

IN THE MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 41 of 2003.

BETWEEN: NO FRILLS CAR RENTAL LIMITED

an independent budget system licence of
P.O. Box 349, PORT VILA, Efate in the
Republic of Vanuatu

Claimant

Counsel: Ridgway Blake Lawyers



**AND: GOVERNMENT OF THE REPUBLIC OF
VANUATU (VANUATU POLICE AND
MOBILE FORCE)**

Defendant

*Counsel: State Law Office, PMB 048
PORT VILA, Efate in the
Republic of Vanuatu*

Coram: Magistrate KEWEI KAWI-IU

Mr. MORRISON for the plaintiff

Mr. LOUGHMAN for the defendant

JUDGMENT

Plaintiff's claim is for the recovery of Vt508,451 for unpaid hire of motor vehicles supplied to Mr Holi Simon at his request.

The Claim

- 1). The Claimant is a local Vanuatu Company operating car rental business in the Republic of Vanuatu.

- 2). The Defendant is the Government owned Joint security force in the Republic of Vanuatu.
- 3). From or about 16th August 2002 to 17 September 2002, the defendant hired a vehicle from the claimant for an amount of Vt276,126. The defendant issued an LPO 260 001279 for payment of this amount but no payment was made.
- 4). On or about 17th September 2002, the defendant approached the claimant requesting extension for the period of hire to 4th October 2002 and for an additional sum owing of Vt232,415, which was agreed by the claimant.

Particulars:

Oral request by Holi Simon

- 5). The total sum owing to the claimant as at 4th October 2002 is Vt508,541 which the defendant has failed or refused to pay despite demand for payment made to the defendant by the claimant”.

Introduction:

It is not denied that Mr Holi Simon was Acting Commissioner of Police when he first entered into contract for the hire of motor vehicles. It is also not denied that he has on several occasions in the past hired motor vehicles from the claimant on arrangement similar to the present one. Further it is not denied that he hired motor vehicle from the claimant on dates and time as alleged in the statement of claim.

Defendant however denies any dealing with the claimant and further says the hire arrangement between Mr Simon and claimant was personal in nature otherwise not authorized and that Mr Holi Simon is personally liable for the cost of the hirage.

Claimant's Case

Claimant is a local Vanuatu Company operating car rental business. And says that several hires have been made over an extended period of time. Mr Steven Du Shan, the Manager of the Claimant's Company further says that

his company has had a close working relationship with the Police Force, making vehicle available at short notice and also changing vehicles when required with little or no notice. In support of this relationship he referred to past hires commencing on the 5th April ending 6th May 2002, ordered by Mr Michael Taun. Mr Holi Simon had in the past hired vehicle commencing 22 July and finishing 31 July. These hires have been paid for.

Consequently, Mr Holi Simon entered into a new hire arrangement commencing on 16 August to 17 September 2002, a total charge of Vt276,126 was incurred. Local Purchase Order (LPO) 260 001279 was issued but never presented for payment for obvious reasons. A further extension of the above hire from 17 September to 4 October was made at a cost of Vt232,415. Thus the amount of Vt508,541 as per the claim represent hire charges for periods 16 August to 4 October 2002 which has remain unpaid.

Defendant's Case

Defendant called one Arthur Colton, then Acting Commissioner of Police. This is the only witness for the Defence. He states that he did not authorize Mr Holi Simon to hire vehicles from the Claimant for periods 16 August 2002 to 4 October 2002. This is partly untrue because on the 16 August Mr Holi Simon was still the Acting Commissioner of Police. His appointment as Acting Commissioner of Police was revoked on 26 August 2002. Mr Arthur Colton was appointed Assistance Commissioner of Police on the 26 August 2002. The hire arrangement precede this date and had not been discharge. It is a continuous hire arrangement. Thus under this circumstances Mr Arthur Colton as the new Acting Commissioner of Police fail to take steps to end the hire agreement, thus allowing Claimant and Mr Holi Simon to continue the hire arrangement to the detriment of the Defendants.

However, Mr Arthur Colton says he became aware of Mr Holi Simon's hire of vehicles on the 26th August 2002 when it was reported to him. Furthermore, he states that he saw Mr Holi Simon using the hired vehicles. Moreover, in his evidence, he states that he advised Budget Rent a Car by letter that the hire was not authorized. He further says that a message/advise was also given to a secretary to inform Claimant not to hire vehicles to Mr Holi Simon and his friends.

