

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 15 (29 April 2022)
SCA 53/2019
(Appeal from CS 78/2017)

PATRICK GRANDCOURT

Appellant

(rep. by Mr. Guy Ferley)

and

SEYCHELLES PETROLEUM CO. (PTY) LIMITED Respondent

(rep. by Mr. Olivier Chang Leng)

Neutral Citation: *Grandcourt v Seychelles Petroleum Co. (Pty) Limited* (SCA 53/2019)
[2022] SCCA 15 (29 April 2022)

Before: Fernando, President, Twomey-Woods, Robinson, JJA

Summary: Contract-Breach of agreement for operation of a petrol station-non-payment of petroleum and gas products sold-reconciliation of accounts-expert witnesses

Heard: 13 April 2022

Delivered: 29 April 2022

ORDER

The appeal is dismissed. The Appellant, Patrick Grandcourt is ordered to pay to the Respondent, SEYPEC, the sum of SR 10,378,092.29, together with commercial interests from the date of this judgment and costs of the suit below and of this appeal.

JUDGMENT

TWOMEY JA

Background

- [13]. Patrick Grandcourt agreed with Seychelles Petroleum Company Ltd. (SEYPEC) in February 2017 to operate its petrol station at Grand Anse Praslin. He had been operating the petrol station under previous agreements for over thirty years with the same company. The venture did not go well. By July 2017 he was informed that he was in debt to the company in a sum approaching SR 14 million.
- [14]. Mr. Grandcourt testified that SEYPEC's representatives tried to eject him from the petrol station but after interventions from his MNA and the President, SEYPEC backed off.
- [15]. Several meetings between the parties took place, some of which were in the presence of Mr. Grandcourt's accountant, one Selwyn Philoé. As a result of these meetings, the debt originally calculated at SR13,714,654.35 was reduced to SR 10,378,092.29.
- [16]. Mr. Grandcourt asked for more time to check the accounts. He sought and received the assistance of a chartered accountant, one Sitraka Ramanantsoa. The latter using what he called "a holistic approach" concluded that the debt was only SR 1,490,675.73. Mr. Grandcourt admitted however that he had not had his accounts audited since 2010 and had not filed any tax returns.
- [17]. At the trial, Mr. Grandcourt's accountant, Selwyn Philoé, testified that at the first meeting in July 2017 with SEPEC he was able to show that the debt outstanding was SR 9,214,977.12 and at another meeting he attended in September 2017 after reconciling bank statements, cheque stubs and credit note transactions including payments for Liquefied Petroleum Gas (LPG) paid to SEPEC directly from Lemuria Hotel, he found that the sum owing was a sum in the region of SR 6 million. In a final report, he found that only SR 1,490,675.73 was owed. On the date set for Mr. Philoé's cross-examination, the court was informed that he had passed away. However, Mr. Ramanantsoa confirmed Mr. Philoé's figures.
- [18]. Sarah Romain for SEYPEC explained that Mr. Grandcourt's debt had accrued over previous agreements dating back to 2006. The new agreement in 2017 allowed him a higher operational margin of 85 cents per litre of petrol sold to allow him not only to meet

his regular payments for stock but to allow him to pay back his debt that had accrued over the years before the 2017 agreement. Still, cheques bounced and the debt mounted. A repayment schedule was made and ignored. A notice for Mr. Grandcourt to vacate the premises was finally issued in June 2017 and on 10 July after payment had not been made she went to the petrol station to ask him to vacate the premises. He did not move out and the debt continued accruing. Mrs. Romain stated that in just one week the supply of petrol to the petrol station from SEYPEC could amount to over SR 1 million.

