

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram:** F. Macgregor (PCA), A. Fernando (J.A), M. Twomey (J.A)]

**Civil Appeal SCA 11/2017**  
**(Appeal from Supreme Court Decision CS 09/2013)**

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Jean Claude Lecoq

Appellant

Versu  
s

Mahe Charters Limited

Respondent

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Heard: 09 August 2019

Counsel: Mr. B. Georges for the Appellant  
Mr. C. Lablache for the Respondent

Delivered: 23 August 2019

**JUDGMENT**

**F. MACGREGOR (PCA)**

[1] The Appellant on 21 November 2008 entered into a written hire agreement with the Respondent whereby the Appellant leased the hire craft to the Respondent, together with other equipments for a period of twelve months.

[2] The hire agreement was to be renewed automatically at the end of every twelve month period, when the hire agreement came to an end, unless the Appellant or Respondent objected to such renewal. During the hire agreement, the Respondent was to pay the

Appellant seventy per cent (70%) of the net revenue, of the business, whilst the Respondent was to retain thirty per cent (30%) of the monthly revenue of the business.

[3] In February 2012, the Respondent is alleged to have illegally terminated the hire agreement causing the Appellant to take possession of the hire craft. As a result of the breach of contract, the Appellant suffered damages.

[4] The damages are particularised as follows;

- 1) Depreciation in the value of the hire craft due to failure to exercise of reasonable care in respect of hire craft SCR 1,000,000.00
- 2) Value of the Dingy which has never been returned to Plaintiff SCR 20,000.00
- 3) Loss of profit from non-payment of rental, in the terms set in the contract SCR 800,000.00

[5] The Court below after analysing the evidence found that the agreement was illegal and hence void. As such the Appellant could not seek to recover payments under an illegal contract. It is unenforceable.

[6] The Learned trial Judge also made the following remarks, that is that the lease agreement was tainted with illegality and thus unenforceable because it was part of a “scam” to enable the Appellant to avoid the licensing restriction applicable to non-Seychellois relating to boat charter business.

[7] It is against this background that this appeal has been lodged. The Appellant been dissatisfied with the judgment given in the Supreme Court on 23 March 2016 seeks this court to reverse the findings made in the Trial Court.

## **Grounds of appeal**

[8] The Appellant has three grounds of appeal and these are:

### **Ground 1**

The judgment of the court does not do justice to the matters pleaded, the evidence led and the justice of the case. It appears to be a hastily-written ruling by a judge who was in a hurry to deliver the judgment at the end of his contract.

### **Ground 2**

In the absence of any cogent evidence to that effect, the learned trial Judge erred in his finding that a non-Seychellois could not be the proprietor of a business in Seychelles without a licence. Consequently, his other findings are tainted with error.

### **Ground 3**

The learned trial judge erred in dismissing all the Appellant's claims on the basis that the contract was tainted with illegality. At least, he ought to have considered the issue of the claim relating to the reduction in value of the vessel during the period it was with the Defendant

[7] The Appellant at the hearing of this appeal espoused that all the three grounds of appeal are linked; therefore this court will consider them as one and proceed on that basis. For clarity purposes, the ground that was mainly pursued and argued at length was ground 3.

[8] After much argument in the hearing before us, the Appellants Counsel signalled to the court that he cannot claim profits from an illegal contract, hence those parts of his ground of appeal that deal with the claim for profits will not be pursued.

[9] He thereafter concentrated on the claim for the misuse of the boat which he argued conveyed obligations with or without the contract. We note that in paragraph [5] of the Appellants plaint in the court below, after pleading contract in its preceding paragraphs [3] and [4], the words “further in terms of the civil code, the Defendant was obliged to use reasonable care in respect of the hire craft and the equipment, including the Dinghy.

[10] The Defendant in his defence below in paragraph [4] of his statement of defence states “paragraph [5] is not admitted”.

[11] By virtue of section 75 of the Seychelles Civil Code Procedure which states,

*“The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff’s claim is not sufficient. Material facts alleged in the plaint must be distinctly denied or they will be taken to be admitted.”*

I find that the general denial is not sufficient and therefore, anything not denied is considered admitted.

[12] In paragraph [5] of the Respondents defence, he refers to the boat in May 2011 encountering major damages and breakdown and from October 2011 to February 2012, it encountered mechanical problems which rendered it unseaworthy for the operation of the business.

[13] The Appellant had testified that the boat was not handed over to the Respondent until the beginning of 2009. The boat remained in the possession of the Respondent until March 2012 (39 months).

[14] On conducting an evaluation of the condition of the boat in November 2009, it was reported that the boat’s value stood at SCR 1.6 million, which is very similar to the purchase price. However, according to Captain Pierre Grancourt’s 2012 report on the evaluation of the boat, he had highlighted that the boat had suffered significant wear. After reviewing the Captain’s testimony, it is clear that normal devaluation of a boat per

year would stand at 10% in regards to the engine and 5% in regards to the hull. However, if the boat is cared for and maintained, this devaluation would be less. Overall, the report found that the boat had depreciated in value to SCR 900, 000.

[16] Taking into account that 10% of this depreciation was due to normal wear and tear, the boat had still depreciated to SCR 810, 000 in value.

[17] The Appellant had testified that he used the boat twice a year, while Mr Rodney highlighted that this time accounted for a total of 2 months each year. During the period that this boat was leased to the Respondent, the Appellant had possession of the boat for a total of 6 months, while the Respondent had possession for 33 months.

[18] Therefore, when calculating the apportionment of blame, 15% of the blame is placed on the Appellant, while 85% of the blame lies with the Respondent.

[19] The Appellant has also sought damages of SCR 1, 000,000 for the depreciation in the value of the vessel. While the agreement between both the Respondent and the Appellant is void, I find that the Respondent still had a duty of care to ensure that the condition of the boat, which did not belong to them and was in their possession for 33 months, was maintained. However, within 3 years, and taking into account the 10% of fair wear and tear, the vessel in question had depreciated in value from SCR 1.6 million to SCR 810, 000.

[21] Therefore, in the case of full liability I would award SCR 810, 000 of damages for the depreciation in the value of the vessel.

[22] However, as I have apportioned 15% of the blame of the Appellant and 85% of the blame on the Respondent, the total amount payable to the Appellant is SCR 688,500.

[23] No order granted as to costs.

F. MacGregor (PCA)

**I concur:.**

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A.Fernando (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 23 August 2019