

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT
VICTORIA

Civil Side No. 308 of 2009

Seychelles Savings Bank

Plaintiff

Versus

Brain Quilindo
Lucy Quilindo

Defendants

Frank Ally for the Plaintiff

JUDGMENT

Egonda-Ntende, CJ

1. The plaintiff is a bank seeking to recover from the defendants, a borrower and a guarantor, the balance of an unpaid loan stated to be SR110,316.18 with continuing interest at the rate of 22% per annum and costs of this suit. Defendant no.1 was the borrower and defendant no.2 was the guarantor of the said loan by virtue of a written agreement dated 24 August 1995 between the plaintiff and the defendants.
2. Defendant no.1 borrowed SR 75,000.00 with interest calculated to be SR 13,133.60 to be repaid in 24 monthly instalments of SR3, 672.23 per month commencing on 28 September 1995 and ending on 28 August 1997. The agreement, (clause 2(d) thereof), states that interest was at the

rate of 16% per annum though the plaint clearly states that interest was 10% per annum at the time of issuance of the loan.

3. Under clause 2(e) of the agreement, the bank was entitled to

‘charge interest at any increased rate from its current rate on any overdue instalment or other payment until the same was discharged by the borrower to the satisfaction of the Bank.’

4. The defendants were served with summons but never filed a defence in the matter. Hearing of the case proceeded in their absence. The plaintiff called one witness. She is Ms Lauren Poupounneau, a Debt Recovery Officer with the bank, who was authorised to represent the bank in court. She testified that the defendant no.1 borrowed SR 75,000 from the plaintiff. An agreement to that effect was executed between the parties and it was produced in evidence and marked exhibit P2.

5. She testified that the plaintiff demanded payment of outstanding amounts from defendant in writing but to no avail. Letters of demand from the plaintiff and the plaintiff’s attorneys were exhibited. She stated that as of today the outstanding sum was SR 112,760.10. The plaintiff charged the defendant an increased rate of interest at the rate of 22% per annum from 1 December 2008 to 1 December 2009. The plaintiff then thereafter charged 30% per annum and then reverted to 22% per annum at an undisclosed date.

6. Mr Frank Ally, learned counsel for the plaintiff, submitted that judgement be entered for the plaintiff in the sum of SR 112,760.10 with interest at 22% (per cent) per annum.

7. The testimony of the plaintiff's witness is silent on whether the defendants were notified of the changes in the interest rates as and when they occurred. Granted that the plaintiff under clause 2(e) of the loan agreement was entitled in event of default to vary the interest rate beyond the rate of interest expressed in the agreement. The agreement is silent on whether the plaintiff would notify the defendants of the change in interest rates once it chose to vary interest.

8. The agreement between the parties was a written agreement. In varying interest I am of the view that the plaintiff was duty bound to notify the defendants in writing of this change so that the parties, especially the guarantor, may have a choice of whether to pay up or suffer the increased rate of interest. Having not done so in writing or even verbally, on the evidence before me, I would not allow the interest so charged to stand.

9. I take this view on a reading of Article 1907 of the Civil Code of Seychelles which states,

‘The interest is either legal or conventional. The legal interest is laid down by law. The conventional interest may exceed the legal interest whenever the law does not forbid it. ***The conventional rate of interest must be agreed upon in writing.***’ (Emphasis is mine.)

10. The conventional rate of interest must be the applicable interest rate in the instant case and therefore had to be agreed in writing. This was taken care of in the loan agreement, which stated not only the interest rate but the actual amount arising as interest. If there was to be any variation of the interest rate expressed in the loan agreement it would be necessary that it be in writing and such notice of variation of interest rate be an addendum to the agreement between the parties. On the record there is no evidence that the defendants were notified in writing of a variation in interest rates.

In my view as the plaintiff failed to notify the defendants in writing of the variation in interest rates the variation in interests remained ineffectual.

11. The plaintiff has claimed a sum of SR 112,760.10 being the sum now due. This sum includes the adjusted interest rate of 22% per annum and 30% per annum implemented between 2008 to an unknown date in 2010. As the adjusted rate of interest has been found to be ineffectual it is not possible for the plaintiff to recover the whole of SR 112,760.10.

12. The plaintiff has not provided a statement of account that would show how the loan account was managed including showing any receipts on it and the debits made to the same, which may have enabled the court to calculate the actual amount due on the loan and agreed interest. I note that the demand letter of Francis Chang-Sam, Attorneys at law for the plaintiff, dated 27 June 2005 set out the amount due on the loan at the time to be SR 58,795.67. I will treat this as the base amount given that on the testimony of the plaintiff's witness this was sum due at the time.

13. I will enter judgement for the plaintiff in the said sum SR 58,795.67 with interest at the rate claimed in the plaint of 10% per annum (rather than at 16% per annum which is what had been set out in the agreement) from 27 June 2005 until the filing of this suit on 29 October 2009. I have preferred the rate of interest of 10% per annum as it is the one claimed in the plaint.

14. The said adjudged sum shall bear interest at the legal rate of 4% per annum from the date of this judgment till payment in full. The defendants shall also pay costs of this suit to the plaintiff.

Signed, dated and delivered at Victoria this 19th day of July 2010

FMS Egonda-Ntende
Chief Justice