

HH 95-03  
HC 6351/02  
SECURITAS (PRIVATE) LIMITED  
versus  
R B CHAAMBA

HIGH COURT OF ZIMBABWE  
SMITH J,  
HARARE, 27 May and 30 July, 2003

Mr *Magwaliba* for plaintiff  
Mr *Njerere* for defendant

SMITH J: The plaintiff (hereinafter referred to as "Securitas") issued summons claiming from the defendant (hereinafter referred to as "Chaamba") \$276 195,50, being in respect of money received by Chaamba from a customer of Securitas which he unlawfully converted to his own use or, alternatively, lost due to gross negligence. Chaamba denies being indebted to Securitas. He claims that he has no knowledge of the loss in question that was suffered by Securitas. At the pre-trial conference the application by Securitas to increase its claim by \$10 000 to \$286 195,50 was granted.

Joseph Mudyariwa, the Finance Manager for Securitas, testified as follows. Chaamba was employed as the Credit Controller but is no longer an employee of Securitas. An amount of \$286 195,50 was not reflected in the company's books, although receipts had been issued therefor. The system that applied in the company was as follows. Chaamba had two receipt books, one for money received and the other for cheques. However, on some occasions he had given a receipt from the cheque receipt book when money was paid in. On 14 May 2002 he had issued two receipts - No. 24407 for an amount of \$138 414 and No. 24408 for an amount of \$137 781,50. However the money had not been banked. Two months later a customer had paid \$10 000 which Chaamba had signed for but he had not issued a receipt. Where payment is received by way of a cheque, the receipt should bear the cheque number. Receipt No 24406, dated 14 May, 2003, did show the cheque number. The customer was a foreign embassy. The receipt was cancelled and two receipts, No 24407 and No 24408, were issued in replacement thereof. The embassy, when contacted about the payment, said that it had paid in cash. The collection slip showed that \$10 000

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in cash had been collected from another customer on 22 July, 2002. Employees who go out to collect payments complete the collection slip and it is regarded as a receipt. Chaamba's signature appears on the collection slip. After money is received by Chaamba, in his capacity of Credit Controller, he is expected to count it and then issue a receipt. He then enters the amount in the Cash Deposit Book and inserts the name of the customer on the back of the duplicate deposit slip. A junior employee goes to the bank and deposits the money. The money that was received from the embassy, as shown on receipts No 24407 and 24408, was not entered in the Cash Deposit Book, because there is no deposit slip which bears the name of the embassy on the back of the duplicate slip. After Chaamba had filled in the deposit slip, and entered the customer's name on the back of the duplicate, it was his duty to hand the cash and the Cash Deposit Book to the banking clerk. After the money was banked, it was his duty to collect the book and ensure that the deposit had been made. There is no record in the books to show that the \$276 195,30 paid by the embassy, or the \$10 000 paid by another customer, was deposited. The finance policy of Securitas has been reduced to writing and the Policy Document has been distributed to every employee. Chaamba had been working for Securitas for 8½ years and held a senior position. The policy of the company is that cash is handled by one person and banked by another. If that practice is not followed, money goes missing.

Securitas keeps what is called the Customer Age Analysis. That is produced monthly and shows what each customer owes and whether the debt is wholly current or whether part is 30, 60 or 90 days in arrears. If the Customer Age Analysis shows that a customer is in arrears, it is the duty of the Credit Controller to contact the customer and ask why it has not paid. The Customer Age Analysis as at 30 June 2002 showed that the embassy was not in arrears. However the money it had paid in May was not shown as having been banked. The amount of \$276 155 had been deleted. The writing was that of Chaamba. The cancellation showed that the amount had been paid.

Mudyariwa said that he was the one who had picked up the fact that the money which was reflected as having been paid had not been deposited. He did not think that Chaamba had given the

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money to Dongo, who was the banking clerk, for him to bank it. If Chaamba had filled in a deposit slip for the money, he should have entered the embassy's name on the back of the duplicate. As regards the \$10 000, the customer had been contacted by telephone and she said that she had paid the money. He had then searched for the money but could not find it. Chaamba seemed to be very jittery and one could see that something was wrong. The police were then called in. Unfortunately Dongo had absconded and cannot be located.

