

**IN THE HIGH COURT OF THE WESTERN PROVINCE HOLDEN IN
COLOMBO EXERCISING CIVIL JURISDICTION**

People's Leasing Company Limited.,
No. 67, Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

PLAINTIFF

Case No. HC/Civil/201/2008/MR

-VS-

1. Muthuthantrige Iran Fernando,
No. 182, G 7A,
Paluhenewatta,
Palannoruwa
Gonapola Junction
2. Muthuthantrige Saman Jayalath,
No. 3/374,
Gorakana,
Moratuwa
3. Muthuthantrige Mervin Joseph
Fernando,
No. 6/374,
Gorakana
Galle Road,
Panadura
4. Nandani LIyanage,

No. 182/G7A,
Paluhenewatta
Palannoruwa
Gonapola Junction

DEFENDANTS

BEFORE : Ruwan Fernando, High Court Judge

COUNSEL : Shanaka De Livera for the Plaintiff

M.D. Upali for the 1st & 4th Defendants

Chamantha Weerakoon for the 2nd & 3rd Defendants

WRITTEN SUBMISSIONS

FILED ON : 08.07.2015 (By the Plaintiff)

DECIDED ON : 15.02.2016

Ruwan Fernando, High Court Judge

The plaintiff instituted this action against 1st to 4th defendants (i) for the recovery of a sum of Rs. 3,517,673.80 together with interest on Rs. 2,546,380.48 at 38% per annum from 01.11.2007 until date of decree and thereafter with legal interest on the aggregate amount of the degree till payment in full; (ii) for the return and delivery in good order and condition of "THE PROPERTY" which is 01 Quantity Year 2000 Mitsubishi Canter bearing Engine No. 4D33H68918 and Chassis No. FE51CB563674 described in the schedule in the Lease Agreement or in the default of such return and delivery of a sum of Rs. 2,325,000/- and (iii) for costs.

After the defendants filed their answer the case was fixed for trial. The case proceeded to trial on 56 issues.

Objections of the Defendants to the production of Computer printouts of Accounts Ledger

When the case was taken up for further trial on 07.05.2015, the plaintiff led the evidence of Mr. J.C. Kotalawela, Accounts Executive who in the course of his evidence moved to produce true copies of computer printouts of Accounts ledger maintained by the plaintiff company as P11, P12 and P13.

The plaintiff sought to produce these documents in order to show that the statement of account marked P3 was prepared by the plaintiff company on the basis of the said computerized Accounts Ledger. The documents sought to be produced by the plaintiff had been certified by the said witness as true copies of the Accounts Ledger relating to the Lease Agreement in question.

The defendants objected to the production of the said documents on the following grounds:

1. There is no *prima facie* evidence such as the name and logo of the plaintiff company to show that the documents sought to be produced are documents of the plaintiff;
2. *Prima facie*, the computer documents sought to be produced are mere data said to have been obtained from a computer however, there is no evidence as to the relevancy of such documents to the case since no computer data sources (e.g. related links, information and terms) are not shown in the said documents;
3. The documents sought to be produced are not in respect of rentals paid by the defendants in terms of the Lease Agreement in question.

Nature of the documents sought to be produced in evidence- Computerized Accounts Ledger

I shall consider all three objections together since the objections are connected with each other. The evidence reveals that witness Chaminda Kotalawaia who moved to produce documents marked P11 to P13 is the Accounts Executive of the plaintiff's company.

It appears on the perusal of the proceedings dated 23.05.2012 that when the plaintiff sought to produce the said statement of account, the defendants insisted that the statement of accounts marked P3 should be allowed to be produced only subject to proof. (Vide- page 298 of the proceedings dated 23.05.2012). The plaintiff's witness Chaminda Kotalawala who was called to prove the document marked P3 clearly stated that he prepared the statement of accounts on the basis of the information available in the Lease Agreement and the data entered in the computerized Accounts Ledger of the company.

He further stated that generally the Accounts Ledgers are maintained by the company in the computer in the course of the normal business transactions and the documents sought to be produced as P11 to P13 are computer printouts of the data contained in the Accounts Ledger of the company in respect of the Lease Agreement in question (Vide- evidence at page 420-423 of the record).

