

IN THE SEYCHELLES COURT OF APPEAL

VILLAGE MANAGEMENT (PTY) LTD APPELLANT

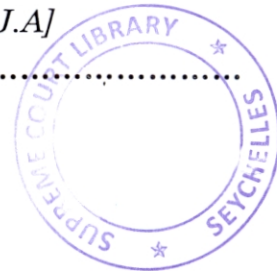
versus

ALBERT GEERS	1 ST RESPONDENT
VILLAGE DU PARADIS (PTY) LTD	2 ND RESPONDENT

Civil Appeal No: 42 of 1997

[Before: Goburdhun, P., Ayoola & Adam, J.J.A]

Mr. R. Valabhji for the appellant
Mr. P. Pardiwalla for the respondent



JUDGMENT OF THE COURT
(Delivered by Adam J.A)

The appellant's claim in the Plaint is as a tenant from April 1987 with the former owner and from 10 August 1993 to 15 October 1993 with the new owner, Second respondent, as a statutory tenant. The respondents in their Defence denied that the appellant was a lawful occupier paying rent but it was the Manager of the premises from 15 May 1987 to 15 May 1992. Also, the appellant was given notice to vacate on 15 May 1992 at the expiry of the Management contract and the respondents averred that at no time was the appellant a statutory tenant but a Manager. By the pleading in this manner the respondent accepted that the appellant was in occupation as a Manager and not a tenant. The letter of 28 September 1988 from the appellant to the previous owners and the letter of 22 June 1993 from the Second respondent to the appellant seems to be consistent with this. The appellant alleged that its Manager and workers were forced off the premises by the First respondent who had no right in law to do this and by so doing committed a fault and trespass for which he was liable in damages and the Second respondent was vicariously liable as employer and committant of the First respondent for the damages caused by the First respondent. The estimates of the total losses and damages suffered by it was SR1,882,000. The Second respondent's counterclaim was for breach of the

Management Agreement in the appellant not yielding up the premises inspite of notices to that effect. Its particulars of loss and damage were SR868,000.

Alleear CJ held that the action by the appellant was brought against the wrong respondents and accordingly dismissed it. He found that there was no basis in the allegation that the appellant's manager and workers were forcibly moved out of the premises; that the respondents did not grant a Management Agreement to the appellant and as far as it was concerned the respondents were a third party having nothing to do with the Management Agreement between the previous owner and the appellant which had expired over a year before. He accepted that the Second respondent bought the hotel Village du Pecheur with all furniture, fittings, equipments, fixtures and goodwill and if the appellant had any claim to those fittings, equipments and fixtures then its action ought to have been directed against the previous owner and not bona fide purchasers for value of the premises and that the respondents were not responsible for the non-renewal of the appellant's licence to operate and run the hotel Village du Pecheur and if the appellant had spent money on structural repairs it should have lodged a claim against the previous owner.

Mr. Valabhji submitted on behalf of the appellant that the Management Agreement was cancelled by the previous owner in a letter written on its behalf on 20 July 1992; that the appellant remained in occupation after the Management Agreement expired on 15 May 1992, and that it continued to make monthly payments of SR23000 to the previous owner and to the Second respondent. He argued that the Management Agreement having expired was irrelevant and it was not necessary in order to decide the case to make a finding as to its nature and legal effect even though the appellant maintained that it was a lease disguised as a Management Agreement. He also submitted that statutory tenancy must be preceded by occupation. He asserted that collusion between the Seychelles Licensing Authority and the respondents have caused the appellant to close down and lose its business.

