IN THE SUPREME COURT OF SEYCHELLES

M. SRINIVASAN CHETTY & SONS (PTY) LTD A COMPANY INCORPORATED IN SEYCHELLES **PLAINTIFF**

VERSUS

MR NADESAN PILLAY **DEFENDANT**

Civil Side No 257 of 2000

Mr. P. Boulle for the Plaintiff
Miss. L. Pool for the Defendant

JUDGMENT

Perera J

The Plaintiff was the lessor, and the Defendant the lessee of premises owned by the Plaintiff in a building known as *"Krishna Building"* in Victoria. The Plaintiff avers that the Defendant failed to pay the rental of Rs. 7000 per month for the period June 2000 to October 2000, amounting to Rs. 28,000. The Defendant in his amended defence, avers *inter alia* that the Plaintiff is holding a deposit of Rs. 7000 paid by him and that that sum was not refunded to him when he vacated the premises at the end of October 2000. He further avers that the leased premises which was used as a shop was extensively damaged on 18th May 2000 when a bus crashed into it. He also avers that he paid Rs.33,871.50 to the Seychelles Construction Company to repair the said shop and to resume his business. He alleges that the Plaintiff, as owner of the building collected the insurance claim without disclosing that the Defendant had disbursed money for the repairs. He therefore avers that any outstanding rent due to the Plaintiff must be set off from the deposit of Rs.7000 and the cost of repairs amounting to Rs.33, 871.50. He therefore counterclaims a sum of Rs.40,871.50.

The Plaintiff resists the counterclaim and avers that the Defendant unlawfully effected repairs without his consent or authority. The Plaintiff also denied the averment regarding a deposit of Rs.7000.

The Plaintiff produced the lease agreement (P1) which shows that the agreed rent was Rs.7000 per month and that the Defendant as lessee was required to pay a deposit of Rs.7000 upon signing the agreement, to be refunded without interest at the termination of the lease. However, consequent to a consent judgment entered by the Rent Board, the Defendant vacated the premises on 31st October 2000. The Plaintiff testified that on that day, the

Defendant owed rent for 5 months, but after deducting the deposit of Rs.7000, a sum of Rs.28,000 was due from him.

The consent judgment was entered by the Rent Board on 4th April 2000, and the accident in which the premises was damaged occurred on 18th May 2000. The Defendant had time till 31st October 2000 to occupy the premises. The Plaintiff by letter dated 18th May 2000 (P4) informed the Defendant not to undertake any repairs to the damaged premises, "*for public safety reasons*" and as there was a proposal to demolish the whole property. Further, by letter dated 23rd May 2000, the Ministry of Health also informed the Defendant that he should cease any activity to repair the premises "*for the safety of the clients*". (P5).

The Plaintiff admitted in cross-examination that the sum of Rs.7000 per month was being paid by the Defendant on a standing order with the bank on the 1st of every month. Hence when he first entered the premises in October 1995, he paid Rs.7000 as the deposit, and a further sum of Rs.7000 as the October 1995 rent. The Plaintiff also admitted that the Defendant paid rent regularly since October 1995 without deducting any amount for repairs he may have effected during the five year period, but stated that he stopped payment in June 2000 after the premises was damaged in the accident. He maintained that the Defendant effected repairs despite being informed not to do so and that hence he was not prepared to re-imburse him or to set off that amount from the rent due. He admitted receiving Rs.27,750 from the Insurance Company for the damage. (D3).

The Defendant in his testimony stated that he paid rent for June 2000, but did not pay for July, August, September and October 2000. Setting of Rs.7000 being the deposit, he claimed that he owes only three months rent. He produced his bank statement (D2) which shows that a sum of Rs.7000 was debited on a standing order. He stated that he consented to vacate at the end of October 2000 as he was constructing a shop at Glacis. He did not vacate earlier as he had no other place to go, and also as his children were attending the Belonie School. Moreover he had a Court order to remain until the end of October 2000. He stated that it was for these reasons that he repaired the premises incurring a sum of Rs.33,871.50 (D1). After the repairs were effected neither the Ministry of Health nor the Seychelles Licensing Authority objected to the reopening of the shop. The Defendant therefore counterclaim Rs.40,871.50, less the rent due from him.