[19]. Paul Mondon the Financial Officer of SEYPEC produced a list of cheques presented to the bank and a list of the cheques that were dishonoured. The dishonoured cheques amounted to SR2,590,233.25 million. The amount owing was arrived at after examination of the list of invoices raised by SEYPEC less amounts paid, taking into account the cheques that were dishonoured. The debt amounted to SR10,047,295.29

[20]. He disputed the accounts presented by Mr. Grandcourt as the latter's accountant had never requested any documents from SEYPEC and in his estimation produced his report without all relevant information. He also explained that Mr. Grandcourt's accountant had not taken into account the debt that had accrued since 2010 and had rolled forward. As regards the LPG, the credit notes for them were raised for Mr. Grandcourt's margin against the cost of the LPG but not for the full value of the LPG as had been done by Mr. Grandcourt's accountants.

The decision of the court *a quo*

[21]. In a decision dated 9 September 2019, the Supreme Court dismissed a pre-emptive action by Mr. Grandcourt against SEYPEC for his ejection from the latter's petrol station. Instead, the Court, having satisfied itself with the debt owed by Mr. Grandcourt, ordered him to pay SEYPEC on its counterclaim, the sum of SR 10,047,295.29 together with commercial interests and costs. Mr. Grandcourt was given two months to vacate the petrol station.

[22]. The Court in giving its reasons for its decision stated that Mr. Ramanantsoa had considered invoices paid between the years 2008 to 2017 when in fact Mr. Grandcourt had

acknowledged in writing in February 2017 that he owed SR 7,024,122.74. That debt had not been repaid and was carried over with the amounts that accrued under the 2017 agreement. The Court accepted Mr. Mondon's figures as being accurate. The debt that accrued after 2017 brought the amount owed to SR 10,047,295.29 as counterclaimed by SEYPEC.

The present appeal

[23]. From this decision the Appellant has appealed on four grounds namely:

- a. *The honourable judge erred in law and on the evidence in his finding that Rs-10,047,295.29 should be paid by the Plaintiff to the Defendant and further that the Plaintiff should vacate the premises, within 2 months and hand over vacant possession to the Defendant.*
- b. *The honourable judge wrongly assessed the evidence of the expert witness, both for the Plaintiff and the Defendant in that:*
 - i. *The Plaintiff's witness was an independent, objective and professional chartered accountant.*
 - ii. *The Defendant's witness was employed by the Defendant and was simply supportive of his employer's claim and he was already part of the team who quantified the claim in the first place.*
- c. *The Defendant's accounts were seriously flawed and unreliable and kept changing throughout the pertinent period and in court.*
- d. *The Defendant's claim was not consistent and therefore unreliable.*

[24]. At the hearing of the appeal, learned Counsel for Mr. Grandcourt, Mr. Ferley, informed the Court that he would not be proceeding with the ground concerning ejectment. From the remaining grounds of appeal, it would appear that the Appellant has two main contentions – first, the credibility of the Respondent's expert witness and secondly the accuracy of the Respondent's accounts. I shall consider these grounds in turn.

The credibility of the expert witnesses.

[25]. I must first of all address the issue of *expert witnesses*. An expert witness is defined as:

“a person who is a specialist in a subject, often technical, who may present his/her expert opinion without having been a witness to any occurrence relating to the lawsuit or criminal case.”¹

[26]. Other definitions are provided in the case of *Hedge Funds Investment Management Ltd v Hedgeintro International Ltd & 2 Ors*²:

“[33] ... Stroud’s Judicial Dictionary defines an expert as:

“one who has made the subject upon which he speaks a matter of practical study, practice, or observation; and he must have a particular and special knowledge of the subject” (2nd Edn 670, citing Dole v Johnson 50 N Hamp 454,).

[34] Black’s Law Dictionary defines an expert as

“A person, who through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder” (9th Edn, 661).”

[27]. In *Government of Seychelles vs Heirs Julienne*,³ Domah JA explained that

“[E]xpert evidence is evidence of a witness who may not have any personal knowledge of the case but is only apprised of the relevant objective facts from which he/she draws a scientific conclusion from his or her expertise.”⁴

[28]. Our Evidence Act, in this respect, provides:

“Expert opinion

17. (1) In any trial a statement, whether of fact or opinion or both, contained in an expert report made by a person, whether called as a witness or not, shall, subject to this section, be admissible as evidence of the matter stated in the report of which direct oral evidence by the person at the trial would be admissible.

