

## **IN THE SUPREME COURT OF SEYCHELLES**

**GILBERT LESPERANCE**

**PLAINTIFF**

**VERSUS**

**WILFRID RICHMOND**

**DEFENDANT**

Civil Side No 430 of 2006

.....  
Mr. FA lly for the Plaintiff

Mr W. Herminie for the Defendant

### **JUDGMENT**

**B. Renaud J**

On 27<sup>th</sup> November, 2006 the Plaintiff entered a Plaint praying this Court to order the Defendant:

- (a) To specifically perform an agreement; and
- (b) Restraining the Defendant by an order of injunction from blocking the way;
- (c) To pay him the sum of SR240,000.00 with interest and costs
- (d) And any other order that the court deems fit in the circumstances.

It is not in dispute that the Plaintiff is the owner of Parcel PR1266 at Cote D'Or, Praslin and the Defendant is the owner of the adjoining Parcel PR1269.

The pleadings of the Plaintiff are that, as per an agreement between the Parties, the Defendant agreed to give up a width of one metre of his land to the Plaintiff.

The one metre width on the Defendant's property had already been demarcated by the Planning Authority.

The Defendant is now refusing to allow the Plaintiff to build his road as per the agreement. The Defendant had since the 4<sup>th</sup> of July, 2006 blocked the access to the Plaintiff's land and the latter cannot use his motor car which is parked inside his property.

The Plaintiff pleaded that unless by order of this Court ordering the Defendant to perform the agreement and restraining him by an order of injunction restraining him from blocking the way the Defendant will continue to do so and this highly prejudicing the right of movement of the Plaintiff.

The Plaintiff claimed that by reasons of matters above-mentioned he has suffered loss and damage for which, according to him, the Defendant is liable to make good as follows:

(i)	Cost of alternative means of transport	10,000.00
(ii)	Breach of agreement	150,000.00
(iii)	Moral damage	<u>80,000.00</u>
		<b>240,000.00</b>

Following a request for further and better particulars from the Defendant, the Plaintiff replied that:

- the agreement is in writing and a copy is attached to the pleadings.

- it was in or around April, 2003, that the one metre width was agreed upon and it was a person by the name of Ah-Kong of the Planning Authority who demarcated it on or about 13<sup>th</sup> June, 2005. A copy of the demarcation plan was supplied by the Plaintiff.
- the Defendant is refusing to allow the Plaintiff to build his road by himself or caused by himself the erection of brick along part of the right of way.
- how this refusal took place, will be further given in evidence.
- the access to the Plaintiff's land was blocked by the Defendant or caused by the Defendant by the erection of brick along part of the right of way.
- the motor vehicle belongs to the Plaintiff and it is parked in Plaintiff's garage.
- the Defendant will indeed be liable to restore the Plaintiff's right of way by removing the obstruction as per the agreement entered into by and between them.
- the Plaintiff's claim is contractual.

In his Statement of Defence the Defendant averred that his property was never demarcated as alleged or at all. He also averred that in the Plaintiff's answer to the Defendant's request for "further and better particulars" a site layout was provided entitled "Proposed subdivision of parcels PR1269 & PR1458 a property belonging to a Mr. Lester Robert.

The Defendant also averred that he did not enter into an agreement with the Plaintiff whereby the Plaintiff could build a road on the Defendant's property or any agreement at all. A copy of a document purporting to be "an agreement" was served on the Defendant in answer to the request for further and better particulars. The Defendant denied that he ever entered into such agreement with the Plaintiff and puts him to strict of producing the original

of said “agreement” as opposed to what can best be described as a “cut and paste computer generated document.”

The Defendant further averred that he has not blocked the access to the Plaintiff's property as the Plaintiff has a clearly demarcated access reserve, PR 2524 between PR2525 and PR1458. In further answer thereto the Defendant averred that he has every right to erect a wall on his property as same does not obstruct the Plaintiff's access road.

The Defendant added that as far as he is concerned there was an issue of a disputed access road between the owner of PR1458, Mr. Lester Robert and the Plaintiff. The Defendant is not therefore liable to the Plaintiff for any breach of agreement or any other breach of whatsoever nature or at all.

The Defendant averred that he did whatever he could to assist in resolving the access dispute between the two parties and even went as far as to suggest that the Plaintiff used a metre of his property to enable the Plaintiff to better turn his car and boat onto his property. The Defendant finally averred that he is not liable to the Plaintiff, or at all and that his property PR1269 is a tourist establishment and a restaurant and it had to be walled in and fenced to keep out stray dogs.

### **What are the contested issues in this suit that this Court has to resolve?**

Going by the pleadings it is my considered view that the only contested issue that this Court has to resolve is – **whether there was an agreement valid in law subsisting between the parties; and if so, to enforce that agreement in accordance with the law.**

**Article 1101** of the Civil Code of Seychelles states that:

*“A contract is an agreement whereby one or several persons bind themselves towards one or several others to give, do or refrain from doing something”.*

**Article 1103** of the Civil Code of Seychelles goes on to clarify that:

*“It is unilateral when one or several persons bind themselves towards one or several persons without any obligation arising on the part of the latter.*

**Articles 1108** of the Civil Code of Seychelles sets out the four essential conditions for the validity of an agreement, as follows:

*“Four conditions are essential for the validity of an agreement –*

- *The consent of the party who binds himself,*
- *His capacity to enter into a contract,*
- *A definite object which forms the subject-matter of the undertaking,*
- *That it should not be against the law or against public policy.”*

**Articles 1109 and 1109-1** provide that the consent shall not be valid if it is given by mistake, or be extracted by duress or induced by fraud. An offer or an acceptance shall only have effect if it is seriously intended in the sense that the parties intend to create legal relations.