When these evidences were considered with other evidences, there appears to be apparent inconsistencies. For example, against his evidence that he informed Budget Rent A Car end of August or early September not to hire car to Mr Holi Simon and his friends; called the Claimants Secretary, and wrote a letter to Claimant were all denied by the Claimant. The Secretary was not called to verify the existence of any advise to Claimant. Moreover, there is no correspondence to suggest that Claimant was advised not to hire vehicle to Mr Holi Simon and his friends. In his evidence in Chief, he says that he was aware of Mr Holi Simon driving hire vehicles as it was reported to him, and that he had called Claimant not to hire more vehicles to them. However, in cross-examination he denied any knowledge of Mr Holi Simon using hire vehicles. The question was put, "Did you ever remind Holi Simon and his two friends of not to hire vehicle?" He states in answer, "Had I known their acts I would have". Again the question, "Why not stop Mr Holi Simon from using the vehicle". Answer, "He operates from an unknown location". He again says that "I was not aware of Holi Simon using Budget Car". These answers clearly raised doubts as to the truth of his evidence.

Moreover, Mr Arthur Colton says he wrote a letter to Mr Du Shane (Claimant) with the advise not to hire any more vehicles to Mr Holi Simon and his friends, as the Police Department will not be responsible for payment. This letter was alleged to have been written in late August or early September. The existence of this letter is crucial as it goes to the root of the claim/liability. The time and date of the letter is important. Was it written before, during or after the hire periods had ended. If there was a letter, it implies that the Claimant had knowledge of the unauthorized hire by Mr Holi Simon. Thus Claimant's knowledge of the letter may disentitle him to claim any damages from the defendant. In order for the defendant to escape liability he must serve the notice if by letter to the Claimant. In this way Claimant will be put on notice that hire is not authorized and payment would not be forthcoming.

However, throughout the duration of the hire and subsequent enquires no reference was made to this letter, despite Mr Colton's insistence that such a letter existed. There is no reference whatsoever of the letter in all the correspondences of the parties either during or after the hire periods. The only time that any reference to a letter ever written to the Claimant was when Mr Arthur Colton gave his evidence in court. It was unfortunate that this evidence about a letter was not properly tested, after Claimant had closed his case.

Even after the hire had ceased investigation was conducted by Officers of the Defendant's Department, however, no reference was made to Mr Arthur Colton's letter. It is thus submitted by Claimant that this Court must treat the purported letter with skepticism and give no weight as to the truth of such claim. The reasons advanced in support of this submission are contained in paragraph 3,9 (pp 2,3) of the Claimant's Submission. Having examined all the evidence and submissions I am not satisfied that there was a letter of the nature as referred to in the evidence of Mr Arthur Colton.

Defendant's reliance on Exhibits D1, D2, D3, D4 and D5 are not helpful as these documents relate to events which occurred after the hire agreement had been completed. Exhibit D1 for example relates to the Appointment of Arthur Colton as Acting Commissioner of Police. His appointment was made on the 26 August 2002, however, the hire arrangements between Claimant and Mr Holi Simon ante date his appointment date. Exhibit D3 is a letter from Major W. Vira to the Manager, Budget Rent A Car acknowledging receipt of the bills for the hire of vehicles. It also purports to inform Claimant that the Defendant "will not be responsible for settling the bills whilst the Supreme Court does not yet hear the case for the officer concerned". The reason for the with holding of payment is irrelevant as the bills/costs incurred relates to specific services which has no relevance to the Supreme Court hearing. At the time this letter was written (22.10.02) the contract had been consummated and Claimant would be entitled to his just consideration.

Exhibit D4 is a letter addressed to Nick Soni Budget Office, Department of Finance. This letter was written by Arthur Colton, Acting Commissioner of Police. The letter was on instruction to Finance Department to revoke Inspector Samson Miller, appointment as Financial Delegate for the Police Department. Again, this had nothing to do with the Claimants claim. Any revocation would have come after the periods of the hire and does not in any way affect the Claimant's claim. At all relevant time he would still have authority to issue LPO's. Claimant would in any case regard him as having ostensible authority. To be effective Defendant must communicate the withdrawal of any authority to the Claimant and at the relevant time, not after the services had been provided. Exhibit D5 is therefore not relevant.

The Law

It is submitted for Claimant, even if he had ceased to be Acting Commissioner of Police Mr Holi Simon would be acting with apparent or ostensible authority which is "authority of an agent as it appears to others": under the doctrine of apparent authority the principal may be bound to third parties because the agent appeared to have authority, though as between principal and agent there was in fact no such authority granted and the normal consequences of such authority did not arise (*Hely – Hutchinson v Brayhead Ltd.* [1968] 1 Q.B. 549,583 cited in *Chitty on Contracts* 25th Ed. Vol. II, Sweet and Maxwell (London), para. 2231, p.22).

This apparent authority is determined objectively. Thus Claimant believes Mr Simon has authority as he had known him during past hires when Mr Simon was Acting Commissioner of Police. That while still holding this position he hired vehicles from Claimant, from 22 July to 31 July 2002. Payments for this hire had been paid via Local Purchase Orders (LPO). Claimant continue to hold the believe that Mr Simon has the authority when he made arrangements for further hires, without any knowledge of Mr Simon's lack of authority. Furthermore, the nature of the transactions are within the normal scope of Mr Simon's authority. Principals usually have a heavy burden to discharge in cases where agents acted within the scope of their authority. In the present case Mr Holi Simon as Acting Commissioner of Police would have authority to hire vehicles. It is one of the act or service that is generally obtained by civil servants, thus Mr Holi Simon would be seen as acting within the scope of his duty or authority. The scope in which the doctrine of apparent authority operates is wide enough and the present case would fall neatly within the doctrine.