...

(3) Nothing in this section affects the admissibility of an expert report under any other written law or otherwise than for the purpose of proving the matter stated in the expert report.

¹<https://legal-dictionary.thefreedictionary.com/expert+witness>

² (CC 4/2012) [2017] SCSC 88 (06 February 2017)

³ (SCA No: 07 of 2012) [2014] SCCA 18 (14 August 2014)

⁴ *Ibid*, at para 11.

(4) In this section "expert report" means a written report by a person dealing wholly or mainly with matters on which the person is or would, if living, be qualified to give expert evidence."

[29]. Expert evidence is tended after the 'primary facts' have been proven by the person with personal knowledge of them. It was in reliance on these provisions that the trial judge admitted the different reports but reserved for himself the assessment of the truth of the contents of each of the reports and the weight to be given to them.

[30]. With regard first of all, to the evidence of the deceased accountant, Mr. Philoé, I have noted the submissions of both parties: Mr. Chang Leng, learned Counsel for SEYPEC, has submitted that the evidence of Mr. Philoé is worthless and should be excluded as he passed away before he could be cross-examined. Mr. Ferley, learned Counsel for SEYPEC has submitted that notwithstanding his passing away before cross-examination, Mr. Philoé's evidence should be taken into account as that of an expert as he was qualified and had experience.

[31]. Mr. Philoé produced a report (P7) which is a schedule of sums paid by Mr. Grandcourt. Based on that schedule of payments and the sale of LPG to Lemuria directly credited to SEYPEC, he concluded that SEYPEC'S claim was incorrect and he produced instead a statement of adjustment (P8). He concluded that Mr. Grandcourt owed SEYPEC SR1,490,675.73. I note that the report does not indicate the rate of margin retention either for fuel or LPG. I also note that in his examination-in-chief he admits that the only information he had was from bank statements and cheque stubs.

[32]. In *Government of Seychelles vs Heirs Julienne*⁵, the Court of Appeal had this to say about the trial court allowing the admission of a report by the Government of Seychelles made by a witness who had left the country and who could not be cross-examined and in the absence of the patient's file to which it referred being produced:

"[12] ... [T]he report even if admissible, remained hearsay, in the circumstances, and could not be acted upon by the learned Judge.

⁵ Supra fn 3

[13] Nor could [the report] be regarded as expert evidence. It lacked the objective reliable facts from which a logical conclusion could be drawn. Whatever material facts it alluded to lacked independent support from a reliable record. It contained a number of factual information which were obviously in dispute...

[14] One added reason for the rejection of the report is that it was not subjected to cross examination. It is trite law that admissibility of a document is one thing and evaluation of what it contains is quite another. If it was admitted in the hope that the respondent would support its content with the hospital file and the file was not produced, the probative weight of the report is tenuous. It is trite that untested testimony goes to weight and not admissibility..."

[33]. The unfairness of accepting the contents of a report which has not been tested is obvious. In the present case, SEYPEC had no opportunity to demolish the report or even to query the facts upon which it was formulated. For example, as Mr. Philoe had admitted that the reconciliation he carried out was based on bank statements and cheque stubs, he could not be cross-examined about the effect of the dishonoured cheques on his figures. It is for this reason that such evidence although admissible is therefore viewed cautiously. The learned trial judge cannot be faulted for not relying on this report.

[34]. It is worth repeating that experts assist the court by complementing the judge's incomplete technical knowledge on a particular subject. Experts help with the fact-finding duty of the trial judge but their reports or testimony are never a substitute for the assessment of the evidence by the judge. It is the province of the trial judge to weigh the evidence of experts before him. the trial judge cannot be reproached for choosing the evidence of Mr. Mondon as being more credible than that of Mr. Ramanantsoa. The latter relied for his report on the documents already prepared by Mr. Philoé and I have said relied, on what he termed a "holistic approach". I am unable to understand what a holistic approach to accounts is, especially in the context of this case. I understand that this might refer to a big picture view of the affairs of a company. Such an approach is not accurate in terms of an actual debt owed and could not in any way rebut the evidence from SEYPEC's methodological account keeping.

