

**IN THE SUPREME COURT OF SEYCHELLES****MARIE-ANNE****POOL****PLAINTIFF****VERSUS****1. RENALD ALBERT****2. NORMA****ALBERT****DEFENDANTS****DEFENDANTS****Civil Side No 311 of 2005**Ms. K. Domingue for the PlaintiffDefendants absent/unrepresented**JUDGMENT****Gaswaga J**

The plaintiff, Marie-Anne Pool sued the defendants; Mr. Renald Albert and Mrs Norma Albert for failure to pay Sr. Rs25,000 representing rent arrears for the period December 2003 to September 2004. It should be pointed out at the onset that although the defendants filed a defence to this plaint, which therefore forms part and parcel of the pleadings before the Court, they did not turn up for the hearing of the case on the date and time agreed upon by all parties. There being no sufficient excuse or excuse at all for their absence the hearing of the matter proceeded ex-parte pursuant to **S. 65 of the Seychelles Code of Civil Procedure Cap. 213.**

From the pleadings it is not disputed that the plaintiff was and still is the owner of a house situate at Plaisance, Mahe and which house was at one point in time occupied by the defendants for a period of four to five years. Further, it is common ground between the parties that although there was no written tenancy agreements a sum of Sr. 2500 was being paid as rent every month to the plaintiff. Indeed the defendants admit part of the claim to the tune of Sr.13,500 which they are prepared to pay. What now remains in dispute is the difference between the claimed figure of Sr.

25,000 and that which is admitted of Sr. 13,500 as well as the month in the year 2004 in which the defendants left the house and lastly, the period of time for which rent was not paid.

I shall start by establishing the point in time at which the defendants left the house bearing in mind however, the holding in the case of **Tirant & Or Vs Banane SCA No. 49 of 1977** that a plaintiff is only entitled to that relief alleged in the plaint and proved at the trial. One witness, the plaintiff was called to testify. She informed the Court that on the 23/9/2004 her mother called telling her that the defendants had vacated the house unceremoniously leaving the keys with herself. Two days later the plaintiff visited the house with a Police Officer from Mont Fleuri Police Station and among other things she noted the above date in the Police statement (P4) which she wrote after the inventory. The Court is satisfied that until the 23/9/2004 when the defendants handed over the keys of the house to the plaintiffs mother they were still recognised tenants of the plaintiff and in full control and occupation of the house as such. It cannot therefore be held that they vacated the house in August 2004 as alleged in the defence.

In further testimony, it was deponed that at the beginning of the tenancy the defendants were paying the rent promptly, to the satisfaction of the plaintiff who did not insist on them making any initial lump sum deposit.

That after a while the plaintiff had to run after the defendants for two to three months to get them to pay rent arrears. Later on the defendants asked for the plaintiffs bank account number to deposit the money directly into her account since at that time they were preparing to start a business of operating a shop. In August 2003, when the plaintiff wanted to withdraw money to facilitate her intended overseas trip she noticed that deposits were not being effected as earlier agreed. The plaintiff took up the matter with the defendants who then deposited Sr. 5000 to cover two months rent up to November 2003.

These transactions are clearly reflected on the plaintiff's bank statement (P1) from Barclays Bank Account number 4351093 as follows; on 13<sup>th</sup> January 2003 the account was credited with Sr. 2500 to cover rent for the month of December 2002 while on the 21<sup>st</sup> April 2003 a deposit of Sr. 2500 was made in respect of the rent for the month of January 2003. Further payments of Sr. 2500 on 7<sup>th</sup> May 2003 and Sr. 5000 on 6<sup>th</sup> June 2003 were effected to clear rent arrears from February 2003 to April 2003. A sum of Sr. 17,500 for the period of May 2003 to November 2003 was paid in four different instalments on the 7<sup>th</sup> August 2003, 1<sup>st</sup> September 2003, 4<sup>th</sup> November 2003 and 15<sup>th</sup> December 2003.

No other money was paid into the account or to the plaintiff save for Sr. 1500 in February or March of 2004 handed over to the said plaintiff as cash meant to off-set rent arrears for the

month of December 2003. This left a balance of Sr. 1000 for December 2003. Empty promises were made to the plaintiff who kept shuttling between her home in Beau Vallon and Plaisance to meet and collect money from the defendants only to find a closed door. This went on from December 2003 until September 2004. A demand notice of 11/6/2004 (P3) by the plaintiffs lawyer was ignored while efforts by Police Officer, Sgt Jean Baptiste requesting the defendants to execute their obligation and pay all the rent outstanding yielded nothing. It is now very clear to the Court that the defendants were not regular payers of rent thus in respect of the plaintiffs house. An evaluation of all the evidence shows that rent arrears for nine months, as indicated herein above, is still owing and it stands at a total of Sr. 23,500 and not only Sr. 13,500 which is admitted in the defence.

It is true the plaintiff suffered mental stress as a result of the conduct of the defendants. She pursued the defendants several times for a period of over nine months, both during night time and day, made telephone calls to them and reports at the Mont Fleuri Police. She engaged lawyers to institute a suit in the Rent Board Tribunal before filing the present one and also had to effect a few repairs on the house to fix the damage caused by the defendants on the wiring system.

In all fairness I feel a sum of Sr. 2,500 as moral damages is suitable and should be awarded.

Accordingly, on the uncontroverted evidence the Court finds the plaintiff to have proved her case on a balance of probabilities and judgment is entered in her favour for the sum of Sr. 23,500 and moral damages of Sr. 2,500 together with costs of the case.

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D. GASWAGA

**JUDGE**

Dated this 3<sup>rd</sup> day of July 2006