On the basis of the evidence of the Plaintiff the Defendant paid all rents up to the end of May 2000, by a standing order with the bank. The bank statement (D^2) establishes that the June 2000 rent was paid by standing order on 2nd June 2001. In these circumstances the Defendant has discharged the burden of proving payment under Article 1315 of the Civil Code. Hence, rent was due only for four months. Therefore deducting the deposit of

Rs.7000, the Plaintiff will be entitled to Rs.21,000.

As regards the counter claim for repairs, the Plaintiff resists the claim on the basis of Clause 6 of the lease agreement which is as follows-

> "6. The lessee shall keep the premises in good and tenantable condition without damage to the structures thereon. *The Lessee shall be liable to replace in case of any breakage or damage to the glass."*

The defendant testified that the damage was to the front part of the shop, mainly to the windows and pillars.

Although the word "*glass"* has not been defined or specifically identified, it is not in dispute that the reference is to the front door and the plate glass fixed fronting the street. In terms of Clause 6, the lessee is responsible for any damage to the "*structure*" of the building, and the "*Glass"* in particular.

The premises in question were "*business premises"* constructed before the lease for the purpose of running a shop. Hence the "*structures"* would have been the brick and stone walls. The "*glass"* referred to was to the front door and the plate glass in front. Although in the case of ***Boswell v. Crucible Steel Co (1925) 1. K.B. 119,*** it was held that plate glass windows were part of the main walls of the edifice, and therefore of the structure, in the case of ***Holiday Followship Ltd, v. Hereford (1959) 1. W.L.R. 211*** it was held that the distinction in each case was a matter of degree, and that in the particular case, the plate glass windows were not, part of the "*main walls"* which formed the "*structure".*

In the instant case, it is clear that the parties intended that the "*glass"* was included as forming the "*structure",* and that in case of "*any breakage or damage*", the lessee would replace it. Mr. Boulle, Learned Counsel for the plaintiff submitted that this was a contractual obligation and hence should not be considered under delictual principles. However, should the words "*any breakage or damage*" be given a narrow interpretation so that even breakages or damages caused by persons other than himself, his servants or agents, or even his customers would oblige him to replace the glass.

Article 1156 of the Civil Code provides that –

> *"In the interpretation of contracts, the common intention of the contracting parties shall be sought rather that the literal meaning of the words. However in the absence of clear evidence, the Court shall be entitled to assume that the parties have used the words in the sense in which they are reasonably understood".*

Mr Boulle submitted that the lessee having agreed with such an onerous obligation ought to have insured himself against the risk. But admittedly, the plaintiff as owner with an insurable interest, had insured the structure of the building and received compensation for the damage from the Insurance Corporation. In these circumstances it would be a reasonable interpretation that the parties intended that the lessee would replace the "*glass*" only when he, or his servants, agents or customers cause any damage willfully or negligently. There was no nexus between the accident that caused the damage and the defendant's obligation.

The plaintiff vehemently maintained that he requested the defendant not to repair the damage as he was in any case proceeding to demolish the building for development of a shopping complex. The defendant had a legal right to occupy the premises up to the end of October 2000. Being a shop keeper by profession he was unable to trade and earn a living. He had no place to shift until his own building was ready. Hence it was a "*necessary repair*" within the meaning ascribed to it in Section 14(5) of the Control of Rent and Tenancy Agreements Act (*Cap 47).* In these circumstances even Section 14(i) (8) thereof permits the Rent Board to authorise the Tenant to effect urgent and necessary repairs and to deduct the costs against the rent. Hence the defendant acted prudently and within the conditions of the lease agreement.

Accordingly, I hold hat the defendant succeeds in his counterclaim of Rs.33,871.50. Thus deducting the sum of Rs.21,000 due to the plaintiff as arrears of rent, judgment is entered in favour to the defendant in a sum of Rs.12,871.50, together with interest and costs.

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A.R. PERERA
JUDGE

Dated this 13th day of October 2005