Thus it is said of apparent authority that: "Where a person by words or conduct represents to a third party that another has authority to act on his behalf, he may be bound by the acts of that other as if he had in fact authorized them. The doctrine of apparent or ostensible authority applies to cases where a person allows another who is not his agent at all to appear as his agent, to cases where a principal allows his agent to appear to have more authority than he actually has, to cases where a principal makes reservations in his agents authority that limit the authority which such agent would normally have, but fails to inform the third party of this, and to cases where a principal allows it to appear that an agent has authority when such authority has in fact been terminated" (see *Chitty on Contracts* 25th Ed. Para

2247, p.30 cited above). Thus the scope in which the doctrine of apparent authority operates as illustrated above is wide and could encompass the arrangements of the Claimant and Mr Holi Simon thus binding the Defendant.

There is no evidence from the Defendant to show that this authority was withdrawn. Furthermore, it is the duty of the Defendant to communicate such withdrawal, if any, to the Claimant by some clear acts, for example, letter, public disclaimer notice or direct communication with Claimant. In the absence of such communication Claimant acted on the representation of the Defendant, either by words or conduct expressed or implied. Previous arrangements for payments were made by Local Purchase Orders issued by Mr Samson Miller. Mr Samson Miller was in-charge of Police Finance, and no doubt Claimant is familiar with this officer and the nature of his duty. His dealing with issuance of LPO as perceived by Claimant was proof of his authority to issue such document. Again no communication of any revocation of Mr Samson Miller's authority was given to Claimant so that he is put on notice as to non payment of the hire. Moreover, there is nothing illegal or irregular in the arrangement for hire and provisions of vehicles between Claimant and the Officers. Legitimate Services were provided by the Claimant pursuant to agreements and there is no reason why payment should be withheld.

By the rule/law of Agency in so far as Principals and Third Parties are concerned a third party may rely on the doctrine of "apparent authority", which is summed in this way.

"Where a person words or conduct represents to a third party that another has authority to act on his behalf he may be bound by the acts of that other as if he had in fact authorized them. This doctrine, called the doctrine of apparent or ostensible authority, applies to cases where a person allows another who is not his agent at all to appear as his agent, to cases where a principal allows his agent to appear to have more authority than he actually has to case where a principal makes reservations in his agents authority that limit the authority which such agent would normally have, but fails to inform the third party of this, and to cases where a principal allows it to appear that an agent has authority when such authority has in fact been terminated." (Chitty on Contract 25th Ed, Vol. II para. 2247 pp. 30-31, case citations omitted).

In the case *Freeman and Lockyer (a Firm) v Buckhurst Park Properties (Mangal), Ltd. & Another* [1964] 1 All E.R. 630, at p. 644, Diplock L.J. after explaining “actual” authority has this to say on “apparent” or “ostensible” authority:

“An “apparent” or “ostensible” authority, on the other hand, is a legal relationship between the principal and the contractor (third party) created by a representation, made by the principal to the contractor intended to be and in fact acted on by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the “apparent” authority, so as to render the principal liable to perform any obligations imposed on him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation. The representation, when acted on by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract”.

In summary, after considering all the evidence I find the following:

- a). Mr Holi Simon entered into a legitimate agreement for hire of Claimant’s vehicle on the 16 August 2002. At the time of this arrangement Mr Holi Simon was still in the employ of the Defendant and occupying a position of Acting Commissioner of Police. He would be acting in this capacity as an agent of the Defendant. In this circumstances he would be acting with actual authority.
- b). On the 26 August 2002 Mr Holi Simon’s appointment as Acting Commissioner of Police was revoked. Defendant although aware of Mr Simon and his fellow officers use of hire vehicles, did not inform the officers to stop the hire, nor did it took appropriate steps to inform Claimant of the changes in the employment of the officers and their authority to continue with the hire arrangement. Therefore in the absence of any notification, Claimant in good faith, continue to let his vehicles on hire to Mr Simon and his friends.


For all that has been said above, I am satisfied that the defendant is liable and therefore indebted to the Claimant. The following orders are made:

ORDER

1. Judgment entered for Claimant in the sum of Vt508,541.
2. Interest 5% p.a. from date of judgement.
3. Cost Sch 2 (items 1,3,4,7,8) Vt32,333.
4. Fee Vt8000
5. Liberty to appeal – Rule 16.28.

Dated at PORT VILA, this 13th day of August 2004.

BY THE COURT


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Senior Magistrate

