

# **IN THE SUPREME COURT OF SEYCHELLES**

**JOHN PHILIP DUBEL**

**PLAINTIFF**

**VERSUS**

**FOREST BUILDERS (PTY) LTD**

Herein Rep by its Managing Director

Marc Agrippine

**DEFENDANT**

Civil Side No 289 of 2009

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Mr. Wilby Lucas for the plaintiff

## **JUDGMENT**

### **B. Renaud J**

The Plaintiff by Plaintiff entered on 22<sup>nd</sup> October, 2009 is claiming for a judgment in the sum of SR156,880.00 from the Defendant allegedly for a breach of a construction contract.

The Managing Director of the Defendant Mr. Marc Agrippine was duly served with summons and Plaintiff on 16<sup>th</sup> November, 2009 for him to attend Court on 24<sup>th</sup> November, 2009. He failed to do so without any reason. Counsel for the Plaintiff applied for and was granted leave to proceed against the Defendant ex-parte. The hearing was fixed for 5<sup>th</sup> February, 2010 at 1.45 pm. On that date the hearing was adjourned to 20<sup>th</sup> April, 2010 at 1.45 pm.

The wife of the Plaintiff testified on behalf of the Plaintiff by virtue of a Power of Attorney (**Exhibit P1**). She was fully aware of all the circumstances in connection with this suit as here husband was undertaking the construction of their house and all matters were jointly discussed between herself and her husband.

The Plaintiff was a customer and a client whereas the Defendant was and is a Building Contractor licensed to operate in building and civil engineering contractors. By a written agreement dated 12<sup>th</sup> December, 2007 (**Exhibit P2**) duly signed by the Plaintiff and the

Defendant Company. The Defendant agreed to construct a 3 bedroom house on land parcel C.5492 belonging to the Plaintiff situated at Les Canelles, Mahe, for the sum of SR400,000.00.

It was a term and condition of the said agreement that the Plaintiff will pay the agreed sum of SR400,000.00 to the Defendant who was to provide the materials and labour for the construction of the house. It was a further term and condition of the agreement that the mode of payment would be by 7 installments subject to the completion of each stage of the project as per a schedule of payment annexed to the agreement. The agreement also provide for the duration of the project which was agreed to be 8 months for the completion of the house.

On 12<sup>th</sup> December, 2007, the Plaintiff paid to the Defendant the first installment payment of SR100,000.00 by cheque in acknowledgement of which the Plaintiff received a receipt. A copy of Barclays bank cheque in the sum of SR100,050.00 is **Exhibit P3**.

The Defendant started clearing the site in early January, 2008, but no construction works took place.

The Defendant gave the Plaintiff several excuses why construction works could not start, citing the extra cost to purchase steel reinforcement bars. The Plaintiff was obliged to make another extra payment of SR10,000.00 on 28<sup>th</sup> March, 2008.

On 30<sup>th</sup> April, 2008 the Plaintiff paid the Defendant another sum of SR6,800.00 towards the cost of the steel bars. **Exhibit P4** is a receipt for that sum.

The Defendant subsequently never start any construction works but by a letter dated 17<sup>th</sup> June, 2008, the Defendant claimed from the Plaintiff an extra sum of SR55,000.00 on the basis of the rapid increase of the costs of building materials. The Plaintiff refused to accede to that demand of the Defendant.

The Plaintiff wrote twice to the Defendant in an attempt to get the performance of the agreement. The letters are dated 23<sup>rd</sup> June, 2008 (**Exhibit P5**) and 22<sup>nd</sup> August, 2008 (**Exhibit P6**).

The Plaintiff complained formally to the Consumers' Protection Unit by a letter admitted as **Exhibit P7**.

The Plaintiff issued a letter of demand on the Defendant on 23<sup>rd</sup> June, 2008 (**Exhibit P8**) by which the Defendant was notified of the termination of the agreement.

The Plaintiff claimed to have suffered loss and damage arising out of the matters pleaded which are particularized as follows:

1. Advance payment in the sum of	-SR121,800.00
2. Moral damage	<u>-SR 35,000.00</u>
Total	-SR156,000.00

On the basis of the uncontroverted evidence the Plaintiff has substantiated his claim against the Defendant on a balance of probabilities and is therefore entitled to the judgment prayed for.

I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the total sum of SR156,000.00 with interest and costs.

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B. RENAUD

**JUDGE**

Dated this 15<sup>th</sup> day of October 2010