The learned counsel for the 1st and 4th defendants whilst objecting to the production of the documents in question stated that *prima facie*, documents in question are computer printouts (Vide page 421 of the proceedings dated 07.05.2015). Accordingly, there is no dispute that the documents sought to be produced at the trial as P11 to P13 are computer printouts despite the fact that the same has been certified by witness Kotalawala as true copies.

Computerized Accounts Ledger as "Business Records"

The question that arises is whether computer printouts of the Accounts Ledger can be admitted in evidence in terms of the law of this country. According to the evidence of witness Kotalawala, the computerized accounts record keeping is the general practice of the plaintiff's company in the ordinary course of business instead of entries in books. Accordingly, such computerized Accounts Ledgers are "business records" containing data entered and kept in the course of a regularly conducted business activity by business employees of the plaintiff company in electronic form.

Applicability of Electronic Transaction Act No. 19 of 2006 to "computerized business records"

The question that arises however, is whether the business records such as Ledger cash book, accounts books, day book etc. fall within the meaning of the Electronic Transaction Act No. 19 of 2006.

The Preamble to the Electronic Transaction Act No. 19 of 2006 reads as follows:

"AN ACT TO RECOGNIZE AND FACILITATE THE FORMATION OF CONTRACTS, THE CREATION AND EXCHANGE OF DATA MESSAGES, ELECTRONIC DOCUMENTS, ELECTRONIC RECORDS AND OTHER COMMUNICATIONS IN ELECTRONIC FORM IN SRI LANKA ; AND TO PROVIDE FOR THE APPOINTMENT OF A CERTIFICATION AUTHORITY AND ACCREDITATION OF CERTIFICATION SERVICE PROVIDERS ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO."

One of the objectives of the Act is to promote public confidence in the authenticity, integrity and reliability of **data messages, electronic documents, electronic records or other communications**. (Vide-section 2 (d) of the Act).

The Electronic Transaction Act defines the basic rule that **no data message, electronic document, electronic record or other communication** shall be denied legal recognition, effect, validity or enforceability on the ground that it is in electronic form (Vide- section 3 of the Act).

Section 26 of the Act defines 'electronic document' which includes documents, records, information, communication or transactions in electronic form. The Act also defines the phrase 'electronic record' as a written document or other record created, stored, generated, received or communicated by electronic means. Accordingly, a record made by and stored in a computer is recognized as a document when sale transactions are simultaneously updated in the Accounts Ledger of the plaintiff company.

Accordingly, I am of the view that such business Ledger (e.g. Accounts Ledger) is an 'electronic record' within the meaning of section 26 of the Electronic Transaction Act No. 19 of 2006.

Admissibility of computer printouts obtained from Accounts Ledger under the Electronic Transaction Act No. 19 of 2006

The Electronic Transaction Act clearly states in section 22 that the Evidence (Special Provisions) Act No. 14 of 1995 shall not apply to and in relation to any data message, electronic document, electronic record or other document to which the provisions of the Electronic Transaction Act applies.

Section 21 (1) of the Electronic Transaction Act reads as follows:

"Notwithstanding anything to the contrary in the Evidence Ordinance or any other written law, the following provisions of this section shall be applicable for the purposes of this Act."

Therefore the rules of evidence relating to any information contained in a data message or any electronic document, electronic record or other communication as regards any business, trade or profession or other regularly conducted activities are governed solely by the provisions of the Electronic Transaction Act as set out in section 21 (1) of the Act.

Section 21 (2) of the Act provides for the admissibility of any information contained in a data message or any electronic documents or electronic records or other communication touching any fact in issue or relevant fact and complied, received or obtained during the course of any business, trade or profession or other regularly conducted business. It reads as follows:

“Any information contained in a data message or any electronic document, electronic record or other communication-

- (a) touching any fact in issue or relevant fact; and
- (b) complied, received or obtained during the course of any business, trade or profession or other regularly conducted activity,

shall be admissible in any proceedings.”

Accordingly, it is the Electronic Transaction Act applies with regard to the rules governing evidence in respect of the admissibility of electronic documents including electronic records such as business Ledger such as the Accounts Ledgers of the present case. Accordingly, it is the Electronic Transaction Act that applies with regard to the rules governing evidence in respect of the admissibility of any information contained in a data message or any electronic documents including electronic records such as business Ledger which is the subject in issue in the present case.