**Article 1134** of the Civil Code of Seychelles states that agreement lawfully concluded shall have the force of law for those who have entered into them. They shall not be revoked except by mutual consent or for causes which the law authorises. They shall be performed in good faith”.

Under that provision of the law, the Court *inter alia* held, in the case of **Vijay & Co v Ailee Recreations Ltd SLR (1983)**, that – *“Parties to a contract are bound to carry out a contract*

*not only according to its express terms but also according to the consequences implied by fairness, practice or the law and in good faith”.*

**Article 1156** of the Civil Code of Seychelles requires that in the interpretation of contracts, the common intention of the contracting parties shall be sought rather than the literal meaning of the words. However, in the absence of clear evidence, the Court shall be entitled to assume that the parties have used the words in the sense in which they are reasonably understood.

The situation *in situ* prior to the purported agreement was that the Plaintiff's property is located behind that of the Defendant. The property of the Defendant is adjacent to that of Mr. Robert and both these two properties are bounded on one side by the main road. The Plaintiff's access to the main road was supposed to be by a secondary road which runs at the side of Mr. Robert's property and the Plaintiff has to take a tight 90 degrees turn to go onto his property. **(See Exhibit P1)**. The Plaintiff encountered a lot of difficulty turning that bend especially when he has to tow his boat on a trailer to take to his home.

A *3m Road Reserve* is indicated on the Survey Plan of the Defendant **(Exhibit P3)** by which the property of the Plaintiff may be directly connected to the main road without him having to turn any bend. A solution for the Plaintiff could have been for him to claim that “road reserve” from the Defendant. If the Plaintiff had claimed and obtained that, the size of the property of the Defendant would have been correspondingly reduced.

It was evident that Mr. Robert had built his septic tank and/or soak-away pit at the rear of his property, but he had located these onto an access drive that leads to the property of the Plaintiff. It was very cumbersome and inconvenient for Mr. Robert to re-locate his septic-tank/soak-away pit on his property because of lack of space.

After hearing the testimonies of the Plaintiff, the Defendant and one Mr. Lester Robert it became evident to me that those 3 persons, who are neighbours, had discussed among themselves and came to certain agreement whereby all 3 of them would benefit out of the existing situation. I believe the testimonies of the Plaintiff and Mr. Robert that they (all three of them) then drew up a document which they sent to the Ministry of National Development, the Ministry from which all the 3 parties initially bought their respective property. For ease of reference I reproduce hereunder the text of the original of that document, **Exhibit P5**, which is purported to be the agreement in issue:

***Cote D'Or***

***Praslin***

*21<sup>st</sup> April, 2005*

*Principal Secretary*

*Ministry of Land Use and Habitat*

*Independence House,*

*Victoria.*

*Attn: Mr. Gerard Hoareau*

*Director General*

*Survey Division*

*Dear Sir*

***Access Road for Mr. Gilbert Lesperance – Cote D'Or, Praslin***

*We are writing in relation to the work that the Survey Division is carrying out to demarcate an area on Mr. Lester Robert's property (Parcel No.1458) for an access road for Mr. Gilbert Lesperance.*

*It was previously agreed between Mr. Lester Robert and Mr. Gilbert Lesperance in the presence of Mrs. Mitcy Larue (MNA) that the width of land to be given by Mr. Robert should be three metres in return for the four metres road access which is to be given to Mr. Robert by Mr. Lesperance.*

*In view that there is a septic tank on Mr. Robert's property in the area near the access road to be given, all three parties concerned in this matter has agreed that the access for the road would be as follows if approved by your ministry.*

- *Two metres away from the septic tank and three metres in other areas from the actual property boundary of Mr. Robert.*
- *Mr. Wilfred Richmond, the owner of the property adjacent to Mr. Robert has agreed to give up a width of one metre of his land next to the said septic tank, thus allowing a three metres wide access to Mr. Lesperance all along.*

*We, Mr. Lester Robert, Mr. Gilbert Lesperance and Mr. Wilfrid Richmond hereby agree to the arrangements mentioned above and do hope that this case which has been going on for many years now, will have your urgent attention and approval and that the matter be resolved very soon.*

*(Sgd) L. Robert*

**Mr. Lester Robert**

*(Sgd) G. Lesperance*

**Mr. Gilbert Lesperance**

*(Sgd)W. Richmond*

**Mr. Wilfrid Richmond**

It is clear and beyond doubt that **Exhibit P5** is the original document and I find it not to be a cut and paste document as averred by the Defendant.



Based on that letter the Ministry of National Development drew up a Survey Plan which is now **Exhibit P4**.