During the course of his cross-examination, Mudyariwa gave the following responses. The money from the embassy had been receipted on 14 May 2002 and the other money on 22 July. These two instances were the only ones where cash had been receipted in the receipt book for cheques. Chaamba kept all the receipt books at all times. He had a safe in which he kept the books and the money that was received after the banking was done. The police had detained Chaamba and tried to locate Dongo, but without success. When the police advised that the charge against Chaamba had been withdrawn before plea because there was insufficient evidence, internal disciplinary measures were instituted. However, he never reported for duty. He just absconded. Whenever instructions were given to Chaamba they were in writing. That was the policy of the company. Dongo had been with the company for 6 or 7 years. When Chaamba was on leave in April 2002 Dongo had taken advantage of his absence and stolen some money. He had absconded about 25 May. It would not have been possible for Dongo to have stolen the \$276 195,50 because he would only have been able to get the money from Chaamba. Chaamba did not give him the money because no deposit slip had been made out for the money.

Chaamba then testified as follows. He joined Securitas in January 1994. In July 2001 he was appointed as Credit Controller. It was his duty to receive cash and cheques that were paid in and then to issue receipts. He kept the money and cheques in a safe. When he started working for Securitas he did the receipting and the banking. The banking was done the day after the payments were received. Usually he would endorse on the back of the cash deposit slip the amount he gave Dongo to bank. Sometimes he would write on a scrap of paper the amount to be deposited, because he did not keep the deposit books and so sometimes they were not available when he needed them. They were kept in a separate safe by Dongo. Dongo would give them to the ladies who did the data processing. Mudyariwa sometimes took the deposit books in order to check them. The cash receipt book and the cheque receipt book were very similar. He kept them in the same drawer. On the day in question, when the payment was received from the embassy, he pulled out one of the receipt books and made out a receipt. He did not realise at the time that he had taken the wrong receipt book. It was only later that he realized that he had made a mistake. It was not the first time that he had used the wrong book to issue a receipt. Whenever he did that he would correct the anomaly by making an endorsement in the cash deposit book. Receipt No 24406 had been made out by him. He had then cancelled that receipt because the person who brought the

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money said that the embassy had received two invoices, one for April and one for May, and he wanted two separate receipts. After cancelling receipt No 24406 he had made out receipts No 24407 and No 24408. He had put the money from the embassy in the safe until the next day, when it would be banked. The following day he took the money and gave it to Dongo for banking. He also gave Dongo a slip of paper showing the amount that had been received from the embassy and the deposit book. He had worked with Dongo since 1996 or 1997. He thought Dongo was related to Mudyariwa. It was Dongo's duty to reconcile receipts and deposits, not his. If he had tried to check the deposit books Dongo would have told him that that was not his responsibility but that of his uncle, Mudyariwa.

Chaamba said that Mudyariwa was a difficult person to work with. He would give instructions verbally, and later deny that he had done so. It was he, Chaamba, who had introduced the system of endorsing on the back of the deposit slip the name of the person who had made the payment. There were two reasons why he had used a separate slip of paper to record the money he had received from the embassy. Firstly, he could not find the deposit book. Secondly, he had been assigned to go and do something else immediately and so he could not wait to make the endorsement in the deposit book. Before Dongo had joined Securitas, he had been responsible for receipting payments and doing the banking. His duties also involved visiting the premises of customers to chase up payments. Unlike with the receipt books, the pages of the deposit book were not numbered. Accordingly pages could be removed and no one would notice it. There were times when Mudyariwa would give Dongo his own personal money to bank and they would use the same book that was used by Securitas. He sometimes saw Dongo tearing out a deposit slip from the book and when that was queried, he said that he was taking it for his uncle.

As regards the \$10 000, Chaamba admitted signing the collection slip when it was brought to him on 22 July. Around that time he was not spending all his time at the office. He had been sent to pick up a cheque and told not to return without it. Later he made out a receipt for the \$10 000 in another receipt book and had left the money in a cash box, which had not been opened until

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after he had been taken to the police station on 25 July.