Accordingly, computer printouts of Accounts Ledger will be admissible as electronic records if they are kept in the course of a regularly conducted business activity as a regular practice of that business activity to make the record or data compilation by business employees.

I am of the view that there is no merit in the argument of the defendants that the computer printouts do not constitute identifiable marks of the plaintiff when such printouts constitute electronic records compiled, received or obtained during the course of any business, trade or profession or other regularly conducted activity. In the instant case, Witness Kotalawale clearly stated that the Ledger accounts is prepared electronically and kept in the course of a regularly conducted business activity and the statement of accounts P3 was prepared based on the data entered in the computerized ledger.

I am of the view that it is immaterial that the business record is maintained in a computer rather than in company books to create the ledger when it is common business practices to maintain computerized accounts ledgers which do not change the result of the business transactions. Therefore entries from plaintiff's accounts ledgers based on cash register receipts are admissible as business record in terms of section 21 (2) read with section 3 of the Electronic Transaction Act No. 19 of 2006.

The learned counsel for the 1st and 4th defendants further argued that the documents sought to be marked as P11 to P13 do not relate to accurate payments made by the defendants and hence, should not be produced in evidence. The learned counsel for the 1st and 4th defendants appears to have challenged the accuracy, genuineness and trustworthiness of the computer printouts obtained from the Accounts Ledger of the plaintiff company relating to the Lease Agreement in question.

Three Rebuttable Presumptions

Although any information contained in any data message or any electronic document, electronic record or other communication is admissible under section 21 (2), it has to be read with section 21 (3) of the Act. Under section 21 (3) of the Act, unless the contrary is proved, three rebuttable presumptions can be drawn with regard to the admissibility of the computer documents, records and other communication as follows:

1. the truth of information contained in a data message or in any electronic document or electronic record or other communication (**truth of the information**);
2. the said data message or in any electronic document or electronic record or other communication was made by the person who is purported to have made it; (**truth of the identity of the maker**);
3. any electronic signature or distinctive identification mark appearing in the said electronic document or electronic record or other communication was genuine (**genuineness of electronic signature or distinctive identification marks**).

By virtue of these rebuttable presumptions, when the party adducing the evidence presents any information contained in a data message or any electronic document or electronic record or other communication, the presumption of truth of information and genuineness and that it was made by the person who is purported to have made it would operate.

Accordingly, the weight to be attached to the *prima facie* admissibility of any information contained in a data message or any electronic document or

electronic record or other communication under section 21 (2) will depend on the question whether the presumptions of truth, genuineness and the fact that such evidence was made by the person who is purported to have made it, can be rebutted or not. Accordingly, any question of accuracy of the printouts, whether resulting from incorrect data entry or the inaccuracies of in any other type of business records or their genuineness can be rebutted on evidence and unless the contrary is proved the 3 rebuttable presumptions will operate.

It seems to me therefore that the Electronic Transaction Act has simplified the procedure relating to the rules governing evidence for the admissibility of any information contained in a data message or any electronic document, electronic record or other communication referred to in section 21 (2) of the Electronic Transaction Act as regards any business, trade or professional or other regularly conducted activity.

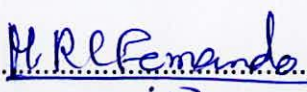
Accordingly, *the* presumption related to any information contained in a data message or in any electronic document or electronic record or other communication is only a rebuttable presumption and hence, they will only operate unless the contrary is proved.

However, the defendants cannot object to the production of these computer printouts obtained from computerized accounts ledgers **at this stage of the trial** on the basis that they are resulting from incorrect data entry or the inaccuracies of in any other type of business records or their genuineness. The defendants are however, entitled to rebut the presumptions relevant to the documents in question and show that they are resulting from incorrect data entry or the inaccuracies of in any other type of business records or

their genuineness in terms of section 21 (3) of the Electronic Transaction Act No. 19 of 2006.

Conclusion

Accordingly, all objections raised by the defendants to the production of documents marked P11 to P13 are overruled and the documents sought to be produced as P11 to P13 are allowed to be tendered as evidence.

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Ruwan Fernando

High Court Judge (Commercial)

15.02.2016