

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

Civil Side No 130 of 2008

Shaiin Yamaan

Plaintiff

Versus

Levi Krishna Chetty

Defendant

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*Anthony Derjacques for the Plaintiff*

*Basil Hoareau for the defendant*

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**JUDGMENT**

**Egonda-Ntende CJ**

1. The plaintiff is a businesswoman who signed a lease agreement with the defendant on 17 January 2008 for lease of a shop on MS Complex Building in Victoria, along Revolution Avenue, on parcel V5494. In pursuance of the said agreement the plaintiff paid to the defendant rent for February and March 2008 at the rate of R13,000 per month as well as the sum of R39,000 being deposit all totalling to R65,000 only.
2. It was understood, agreed and an implied term of the lease agreement that the defendant had lawful authority and lawful competency to agree to, consent to, and enter the said lease agreement for the leased premises. In

breach of the said agreement, defendant had no lawful authority and the said agreement was therefore void.

3. The Seychelles Licensing Authority declined to grant trading licence to the plaintiff on the ground that she did not have a valid lease.
4. On 15<sup>th</sup> April 2008 the plaintiff entered into a valid lease agreement with the fiduciary for MS Complex building, Mrs Mersia Chetty, whom she paid the deposit and rent to the premises.
5. The plaintiff has demanded from the defendant the reimbursement and or refund of the said sums of money paid to the defendant but the defendant has declined to do so. The plaintiff claims the said sums of money plus moral damages of R10,000 from the defendant with interest and costs of this suit.
6. The defendant admitted that he entered into a lease agreement with the plaintiff and received the sums of money in question. He contended that he was entitled to enter into the said agreement as the owner of the property had died and pending the appointment of a fiduciary, he stepped in to administer the property and meet loan obligations due on the property. He denied that any money was due to the plaintiff as she had made use of the property for February and March 2008 and the deposit had been lawfully paid to him.
7. The essential facts in this case are hardly in dispute. It is the legal conclusion to draw from the same that is largely in issue. The fiduciary of MS Complex passed away on 12 July 2007. Mersia Chetty, hereinafter referred to as PW3, owned 70% of the property. The defendant owned 20% of the property. A

struggle erupted for control of the building. The majority ownership appointed PW3 as fiduciary. Eventually in a ruling by this court dated 27 March 2008 PW3 was appointed fiduciary of the property in question in Civil Side No187 of 2007.

8. It is clear that the building in question was co-owned and at the time the defendant purported to enter into a lease agreement with the plaintiff the defendant had no lawful authority to act for the co owners of the property as he was not the fiduciary. He was also quite aware that any attempt to do so was being vigorously contested in court. Clearly he was devoid of any authority to enter into a valid lease agreement for the property in question. That purported lease was void *ab initio*.
9. The defendant did not adduce any evidence in this case. Instead he submitted that the plaint in this case failed to disclose two material facts and should be dismissed. He submitted that the plaintiff was under an obligation under Section 71 of the Seychelles Code of Civil Procedure to state material facts in the plaint on which a claim is based. In this case the plaintiff ought to have disclosed that the property in question was co owned property as this was a material fact. Secondly the plaint does not mention the fact that the defendant was not a fiduciary, which is the essence of this claim. Not having done so this claim must fail.
10. Mr. Hoareau made available 2 cases in support of the defendant's case. These were Gallante v Hoareau [1988] SLR 122 and Marie Ange Pirame v Armano Peri SCA No 16 of 2005 (unreported). The former basically reiterates the law that a plaint must disclose the material facts. And the latter,

a Seychelles Court of Appeal decision, holds that no regard should be had to evidence on the record that is outside the pleadings.

11. In this case the plaintiff states that the plaintiff entered into a lease agreement with the defendant to lease a shop. It was understood and or an implied term of that agreement that the defendant had authority to enter into such an agreement. It turned out that the defendant did not have such authority to enter into such an agreement. The plaintiff claims from the defendant the sums she had paid as the agreement was void.

12. In my view it was not strictly necessary to state that the property in question was co owned and that the defendant was not the fiduciary. It was sufficient to state that the defendant entered into an agreement without the authority to do so. That summarised in a very precise manner the necessary facts to establish a cause of action and to succeed if no defence is provided. The purpose of disclosing material facts, as noted in Gallante v Hoareau (supra), is to give the defendant a fair notice of the case he was to meet. The plaintiff has done so in a very precise manner. The fact that the property in question was co owned and the defendant was not a fiduciary is the evidence that bears out the plaintiff's claim that the defendant did not have authority to enter into a lease agreement.

13. In any case those facts in question are facts that were particularly within the knowledge of the defendant. He knew the building in question was co owned. He knew there was a contest raging in the courts as to who ought to manage the property in question. He knew that he had no authority in law to manage the building, not having been appointed a fiduciary. He then

purported to enter a lease agreement with the plaintiff when he had no authority to do so.

14. Secondly, as a matter of law, Mr. Hoareau submits that this case should fail as the plaint does not contain a prayer for a declaration that the agreement in question be declared void. The plaint just prays for a sum of money. Mr. Hoareau does not provide any authority, either by way of statute or case law for this proposition. It is entirely without merit in my view. The plaint has clearly stated the relief sought. It is a claim for R75,000. The plaint need not state any more on this score.

15. Mr Hoareau further submitted that this claim should fail on the merits because the plaintiff was put in occupation of the premises and she has not handed back the keys to the defendant.

16. In his written statement of defence the defendant had claimed that he received the money paid by the plaintiff and used it to pay back an outstanding loan on the property in question. He brought no such evidence before this court. No such evidence was put to PW3, the fiduciary of the property in question, in cross examination. And even if that were the case this would be relevant to a dispute between PW3 and the defendant, and not this case.

17. Article 818 of the Civil Code of Seychelles states,

‘If the property subject to co ownership is immovable the rights of the co-owners shall be held on their behalf by a fiduciary through whom only they may act.’

18. This right was discussed in Jumea v Anacoura and Anor [1978] SLR 180.

Sauzier, J., (as he then was), stated at page 182,

‘Although the right of co-ownership in land is a real right which extends over the whole of the property, that right cannot be exercised except through the fiduciary on behalf of all the co-owners in accordance with the provisions of the Civil Code of Seychelles, ..... In other words, the right of co ownership in the land, a real right, rests with the fiduciary as if he were the sole owner of land, but that right may only be exercised in a restricted way in accordance with the provisions of the Civil Code. Each co-owner has only a personal right, a *jus crediti* or a claim to a share in the proceeds of sale of the land.’

19. I am satisfied that the defendant entered into a lease agreement when he had no authority to do so. Such agreement was void *ab initio*. The defendant was not entitled to receipt of the moneys he received under the said agreement. The parties must be put back in their position previous to that agreement. The plaintiff is entitled to a refund of the moneys paid under that agreement from the defendant. I order that the defendant refunds to the plaintiff the said sum of R65,000.

20. The plaintiff must have been put to some distress on learning that she could not obtain a licence for her premises on account of the invalid lease agreement. I allow the claim of moral damages of R10,000 in the circumstances of this case.

21. The sum of R 65,000 shall bear interest at legal rate of interest of 4% per annum from March 2008 till payment in full. Likewise R10,000 shall bear

interest at the rate of 4% per annum from today till payment in full. The defendant shall also pay to the plaintiff costs of this suit.

Signed, dated, and delivered at Victoria this 30<sup>th</sup> day of July 2010

FMS Egonda-Ntende  
**Chief Justice**