

# **IN THE SUPREME COURT OF SEYCHELLES**

**MAXWELL FOCK TAVE  
SUSAN FOCK TAVE**

**PLAINTIFFS**

**VERSUS**

**P&W ENTERPRISE**  
(Rep by Paul Jeannevol)

**DEFENDANT**

Civil Side No 40 of 2009

Mr. Gabriel for the Plaintiffs

## **JUDGMENT**

**B. Renaud ACJ**

The Plaintiffs entered their plaint on 19<sup>th</sup> February, 2009. They also entered a petition with motion supported by affidavit moving the Court to issue an interim injunction against the assets of the defendant.

The Defendant was served with summons, the Plaint and the Motion with the petition and Affidavits on 25<sup>th</sup> March, 2009 for Court appearance on 31<sup>st</sup> March, 2009 at 9.00 a.m. The Defendant failed to obey the summons and defaulted appearance. He did not give the Court any reason for his failure. Upon the application of the Plaintiff the Court granted leave for the matter to proceed ex-parte.

The Plaintiffs were at the material time the owners of Parcel No. J3050 situated at Bel

Ombre, Mahe, Seychelles and the Defendant was a licensed Building Contractor registered in Seychelles and represented by Mr. Paul Jeannevol of Anse Aux Pins, Mahe.

Although the Defendant is termed P&W Enterprise it is not a limited liability company but simply two persons who operated under a registered business name. One of the two persons is Paul Jeannevol.

On 14<sup>th</sup> August, 2008, the Plaintiffs and the Defendant entered into a Building Contract Agreement, hereafter referred to as the "Agreement" to construct a dwelling house on Parcel J3050 at Bel Ombre, Mahe, hereinafter referred to as the "house" for the quoted price of SR. 997,225.00.

By virtue of the Agreement, the works on the house would have started on the date of signature of the agreement and completed by the 1<sup>st</sup> April, 2009.

The Plaintiffs disbursed the sum of SR525,700.00 to the Defendant between the months of September 2008 and November 2008 for the purpose of purchasing building materials for the said house.

Despite such disbursements, the Defendant was unable to account for the said building materials, thus failing to honour the terms of agreement. Further, there had been no substantial work done on the house except for the demolition of part of the existing foundation of the building.

On 18<sup>th</sup> November, 2008, the first Plaintiff sent a letter to the Defendant demanding the refund of the amounts disbursed less the sum of Sr80,000.00 being the cost of demolition referred to above, thus claiming a net total of SR.445,700.00.

By letter dated 18<sup>th</sup> November, 2008 the Defendant agreed to refund all the monies that were given to him by the Plaintiffs.

Despite further requests including a further letter dated 10<sup>th</sup> December, 2008 from the Plaintiff's Counsel, the Defendant has failed, refused or neglected to pay the sum of SR445,700.00.

In a re-evaluation study made by Blackburn Consulting dated 27<sup>th</sup> January, 2009, the estimated costs for the works carried out on the foundation of the house together with the materials on site were valued at SR132,605.00. The Plaintiffs having deducted that last sum from their claim, the Defendant is therefore indebted to the Plaintiffs in the sum of SR393,095.00.

Based on the uncontroverted evidence of the Plaintiff, I am satisfied on a balance of probabilities that the Plaintiffs have substantiated their claims against the Defendant. I find that the Defendant owed the Plaintiff the sum of SR393,095.00 being the amount due for failing to fulfill an agreement to build the house of the Plaintiffs.

I accordingly enter judgment in favour of the Plaintiffs and against the Defendant in the sum of SR393,095.00 with interest and costs.

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B. RENAUD  
**ACTING CHIEF JUSTICE**

Dated this 27<sup>th</sup> day of July 2009