Mr. Pardiwalla submitted on behalf of the respondents that the appellant's action was based on tort in that its staff was forcibly evicted from the hotel in breach of the appellant's right as statutory tenant for which it claimed

damages for the alleged resultant losses. There was no evidence led to support that the appellant's staff were forcibly evicted. On the contrary the evidence adduced was more consistent with the premises being vacated on their own accord. The appellant being in occupation only by virtue of the Management Agreement could not claim statutory tenancy which was conditional on the pre-existence of a lessor-lessee relationship which was lacking here and could only be applicable if the lessee who retained possession of the premises for the same purpose as provided in the original contract, that was to observe the express or implied terms in that contract. In this case the appellant could not carry out the purpose in the Management Contract that of running the business of a hotel since the Seychelles Licensing Authority had refused to renew the appellant's licence when it expired on 15 October 1993. The respondents' acceptance of SR23000 monthly payments was due to the appellant's refusal to vacate and thus the necessity to mitigate damages. The question of suffered losses by the appellant would not arise if the appellant was not a statutory tenant, it was not in lawful occupation or its staff were not forcibly removed. Mr. Pardiwalla also submitted that the Management Contract between the appellant and the previous owner was not assigned to the respondents and so they could not be held liable for undischarged contractual obligations, if any, of the previous owner, such as claim for addition of furniture and structural improvements which could only be claimed from the previous owner. The loss of business, or of hotel clients, as well as loss in respect of staff salaries or of social security was as a result of the non-renewal by the Seychelles Licensing Authority of its licence. In this context the Seychelles Licensing Authority wrote in February 1993 to the appellant about the issue of renewal of its licence. The appellant was asked to remove its stock from the hotel but it failed so to do. Even if there was unlawful eviction the appellant should have sought to mitigate its loss by removing the stock. He argued that in the evidence given by the witness of the appellant on the Management Contract shown to him the witness accepted that in it the appellant was managing the hotel and for this the appellant retained all the income and made monthly payments to the previous owner. The witness indicated that the agreement provided that the premises could not be used for any other thing except a hotel.

Mr. Valabhji referred to Article 1156 of the Civil Code of Seychelles. This provides:-

“In the interpretations of contracts, the common intention of the contracting parties shall be sought rather than the literal meaning of the words.

However, in the absence of clear evidence, the Court shall be entitled to assume that the parties have used words in the sense in which they are reasonably understood.”

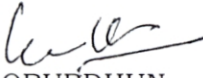
It could not be denied by the appellant that words like “mange”; “manager”; “management”; “business”; “hotel”; “salary”; “income”; “monthly payments” have been used in the Management Contract in the sense in which they are reasonably understood. In the absence of clear evidence, this Court shall be entitled to make such an assumption. The evidence from the appellant’s witness indicated the appellant as agreeing to manage the hotel for which the appellant retained all the income received from the management of the business and occupancy of the hotel and made monthly payments to the respondents. This does not reflect absence of clear evidence on the words used in the Management Contract. It follows that this Court must assume that the appellant entered into a Management Contract since there was nothing which could be described as clear evidence to the contrary of it being a tenancy with the appellant as tenant of the hotel owned by the previous owner, thereafter a statutory tenant of the previous owner and then a statutory tenant of its successor Second respondent.

We are satisfied that Alleear CJ was correct to find that the appellant was the Manager and not the tenant of the previous owner. On the alternative argument presented on behalf of the respondent by Mr. Pardiwalla we agree that the appellant failed to establish any fault or trespass on the part of the First respondent for which he and the Second respondent could be held liable. The loss and damages, according to the evidence, was due to the non-renewal of the appellant’s licence to operate the hotel by Seychelles Licensing Authority. The appellant did not provide any proof that the respondents were in any way

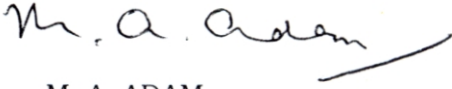
responsible for the non-renewal of the appellant's licence by the Seychelles Licensing Authority. Without this there was no nexus between the conduct of non-renewal of the licence and the resulting loss and damages suffered by the appellant.

Accordingly, the appeal filed by the appellant is dismissed with costs.

Dated this 4th day of *December* 1998.


H. GOBURDHUN
PRESIDENT


E. O AYoola
JUSTICE OF APPEAL


M. A. ADAM
JUSTICE OF APPEAL

Handed down