IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA), A. Fernando (J.A), F. Robinson (J.A)**]**

Civil Appeal SCA20/2017

(Appeal from Supreme Court DecisionCS59/2016)

Seychelles Commercial Bank
C/O John M R Renaud
Attorney-at-Law
Allied Building
Victoria, Mahe

Appellant

Versus

Felix Amelie
C/O Basil Hoareau
Attorney-at-Law
MS Complex
Revolution Avenue
Victoria

Respondent

Heard: 12 August 2019
Counsel: Mr. J. Renaud for the Appellant
Mr. B. Hoareau for the Respondent
Delivered: 23 August 2019

JUDGMENT

A. Fernando (J.A)

1. The Appellant (Defendant, before Supreme Court) has appealed against the judgment of the Supreme Court wherein the following orders had been made:

i. that the Defendant pays the Plaintiff (Respondent, herein) the sum of SR 50,000 moral damages.
ii. that the Registrar of Lands discharge the charges on Parcel J682 in favour of the Defendant.
iii. that the Defendant rectifies the negative credit information passed on to the Central Bank of Seychelles by recalling the same.
iv. that the Defendant pays the costs of this suit.

2. The Appellant has by way of relief sought from this Court a judgment reversing the findings and decision of the learned Trial Judge for want of evidence and proof, granting the prayers of the Appellant and ordering the Respondent to pay the Appellant costs of this appeal and in the Supreme Court.

3. Having abandoned appeal grounds 2.1 and 2.2, the Appellant had relied only on its third ground of appeal, namely ground 2.3 which reads as follows: **"**The learned trial Judge erred in not fully appreciate the interpretation and impact of Regulations b(1) and 10(1) of the Central Bank (Credit Information System) Regulations, 2012 that the Respondent knew of its existence.**"** (verbatim). It is my view that the above ground is unclear and does not raise a ground of appeal. The Appellant has abandoned its grounds of appeal 2.1 and 2.2 which were against the finding of the learned trial Judge that the Appellant's action is prescribed and the sums owing to the Appellant had been paid by the Respondent.

4. In its Skeleton Argument, the Appellant had appeared to clarify his ground 2.3 of appeal by stating that **"**the Regulations had no retrospective effect and the debt occurred before the promulgation of the Regulations…**"** The Appellant had gone on to state: **"**At the time the Appellant reported the information of the Respondent there existed arrears on the loans, irrespective whether they were covered by security or not.**"** The submission in the Skeleton Argument in relation to the distinction sought to be made that the Respondent personally and not his business, was sued before the trial court, does not fall under appeal ground 2.3 and therefore I shall not consider it.

5. The Respondent in his Skeleton Heads of Argument had set out his understanding of the Appellant's ground of appeal by stating that **"**the Appellant has argued that the Regulations do not have retrospective effect and according to the Appellant the debts – which were the subject matters of the suit – had occurred before the promulgation of the Regulations.**"**

6. Facts in Brief: The Respondent, who was the owner of parcel J 682 had obtained two loans from the Appellant. The two loans were secured by charges against the said property. The case of the Respondent before the trial court was as set out in the Plaint, that the Appellant had caused his name to be registered as a bad debtor with the Central Bank of Seychelles, when the right to demand any outstanding payment in respect of the loans had been prescribed under the Civil Code of Seychelles Act. It had also been the Respondent's case that despite repeated requests to the Appellant to cancel the charges against the property and cause the Central Bank to have his name removed from the "bad debtors' list the Appellant had illegally refused and failed to do so. The Respondent by way of relief had prayed for, among other things, for a declaration that the right of the Appellant to demand payment is prescribed, for orders that charges against the property be cancelled by the Land Registry, that the Respondent's name be removed from the **"**bad debtors**"** list kept by the Central Bank, and that the Appellant pay damages to the Respondent in the sum of SR 1,500,000 with interest along with costs.

7. The judgment of the learned Trial Judge had granted the relief prayed for, save for the total amount of damages claimed, as referred to at paragraph 1 above.

8. The Appellant had denied prescription in its Statement of Defence. It had been its position that the Respondent remains indebted and its security ought not to be removed. It had thus prayed for a dismissal of the Plaint. In view of the fact that the Appellant has abandoned its grounds of appeal 2.1 and 2.2 which were against the finding of the learned trial Judge that the Appellant's action is prescribed and the sums owing to the Appellant had been paid by the Respondent, the issues whether there was prescription or not, and whether the sums owing to the Appellant had been paid by the Respondent or not, do not arise for consideration in this case.

9. The learned trial Judge at paragraph 52 of her judgment had stated: **"**As I have pointed out above, the loans amounting to SR 100,000 and SR 73,000 have either been repaid or actions in relation to them prescribed. The charges in respect of these loans on the Plaintiff's property have to be discharged. No right of action in respect of those loans subsist.**"** There is no challenge to this finding in view of the abandonment of 2.1 and 2.2 of the grounds of appeal by the Appellant.

10. The only remaining challenge is in relation to the disclosure to the Credit Information System (CIS) owned and operated by the Central Bank, under regulation 10 of the Regulations, of the negative credit information about the Respondent. Regulation 10 of the Regulations provide: **"**(*1) A participating institution* ***shall inform*** *applicants*

*and guarantors that information relating to their liabilities will be provided to the CIS.***"** (emphasis added). It is clear from the evidence that both the Appellant's employees agreed that the Respondent had not been informed that this information would be passed on to the CIS. It was their belief that as a defaulter at the time of coming into force of the Regulations, the information could automatically be passed on. This is a flawed belief as regulation 10(1), referred to above, is in mandatory terms and made it obligatory to the Appellant to inform the Respondent. Further, in view of the abandonment of appeal grounds 2.1 and 2.2, the issue of any liabilities of the Respondent under credit facilities does not arise. On this matter we are in agreement with the learned Trial Judge who held: **"**… in the absence of any notice to the Plaintiff, information about his liabilities to the Defendant should not have been disclosed to the CIS and this has to be recalled by the Defendant.**"**

11. We therefore dismiss the appeal with costs to the Respondent.

A. Fernando (J.A)

I concur:. **…….** F. MacGregor (PCA)

I concur:. **.....** F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on23 August 2019