

IN THE SUPREME COURT OF SEYCHELLES

Desire Vidot

Plaintiff

Vs

Planus Dental Technology (Sey)

Company Ltd Represented by

Mr. Gunter F. Epple

Defendant

2000

Civil Side No: 259 of

Mr. Pardiwalla for the plaintiff
Mr. Derjacques for the defendant

D. Karunakaran, J.

JUDGMENT

Pursuant to the judgment of the Court of Appeal dated 5th December 2003 - in Civil Appeal No. 10 of 2003 - this matter has been remitted to the Supreme Court for the assessment of damages, payable by the defendant to the plaintiff for breach of a contract, hereinafter

called the suit-contract.

In fact, the plaintiff originally instituted this action before the Supreme Court seeking a judgment,

- (i) *ordering the defendant to forthwith transfer plots T1652 and T1653 to the plaintiff; and*
- (ii) *ordering the defendant to pay the sum of Rs 414,000/- to the plaintiff in damages for the breach of the suit-contract.*

The defendant denied the very existence of the suit-contract and liability raising inter alia, a point of law in defence based on simulation and back-letters. The trial Court having heard the evidence and submissions of counsel on both sides, gave judgment in favour of the defendant, whereby the Court dismissed the suit upholding the contention of the defendant that the suit-contract was a back-letter and simulation. Being dissatisfied with the said judgment, the plaintiff appealed against it to the Court of Appeal. In its judgment, the Court of Appeal reversed the judgment of the trial court and held that the defendant was in breach of the suit-contract and liable in damages. Consequently, the Court of Appeal remitted the case to the trial Court for the assessment of damages, which the defendant is liable to pay to the plaintiff. Hence, this Court herein proceeds to assess and quantify the damages accordingly.

The background facts and circumstances that allegedly gave rise to the breach of contract by the defendant are as follows:

The plaintiff was at all material times the owner of a parcel of land at Takamaka, Mahe, known as Parcel No: T 1160, which may hereinafter be referred to as the "*parent parcel*". When this parcel of land was in the process of being subdivided into four plots namely, T 1651, T 1652, T 1653, and T 1654 the defendant-company agreed to purchase one of those plots that is, T 1654 from the plaintiff. The plaintiff also agreed to sell that plot T 1654 to the defendant for the sum of Rs700, 000/- In view of time-constraint and of the fact that the defendant company wished to proceed with the purchase, the parties agreed that the whole of the *parent parcel T1160* be transferred to the defendant, upon obtaining the Government sanction. And thereafter the defendant would transfer back to the plaintiff the three plots namely, T 1651, T 1652 and T 1653 having them excised from the parent parcel. This back-transfer was to be effected as and when the subdivision of the parent parcel was approved and registered.

In pursuance of the agreed transactions, the defendant obtained the Government sanction for the purchase of the parent parcel - T 1160 -from the plaintiff. On The 14th December 1995, the plaintiff in terms of the agreement transferred the parent parcel to the defendant as evidenced by the registered transfer deed exhibit P9. However, after subdivision, the defendant on his part transferred back to the plaintiff only one plot namely, T 1651 instead of the said three plots as agreed upon. According to the plaintiff, the defendant is therefore, in breach of the agreement in that, it failed and refused to transfer the remaining two plots namely, T1652 and T1653 to the plaintiff. As a result, the plaintiff contends that he suffered **loss and damages** as particularized and estimated below:

- | | | |
|-------|--|---------|
| (i) | Delay in transfer of the two plots
Rs 24,000-00 | |
| (ii) | Loss of use R200/- per day for 1700 days
Rs340,000-00 | |
| (iii) | Moral
Rs 50,000-00 | damages |

Total

Rs 414,000-00

Therefore, the plaintiff claims that the defendant is liable to compensate him in the sum of Rs 414,000-00 for the consequential loss and damage that arose from the breach of the agreement by the defendant. In respect of the said loss and damage, the plaintiff testified in essence as follows:

“I lost the property, which was to be transferred to me. It has affected me financially and morally. I claim Rs 50, 000/- for moral damages. I also claim Rs200/- per day for loss of use as claimed in plaint”

On the other hand, the defendant contends that the quantum of damages claimed by the plaintiff for loss and damage is unreasonable and exaggerated.

In fact, the plaintiff instituted this action alleging that the defendant refused to transfer plots T1652 and T1653 in breach of the contract. Thus, in effect, he sought a relief based on a specific performance of the contract. The Court of Appeal granted that relief and accordingly, ordered the defendant to transfer the said two plots of land to the plaintiff. The plaintiff thus, regained his property and eventually suffered no material loss in terms the subject matter of the contract, except the fact that there has been a delayed performance. Besides, the plaintiff did not suffer any direct pecuniary loss due to any specifiable damage, because of the delay occurred in obtaining the ownership of the said two plots. Therefore, he is entitled to recover damages from the defendant only for the breach and for consequential loss and damage, if he had suffered from loss of use and enjoyment of the said two plots during the intervening period.

In general, although damages are due for breach of contract, the defendant shall only be liable with regard to damage, which could have been reasonably foreseen or which was in the contemplation of parties, when the contract was made, provided the damage was not due to any fraud on his part vide article 1150 of the Civil Code of Seychelles. In the instant case, obviously there is no fraud alleged.

It is truism that every obligation to do or refrain from doing something shall give rise to damages, if the debtor fails to perform it vide article 1142 of the Civil Code Seychelles. Although in principle moral damages ought not to be awarded for breach of contract, in certain circumstances the Court may award such damages vide *Koppel vs. Attorney-General (1936-1955) SLR*.

Indeed, damages are intended to compensate the innocent party for the loss that he has suffered as a result of the breach of contract, not intended to punish the one, who caused the breach. In order to establish an entitlement to substantial damages for breach of contract the injured party must establish that:

- (a) actual loss has been caused by the breach; and
- (b) the type of loss is recognized as giving an entitlement to compensation; and

the loss is not too remote; and

- (c) the quantification of damages to the required level of proof.

Bearing all the above in mind, I now proceed to examine the claims and assess the quantum of damages awardable under each head, in the light of the evidence on record. For the delay in transfer of the two plots, the plaintiff claims damages in the sum of Rs 24,000/- As I see it, mere delay in the performance of defendant's obligation, by itself cannot give rise to damages unless the claimant proves that he suffered special damages. In the circumstances, I find the plaintiff is entitled to only nominal damages, for the breach. In my considered view, the sum of Rs5000/- would be fair and reasonable amount payable under this head.

For loss of use the plaintiff claims the sum of Rs200/- per day, for the two vacant plots. In fact, there is no evidence on record to show how the plaintiff could have been generating revenue at the rate of Rs200/- per day from those two vacant plots. In fact, there is no building or any

plantation on the plots in question. Undoubtedly, claim at the rate of Rs200/- is highly exaggerated and unreasonable and baseless and so I find. In any event, there is no evidence at all to establish the loss of use at Rs200/- per day. In the circumstances, I award a global sum of Rs25, 000/- for loss of use during the intervening period, following delayed performance of the defendant's contractual obligation in this matter. In my estimate, this global sum appears to be adequate, fair and reasonable in the given circumstances of the case. Finally, having regards to all the circumstances, I award a sum of Rs5, 000/- towards moral damages.

In the final analysis, therefore, I enter judgment for the plaintiff and against the defendant in the total sum of Rs35, 000/- with costs of this action.

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D. Karunakaran

Judge

This 27th day of March 2007