on 12 February 2018. They then moved into the new house with their children. This explains their presence in the house when the writ was executed. Mr. Manufekai confirmed that there was another building on the land but he did not inspect it or go into it.

[16] On the day that the writ was executed the claimants were all at work and the judgment debtors alone were at home. However, Mr. Manufekai said that it was apparent to him that a number of people (not just the judgment debtors) were living in the house. The judgment debtors told him that the house and the goods belonged to the children.

[17] It follows that the judgment debtors' presence in the house and their apparent possession of the goods is explained in a manner that is consistent with the claimants' assertion that they, and not the judgment debtors, own the goods.

[18] The items seized were acquired by the claimants in the following manner:

- (a) Refrigerator. This was purchased by Tupou Seluini in August 2016 from Prema and Sons for TOP\$1,270. A copy of a tax invoice from Prema and Sons was produced which Miss. Seluini acknowledged had been requested recently. Miss. Vaihu put it to Miss. Seluini that if, as she said, this was a genuine cash sale there would have been no name on invoice. Miss. Seluini rejected that assertion and I do also. The form of the invoice has a place for the name of the customer to be inserted. The name inserted is Tupou Seluini. I have no reason to think that Prema and Sons would issue a false invoice.
- (b) Two sofas. These were purchased by the claimants' mother for them from a flea market in Auckland for NZ\$550 using the claimants' money. Miss. Seluini said that they had purchased furniture in New Zealand because it was less expensive to buy it there and ship it to Tonga. Consistent with this, she produced shipping, customs and quarantine documents which are in the name of the claimant, Manuvahe Seluini. The quarantine entry has a general notation for furniture.
- (c) Gas Stove. This too was purchased from Prema and Sons by Tupou Seluini. The costs was TOP\$670. This item was included on the same invoice referred to in paragraph 18(a) above.

- (d) Table. This was gifted from a relative in Glenn Innes and shipped to Tonga.
- (e) Four double beds. One bed was purchased from Furniture Warehouse in Manukau. A sales order was produced and the address for delivery was the address in Glenn Innes of the same relative who gifted the table. One bed was purchased from Redpath Furniture in New Lynn and an invoice was produced. I note that the invoice has the second judgment debtor's name as the customer but this is consistent with Miss. Seluini's evidence that the claimants' mother had acquired items in New Zealand for the claimants using their money which the claimants then shipped to Tonga. The remaining two beds were purchased at a garage sale in Pukekohe. I note that the customs documents (in the name of Manavahe Seluini) refer to used mattresses.
- (f) Two single beds. These were gifted by relatives in New Zealand and shipped to Tonga from New Zealand.
- (g) Five dressers. One dresser was purchased from Furniture Warehouse for which a sales order was produced. The others were purchased at the flea market at Avondale and a garage sale at Pukekohe. I accept they were purchased for the claimants and with their money. All were shipped to Tonga from New Zealand.
- (h) Three tall boys. One tall boy was purchased from Furniture Warehouse and a sales order was produced. One was purchased at the flea market at Avondale and one was gifted by a relative. I accept that they were all purchased for the claimants and with their money. They were all shipped to Tonga from New Zealand.

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- (i) Twelve Chairs. Six were gifted with the table by a relative and the other six were purchased at a garage sale for NZ\$30 each. I accept that they were all purchased for the claimants and with their money. All were shipped to Tonga from New Zealand.

The result

- [19] I am satisfied to the require standard that the claimants, and not the judgment debtors, own all of the items seized.
- [20] The claimants are successful. There shall be a declaration that they are the owners of the goods seized on 9 March 2018 pursuant to writ of distress 11 of 2017.
- [21] The bailiff's special seizure of the goods along with the third judgment debtor's undertaking (all pursuant to s 8 of the Bailiffs Act) are discharged.
- [22] The claimants were not legally represented and for that reason there shall be no order as to costs.

NUKU'ALOFA: 11 June 2018




O.G. Paulsen
LORD CHIEF JUSTICE