THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES

Civil Appeal No. 2 of 2010

(Arising from RB43 of 2007)

Intergrated Financial Services (PTY) Ltd Appellant

Versus

Aarti Investmetns Ltd Respondent

Basil Hoareau for the Appellant
S Rajasunduran for the Respondent

JUDGMENT

Egonda-Ntende CJ

[1] The appeal before me is against the decision of the Rent Board of Seychelles dated 12 January 2010. The decision is signed by Mrs Samia Govinden as Chairperson and H. Hoareau as a member. The Rent Board allowed the claim by the respondent (applicant before the Board) for eviction of the appellant and ordered him to vacate the premises in question within 4 months from the date of that order.

[2] The appellant was dissatisfied that with that decision and appealed to this court, citing 4 grounds of appeal. At the hearing of the appeal the appellant consolidated grounds 1 and 2 into a single ground to that the effect that the Board was not properly constituted in that the members who heard the evidence in the case were not the same members that made the decision announced in the matter.

[3] Grounds 3 and 4 were consolidated into one ground to the effect that the Board could not have been satisfied on a balance of probability that there was sufficient evidence that the agreement between the parties did not permit the appellant to sub lease the property in question.

[4] Mr. Basil Hoareau, learned counsel for the appellant, submitted that the Board when it was hearing evidence in this matter was constituted differently from the Board that delivered the decision of the Board. This rendered their decision invalid as the Board that delivered the decision was not properly constituted as not all the 2 members that made the decision had heard the evidence adduced in the case. He cited several cases in support of his submission. These included Ah-Thion v Molle [1973] SLR 378 and Dubel v Bossy [1973] SLR 385.

[5] Mr. Rajasundaran , learned counsel for the respondent, agreed with the legal principle argued by Mr. Hoareau that in order for the Board to be properly constituted the members of the Board that made the decision must the members who had heard the evidence in the case, which was the position in the case at hand. Mr. Rajasundaran submitted that the Board was properly constituted in so far as the 2 members who made the decision, Mrs S Govinden and Ms H Hoareau were the same members of the Board who had heard the evidence in the case.

[6] On the 24 April 2009 when this matter was heard the Board was constituted by the Chairperson, S Govinden, F Afif, member and O Delcy, member. On that day the case for the applicant (now respondent) was presented. These same persons constituted the Board on 28 April 2009 when the case for the respondent (now appellant) was heard. The

case was called on 5 May 2009 but no hearing took place. Present for the Board were the Chairperson, S Govinden and H Hoareau, member. At the same time the Board made an order that day that the constitution of the Board was to be Mrs Afif/Delcy and Chairperson.

[7] On the 13 November 2009 submissions were made to the Board. On that day it was constituted by O Delcy and F Afif, both members. The Order of the Board was read on 12 January 2010 and the Board that announced the decision was constituted by the Chairperson, S Govinden and H Hoareau, member. The Order bears the signature of these two officers of the Board.

[8] It is clear on examining the record that the H Hoareau, a member of the Board, who participated in making the decision in this matter was not present when the evidence in this case was received on 24 April and 28 April 2009. Neither was he/she present when submissions were made.

[9] Section 17(5) of the Control of Rent and Tenancy Agreement Act provides that two members of the Board shall constitute a quorum. Both counsel were in agreement on the legal principle that for the Board to be properly constituted the members who heard the evidence must be the members that render the decision. That is the gist of the decisions of this court in Ah-Thion v Molle [1973] SLR 378 and Dubel v Bossy [1973] SLR 385.

[10] For the guidance of Board, given what happened in the present proceedings before the Board, I find it necessary to repeat the guidance provided by Sauzier J, (as he then was) in Ah-Thion v Molle (Supra) at page 381.

> ‘For the guidance of the Board I set out the procedure which it should follow in future. This directive is to be read and interpreted as a whole.
>
> (a) The same members composing the Board for the purpose of any proceedings are to be present during the whole of the proceedings. The proceedings comprise the hearing of all the evidence, including the visits to the *locus in quo* and end when a vote is taken on the final decision of the Board.
> (b) If any member of the Board absents himself from any part of the proceedings he should take no further part in the proceedings.
> (c) Any member of the Board who has not been present throughout the proceedings should not participate in the decision.
> (d) The Board shall be composed of not less than two members who shall be present throughout the proceedings.
> (e) The decision of the Board should be recorded in the minutes and signed by the member who acts as Chairman at the sitting of the Board when the decision is made. A record should be made of the members who are present and participate in the decision by expressing an opinion. If the decision is arrived at by a majority vote that fact should be noted in the minutes. If the chairman uses his second and casting vote that fact should also be noted in the minutes.
> (f) The decision of the Board should be made public by the Chairman or the clerk announcing it at a public sitting of the Board. The fact should be recorded in the minutes. It is not necessary that at the sitting when the decision of the board is announced the board should be composed of the same members who participated in the decision, the reason being that the proceedings which lead to the decision terminated when a vote was taken on that decision.’

[11] As the constitution of the Board that heard the evidence was different from the constitution of the Board that rendered the decision of 12 January 2010 that decision was invalid and cannot be sustained. It is accordingly set aside and the matter remitted to the Board for re trial. Given the success of the first ground of appeal it is not necessary to consider the remaining ground which is now a moot point.

Signed, dated and delivered at Victoria this 31st day of March 2010

FMS Egonda-Ntende
Chief Justice