# IN THE SEYCHELLES COURT OF APPEAL

**GERARD LABLACHE** **Appellant**

**VERSUS**

**DESPILLY WILLIAM** **Respondent**

Civil Appeal No: 14 of 1999

*[Before: Ayoola, P., Pillay & Matadeen, JJ.A]*

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Mr. P. Boulle for the Appellant
Mr. P. Pardiwalla for the Respondent



## JUDGMENT OF THE COURT

*(Delivered by Pillay, J.)*

This is an appeal against a decision of the Supreme Court which entered judgment in favour of the plaintiff, now the respondent, who had claimed that the defendant, now the appellant, had acted in breach of Clause 7 of an agreement dated 31st July 1997 (Exhibit P1) by stopping, as from 8th November 1994, to send clients to use the bar and restaurant services of the respondent and awarded damages to the respondent in the sums of Rs.15,000/- as moral damages and Rs.51,000/- as loss of revenue monthly from 8th November 1994 to the 18th September 1998, with interests.

The trial Court also dismissed the counter-claim of the appellant who had alleged that Exhibit P2 had come to an end prior to 8th November 1994 as a result of its breach by the respondent in that the latter had, by his unilateral action, built his own bungalows and had failed to provide a 24-hour snack and bar room service in his restaurant.

The appellant is appealing against the judgment of the trial Court substantially on the ground that it had made wrong findings of fact and should have held on the evidence on record that it was the respondent who was the first to act in breach of Exhibit P1, with the result that the appellant was discharged under Article 109(3) of the Commercial Code Act from his obligations under the commercial contract.

Moreover, the appellant contended that if the respondent were found on appeal to have acted in breach of Exhibit P1, the case should be referred back to the trial court for an assessment of damages sustained by the appellant.

There were also other grounds of appeal challenging the damages awarded by the trial Court to the respondent and its finding of fact that the respondent had not failed to offer a 24-hour snack service in its restaurant, in breach of Clause 3 of Exhibit P2.

The respondent has cross-appealed, unnecessarily from our point of view, on the ground that, despite its wrong findings of fact, the trial Court was right at the end of the day in coming to the conclusion that it did.

Exhibit P1 is an agreement reached by the parties whereby, in anticipation of dissolving their partnership, which they did later, they decided who should own and manage the two separate businesses. The business in respect of a restaurant built on the land belonging to the partnership was to be owned and managed by the respondent and the business in respect of the bungalows built on the land belonging to the partnership was to be owned and managed by the appellant.

Clause 7 of Exhibit P1 is as follows:-

> "**7.** Upon the bungalows being operational the partners shall decide jointly on the following matters, which list is not exhaustive, concerning the joint aspects of the two businesses -
>
> (i) opening of bars in the bungalows and restaurant;
>
> (ii) the holding of dances and special nights in the restaurant;
>
> (iii) rates to be charged by the restaurant in respect of clients of the bungalows" (the emphasis is ours).

What are "the joint aspects of the two businesses" which have to be decided by the parties? They are to be gauged, in our opinion, from the clear intention of the parties. It is evident that the intention of the parties is to regulate such business activities of one of the parties which might adversely affect the business activities of the other. That manifestation and execution of such intention became apparent in an agreement reached, pursuant to Clause 7 of Exhibit P1, namely Exhibit P2, in which the parties agreed in Clause 2 that:-

> "The bungalows shall have no bar and restaurant but all clients shall utilise the services of the restaurant in those respects."

Such a restriction was placed squarely on the appellant. It is, in the same vein, the intention of the parties, according to the appellant, that the respondent should not build bungalows on the land where his restaurant was situated, i.e. on the property that formerly belonged to the partnership of the parties without a joint decision of the parties pursuant to Clause 7 of Exhibit P1. It was contended that before the construction of such bungalows by the respondent, which would adversely affect the business interests of the appellant, the respondent had a duty, pursuant to Clause 7 of Exhibit P1, to decide jointly on the matter with the appellant as it concerned the joint aspects of their businesses.

The evidence on record, however, showed that no such joint decision took place, as was the case with Exhibit P2, but that the respondent unilaterally decided to build bungalows on the land on which his restaurant was built.

As correctly submitted by learned Counsel for the appellant, the parties to a commercial contract, i.e. Exhibit P1, are bound to carry it out not only according to its express terms but also according to the consequences implied by fairness and practice and good faith – Vide **articles 1134 and 1135 of the Seychelles Civil Code** and **Vijay & Company v Ailee Recreations Ltd (1983) SLR 91**.

There is abundant evidence on record to show that, contrary to what the learned Judge found:-

(a) the bungalows were built long before the 8th November 1994 by the respondent and were on the land that formerly belonged to the partnership of the parties and on which now stood its restaurant;

(b) the new restaurant built and used by the appellant as from 8th November 1994 was on a different portion of land, i.e. it was not on the land that formerly belonged to the partnership of the parties and on which stood its bungalows.

Given the existence of Item (a) above, the appellant was justified, under Article 109(3) of the Commercial Code Act, to treat the commercial contract which had bound him to the respondent as discharged. Article 109(3) of the Commercial Code Act reads as follows:-

> "When a breach of a commercial contract occurs, the party innocent of the breach shall be entitled to treat the contract as discharged by operation of law.

> The rules of article 1184 of the Civil Code, insofar as they require that when a breach of contract occurs discharge thereof shall be obtained through proceedings, shall not apply to commercial transactions" (the underlining is ours).

It is interesting to note that Item (b) has nothing to do with "the joint aspects of the two businesses" of the parties since the restaurant was built on a plot of land that did not formerly belong to the partnership of the parties and was consequently outside the ambit of Exhibit P1.

We, however, refuse to accede to the prayer of the appellant that the matter be remitted to the trial Court for the assessment of damages sustained by the appellant since the Court found as a matter of fact that no loss had been borne by the appellant as a result of the operation of the bungalows built by the respondent, as conceded by learned Counsel for the appellant himself.

In the light of the decision we have reached, we are relieved from the task of considering the other grounds of appeal of the appellant.

For all the reasons given, we allow the appeal and dismiss the plaint of the respondent. The respondent is to pay the costs on appeal and in the Court below.

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| **E. O AYOOLA** | **A. G. PILLAY** | **K. P. MATADEEN** |
| **PRESIDENT** | **JUSTICE OF APPEAL** | **JUSTICE OF APPEAL** |

Delivered at Victoria, Mahe this 17 day of December 1999.