Chaamba said that Dongo had reported for duty on 22 May. He gave him the \$276 195 he had received from the embassy. Later that day Dongo complained that he had a headache and then he did not come to work the following day.

Chaamba said that on the 15<sup>th</sup> of each month he and Mudyariwa would do an analysis of the accounts, using the previous month's Customer Age Analysis. That is why, after he gave Dongo the money he had received from the embassy, he endorsed on the analysis that the embassy had paid its account. He was shocked when he heard Mudyariwa say that he had taken the money for his personal use. It would not have been possible for him to leave the premises after work, taking the money. There was a security guard at the gate who searched those who were leaving, especially if they were carrying bags. Money had been deposited at the bank on 14 May. The money from the embassy was received on 15 May. He gave it to Dongo that same day for banking. He made a note on a slip of paper of the amounts concerned and expected Dongo to fill in the deposit slip and go to the bank the following day. He had not filled in the deposit slip because he was busy doing the analysis of accounts which was always done on the 15<sup>th</sup> of each month. He had been arrested on 25 July and released on 30 July. The police told him that there was not sufficient evidence to charge him. He returned to Securitas and was given a letter of suspension.

Under cross-examination Chaamba made the following responses. He wrote on a slip of paper the amount of money that was to be banked. Because he had counted the money, that would make it easier for Dongo. There had never been any problems previously. The note he wrote was to tell Dongo how much money he was being given and give a break-down of the different denominations. He saw nothing wrong in giving Dongo money without getting any form of acknowledgement. There was no proof that he had given the money to Dongo. He remembered on one occasion the secretaries who captured the data had complained that one deposit slip was not endorsed on the back with the name of the customer who had made the payment. The endorsement on the back of the deposit slip helped the secretaries and was also a control measure. The payment from the embassy had been made in cash but the receipt that was issued was from the cheque receipt book. It was not the first time that that had been done. On some occasions a cheque was received and a receipt from the cash receipt book was issued.

The claim by Securitas is based on the allegation that Chaamba either unlawfully converted the money in question to his own use or, alternatively, lost the money through gross negligence. Chaamba does not dispute that he received the two lots of money. He issued receipts for both of them. In the case of the payment by the embassy, he received cash but he issued a receipt from the

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cheque receipt book. Furthermore, he failed to fill in a bank deposit slip with the amount that was to be deposited and to endorse on the back of the slip the name of the customer who had paid the money. Although he says that he wrote on a slip of paper the amount that was to be deposited, that slip of paper, if it every existed, could not be produced. There is nothing to show that Chaamba gave the money to Dongo for banking. Therefore, even if Dongo could be located, it would not be possible to prove that he had taken the money into his possession. It would be his word against Chaamba's. The fact that Chaamba did not follow the normal procedures counts against him. Firstly, he used the wrong receipt book. Secondly he failed to complete the bank deposit slip and to endorse on the back the name of the customer. Then he failed to get any written acknowledgement from Dongo that he had been given the money.

Chaamba, as Credit Controller owed a duty of care to Securitas. There was a system in place to ensure that payments received from customers were duly receipted and then deposited. The Policy Document issued by the Finance Department of Securitas requires that cheque and cash deposit slips should be initially checked immediately the deposit books return from the banks and any errors/omissions should be reported immediately. There is no evidence to establish that Chaamba converted the \$276 195,50 to his own use. However he admits that he received the money. He did not complete a deposit slip as he was required to do. He says that he gave the money to Dongo to deposit. That being the case, it was his duty to check the following day to ensure that the money had been deposited. He did not do that. In fact he never checked to see whether the money had been deposited. The fact that the money was not deposited only came to light two months later, when Mudyariwa checked to see whether all payments that were receipted had been deposited. The failure by Chaamba to do the necessary checking, which it was his duty to do, amounted to gross negligence. That led to the money being lost. That being the case, he is liable to replace the money. Similarly, as regards the \$10 000, I consider that it was due to his failure to safeguard the money that it was lost.

It is ordered that the defendant pay the plaintiff -

1. \$286 195,50 with interest thereon at the rate of 30% per annum from 14 May 2002 to date of payment; and
2. costs of suit.

*Magwaliba, Matuta & Kwirira*, legal practitioners for plaintiff