[35]. It is Mr. Ferley's submission that notwithstanding, as Mr. Ramanantsoa was an independent witness and not an employee of one of the parties as was not the case with Mr. Mondon, his evidence was more credible and should have been accepted. I cannot agree with this contention. The credibility of a witness, whether he is an expert or not is not solely assessed on whether he is an employee of one of the parties or not. Mr. Ramanantsoa's report was, as stated in the report by himself, based on a reconciliation performed by Mr. Philoé who had passed away and could not be cross-examined. He admits in the report that:

"...[I]t was difficult to match all payments done against invoices due to incomplete record hence an analytical review was done" (sic)

[36]. It is difficult to see what credibility could be attached to the report, given the shortcomings highlighted. Again, the trial judge cannot be faulted for favouring the evidence of Mr. Mondon over that of Mr. Ramanantsoa.

[37]. In the circumstances, Grounds b (i) and b (ii) have no merit and are dismissed.

The accuracy of the debt owed

[38]. It is submitted by Mr. Ferley that SEYPEC's accounts were seriously flawed and inconsistent as they did not take into account the following matters: the sum first claimed was reduced after the meeting of 12 July 2017, the reconciliation performed by Mr. Philoé, the money paid directly by Lemuria into SEYPEC's accounts, the margins of profit as agreed which were not credited to Mr. Grandcourt and cheques paid were not reflected in SEYPEC's account.

[39]. Mr. Chang Leng has contended that Mr. Grandcourt did not produce any documents such as bank statements, cheque stubs and payment receipts to rebut the evidence of the debt, SEYPEC stated he owed. This was despite the fact Mr. Mondon had produced all SEYPEC's statements, invoices and summaries of cheques that had been presented and a list of those dishonoured (Exhibits D9 – D120). Mr. Ramanantsoa admitted he did not have sufficient records to provide an accurate report. It is Mr. Chang Leng's submission that SEYPEC's claim is accurate because of the records they kept. The only discrepancy

was that at the first meeting held in July 2017 and after the letter of claim was issued, a readjustment was done to reflect payments that had come in subsequently.

[40]. Moreover, the Appellant has not taken into account the fact that Mr. Grandcourt signed the 2017 agreement which it is alleged he breached. The evidence of the witnesses for SEYPEC is corroborated by the contents of the Fourth Schedule to the agreement, namely under the provision for margins. It reads as follows:

“The Company shall apply the following margins:

Bulk Fuel: Rs 0.85/litre. However, an amount of 0.50/litre will be retained by the company as payment towards the debt of Rs. 7,024,122.74 that was owed to the company, effective 01 November 2015...

[41]. This is an acknowledgement by Mr. Grandcourt that he owed SR7,024,122.74 at the commencement of the agreement in 2017. This is not reflected in any of the reports produced by his accountants. Neither are the percentages of the margins for fuel and LPG reflected in the accounts.

[42]. There was therefore no evidence in rebuttal of SEYPEC’s counterclaim apart from the allegation by Mr. Grandcourt that he owed less and the incomplete accounts produced by the two accountants.

[43]. In the circumstances, grounds a, c and d have no merit and are dismissed.

Decision and Orders

[44]. The appeal fails in its entirety. The decision of the Supreme Court is upheld.

[45]. I therefore order the Appellant, Patrick Grandcourt to pay to the Respondent, SEYPEC, the sum of SR 10,378,092.29, together with commercial interests from the date of this judgment and costs of the suit below and this appeal.

Dr. Mathilda Twomey-Woods, JA.

I concur

Anthony Fernando, President

I concur

Fiona Robinson, JA

Signed, dated and delivered at Ile du Port on 29 April 2022.