

IN THE COURT OF APPEAL OF SEYCHELLES

SWIFT ENTERPRISE LIMITED

APPELLANT

VS

NEVILLE DICK

RESPONDENT

SCA03/2011

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(Before: MacGregor, PCA, Fernando & Msoffe)

Counsel: Mr S. Rouillon for Appellant
Mr. N. Gabriel for Respondent

JUDGMENT

MSOFFE. J.A,

The Appellant is a limited liability company incorporated and is operating its business in Seychelles. At the material time the Respondent was the Appellant's client.

The Appellant's case before the Supreme Court of Seychelles (Renaud J.) was that on 24th October 2008 the parties signed an "acknowledgment of debt" in which the Respondent acknowledged owing the Appellant a sum of SR.65,000 for carrying out excavation works at the Respondent's property at Anse Boileau, Mahe, Seychelles.

The Respondent denied owing the Appellant the above sum of money and averred that the alleged acknowledgement was obtained through fraudulent misrepresentation.

The document subject of the alleged acknowledgement reads:-

ACKNOWLEDGEMENT OF DEBT

THIS IS TO CERTIFY THAT I MR. NEVILLE DICK OF ANSE BOILEAU OWES SWIFT EXCAVATION PTY LTD THE SUM OF SIXTY-FIVE THOUSAND RUPEES BEING EXCAVATIONS WORKS ON MY SITE AT ANSE BOILEAU.

*PAYMENT TO BE EFFECTED BY THE 7TH NOVEMBER 2008
AMOUNT DUE RS.65,000.00*

*(SD) N. DICK
MR NEVILLE DICK*

*(SD) J.MALOW
MR J. MALOW
SWIFT EXCAVATION*

Date 24/10/08

It was common ground at the trial that the above document was drawn up and typed out by the Appellant who gave it to the Respondent to sign .

The law in Seychelles governing the validity or otherwise of an “acknowledgement of debt” is provided for under Article 1326 of the Civil Code of Seychelles. The article reads in part thus:-

1. A note or promise under private signature whereby only one party undertakes an obligation towards another to pay him a sum of money or something of value shall be written in full, in the hand of a person who signs it, or at least it shall be necessary that apart from its signature he adds in his own hand the formula "valid for" or "approved for" followed by the amount in letter or the quantity of the things. This requirement shall not apply to tradesmen and employees acting within the scope of their trade or employment.

Under Article 1326 (supra) for an “acknowledgement of debt” to be valid it should conform to the formula set out in the Article. That was not complied with in this case. Here the Respondent did not write the document in full by his own hand nor apart from his signature did he add the formula ‘valid for” or “approved for” following the amount in letters. So, as per the Article this was not an acknowledgement of debt valid in law.

A close look at the acknowledgement of debt (Exh.P1) shows that it has the tenets of a contract. This is because of the use of the words “owes” and “being’ in which the Respondent certified that he owed the Appellant the sum of SR.65,000 for being excavation works carried out at his site at Anse Boileau. However, since the existence of a contract

between the parties was not pleaded as an alternative we will leave it at that. We say so because Section 71 of the Seychelles Code of Civil Procedure requires specific pleadings to be included in plaints. There should be a plain and concise statement of the circumstances constituting the cause of action and the matters which are sustaining the action . The relief claimed should also be stated. Since as a general principle the court will not grant a relief not sought for by the parties the possible alternative plea of a contract in this case cannot be considered.

Having said so, this case boils down to one main issue, that is the quantum of damages. Indeed this is reflected in the record of proceedings dated 10th June 2010 where Mr. Herminie told the Court:-

This matter is on quantum, we do not denying (sic) that certain work had been done but the sum which is being claimed is too excessive, so we can restrict ourselves to the issue of quantum.

Since there is no dispute that some excavation works were carried out at the Respondent's site the issue is whether the sum of SR. 33,000 awarded to the Appellant is reasonable.

The Appellant gave evidence as to how he calculated the cost of the works done at the Respondent's site . The judge analyzed the costs in relation to the works done. Generally speaking, the calculations he arrived at are reasonable. However, on the aspect of transporting the excavator

to the site there is reason to believe that he ought not to have rejected the total amount of SR.7,000/- claimed by the Appellant. The judge rejected the claim on the basis that no trailer was hired to transport the excavator. The evidence of Mr. Rodney Mathieu at page 26 of the record of proceedings is clear that bringing the excavator all the way down to Anse La Mouche would have a cost. If so, the judge ought to have taken into account this aspect of the evidence and award the whole amount of money to the Appellant for transporting the excavator to the site. In view of this, we think an additional sum of SR. 3,000,00/- would be reasonable in the circumstances. For this reason, adding this sum of money to that of SR.33,000 awarded by the court, we hereby find that the Respondent owes the Appellant a total sum of SR. 36,000.00.

The appeal is partly allowed with costs.

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J.H. MSOFFE
JUSTICE OF APPEAL

I concur:

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F. MACGREGOR
PRESIDENT

I concur:

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T FERNANDO
JUSTICE OF APPEAL

Dated this 31st August 20120, Victoria, Seychelles