When giving evidence Mr. Lester Robert testified that that agreement came about after all three parties sat and discussed the matter. Following agreement by all parties that agreement was drawn up in writing and signed by all 3 of them.

He, Mr. Lester Robert thereafter acted on the terms of the agreement and surrendered part of his property to be turned into the access drive of Mr. Gilbert Lesperance whilst he took over the previously demarcated access of Mr. Lesperance, which ran behind his (Mr. Robert) property where his septic-tank and soak-away pit are located. Mr. Robert then proceeded to build a boundary wall all along the northern side of his property leaving outside his boundary wall a continuous portion of 3 metres from the main road and at the latter part 2 metres at the end of his property parcel PR1458, to be used by the Plaintiff Mr. Lesperance as his access to his property. This is indeed a reflection of the agreement reached by them.

I note that on the southern boundary of Mr. Richmond's property PR1269 as shown on survey plan (**Exhibit P3**) there is marked by the Surveyor the words – “Road Reserve” on a demarcated strip on that Survey Plan and on which the Surveyor also stated the following – “The figure QR53, QS31, (b), (a) and QR53 represents a 3 metre road reserve.”

Mr. Richmond built his boundary wall and enclosed that portion marked as “3m Road reserve” as forming part and parcel of his property. It is my considered judgment that the Defendant Mr. Richmond did that on the strength of the agreement entered by the 3 parties as contained in the document dated 21<sup>st</sup> April, 2005. So, it is obvious that Mr. Richmond

also acted on the strength of this agreement when he built that boundary wall all along his property from the main road leading to the property of the Plaintiff at the rear.

After both Mr. Robert and Mr. Richmond build their respective boundary wall, the Plaintiff Mr. Lesperance could have easily drove in onto his property were it not for certain obstruction created by the Defendant which somewhat impeded the Plaintiff's motorable access, especially upon reaching the point where the Plaintiff has to turn towards his house and pulling his boat-trailer.

**Exhibit P6** is a photograph showing very clearly where the Defendant had constructed that boundary wall leaving the driveway to the property of the Plaintiff clear for him to take his boat and trailer to his house. I established both from Exhibit P6 as well as when I visited the site that the block-works erected outside the boundary wall and which impedes the passageway of the Defendant is of a more recent construction than the boundary wall itself. Had these block-works, which apparently are meant to be "flower-boxes", not been erected, the Defendant would have been able to drive through with his trailer and boat quite easily, onto his property.

I have no doubt that the erection of those block-works was an afterthought of the Defendant in breach of what he had originally agreed.

After receiving a copy of that "agreement" nowhere in his pleadings, did the Defendant deny his signature at the bottom of that document. Neither did the Defendant pleaded that he gave his consent by mistake, or it was extracted from him by duress or that he was induced by fraud. I believe that the offer or acceptance have effect as it was seriously intended in the sense that the parties intend to create legal relations. As such, I find that that agreement was lawfully concluded and now has the force of law for the three parties who

have entered into it. In my judgment, this agreement cannot be revoked except by mutual consent or for causes which the law authorizes and it has now to be performed in good faith.

Interestingly, the Defendant in his Statement of Defence admitted that he did whatever he could to assist in resolving the access dispute between the two parties and even went as far as to suggest that the Plaintiff used a metre of his (defendant's) property to enable the Plaintiff to better turn his car and boat onto his property. In fact the very objective of the agreement is to achieve just that and it is indeed what the Plaintiff is asking this Court to uphold.

For reasons stated above it is my finding on a balance of probabilities that the document dated 21<sup>st</sup> April, 2005 and signed by the parties namely, the Plaintiff, the Defendant and Mr. Lester Robert, is an agreement valid in law between the parties and is legally enforceable between them. I further find that the Defendant had since the 4<sup>th</sup> of July, 2006 breached this said agreement by blocking the access to the Plaintiff's land and the latter cannot use his motorable access to his property.

In the circumstances I believe that it is fitting, just and necessary that I should order the Defendant to perform the agreement which I hereby order him to do.

I hereby further issue an order of injunction restraining the Defendant from blocking the 3 metre wide driveway of the Plaintiff. For compliance with this order, the Defendant has to demolish the block-works that he has erected or caused to be erected in the driveway of the Plaintiff within two weeks from today, so as to make the said driveway as depicted in **Exhibit P4.**

I also find that the Plaintiff suffered loss and damage caused by the action of the Defendant in blocking his driveway. I gave due consideration to the claim of the Plaintiff for loss and damage that he suffered. I believe that the Plaintiff's claim is much on the high side as he ought to have taken alternative action to mitigate his loss and damage. In the circumstances I find the Defendant liable to make good to the Plaintiff for his loss and damage as follows:

(i)	Cost of alternative means of transport	5,000.00
(ii)	Breach of agreement	20,000.00
(iii)	Moral damage	<u>20,000.00</u>
		<b>45,000.00</b>

Judgment is accordingly entered in favour of the Plaintiff as against the Defendant as set out above, all with interest and costs.

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B. RENAUD

JUDGE

Dated this 11<sup>th</sup> day of November 2010