

**IN THE SUPREME COURT OF SEYCHELLES****SWIFT ENTERPRISE LIMITED**Formely Swift Excavation (Pty) Ltd \_  
Rep. by its Director Mr Jadel Malow**PLAINTIFF****VERSUS****NEVILLE DICK****DEFENDANT**Civil Side No 55 of 2009

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Mr. S. Rouillon for the Plaintiff  
Mr. W. Herminie for the Defendant

**JUDGMENT****B. Renaud J**

The Plaintiff entered this Complaint on 13<sup>th</sup> March, 2009 claiming from the Defendant the sum of SR65,000.00 with interest at the commercial rate from the date of the filing of the Complaint and costs.

The Plaintiff is inter-alia a Construction Company incorporated and operating in Seychelles and the Defendant was a client of the Plaintiff.

The plaintiff alleged that on 24<sup>th</sup> October 2008 the parties signed an 'acknowledgement of debt' whereby the Defendant acknowledged owing to the Plaintiff a sum of SR65,000.00 for carrying out excavation works on the

Defendant's property at Anse Boileau, Mahe. The Defendant denied this allegation and averred that the alleged acknowledgment was obtained through fraudulent misrepresentation.

The document which is pleaded as an '*acknowledgement of debt*' is in evidence as **Exhibit P1**. It is not in dispute that this document was drawn up and typed out by the Plaintiff who gave it to the Defendant to sign and he signed it too. It is worded as follows:

**"ACKNOWLEDGEMENT OF DEBT**

THIS IS TO CERTIFY THAT I MR. NEVILLE DICK OF ANSE BOILEAU OWES SWIFT EXCAVATION PTY LTD THE SUM OF SIXTY FIVE THOUSAND RUPEES BEING EXCAVATIONS WORKS ON MY SITE AT ANSE BOILEAU.

PAYMENT TO BE EFFECTED BY THE 7<sup>TH</sup> NOVEMBER 2008

AMOUNT DUE RS65,000.00.

(Sgd) N. Dick

MR. NEVILLE DICK

(Sgd) J. Malow

MR. J. MALOW

SWIFT EXCAVATIONS

DATE 24/10/08"

**Article 1326** of the CCsey States-

"1. A note or promise under private signature whereby only one party undertakes an obligation towards another to pay him a sum of money or something of value shall be written in full, in the hand of a

*person who signs it; or at least it shall be necessary that apart from his signature he adds in his own hand the formula 'valid for' or 'approved for' following by the amount in letters or the quantity of the thing. This requirement shall not apply to tradesmen and employees acting within the scope of their trade or employment.*

2. *The requirement of the formula as in paragraph 1 of this article shall not apply to promissory notes which are required by the Bills of Exchange Act, Cap. 15, or any law amending or replacing that Act”.*

It is evident that, for an ‘*acknowledgement of debt*’ by one party under private signature to be valid in terms of Article 1326 of CCsey, it is mandatory that it should conform to the formula set out in that article. This is not the case in respect of Exhibit P1 in the instant case. Here the Defendant who undertook the obligation towards the Plaintiff to pay him a sum of money, neither wrote the document in full by his own hand nor at least apart from his signature did he add in his own hand the formula ‘**valid for**’ or ‘**approved for**’ following by the amount in letters.

In the reported case of **Corgat v. Maree (1976) No. 22** it was inter-alia held that:

*“an acknowledgement of debt may constitute sufficient consideration for a promissory note; but such acknowledgement is not conclusive*

evidence of the debt but must be weighed with other evidence in determining whether exists or not.” (emphasis mine)

For reasons stated above I conclude and find that the so called “*acknowledgement of debt*” on which the Plaintiff based his claim is not evidence of the debt but can only amount to initial proof in writing which can be rebutted.

I heard the evidence of the Plaintiff as to how he calculated the cost for the works he undertook for the Plaintiff. He only gave to the Defendant that cost after the works were completed. Before the works started the Defendant asked the Plaintiff for a quotation but the Plaintiff told him that he could not be given one because he had to do the works first and then he will assess the price.

The Plaintiff testified that he started the works on 5<sup>th</sup> July 2008 and carried on for 10 days charging SR5,800.00 per day operating for 8 hours each day and a further charge of SR7,000.00 for the cost of displacement of the Executor to the site by the use of a Trailer from Victoria to Anse Boileau. According to the Plaintiff all the arrangements he made with the Defendant were verbal. The Plaintiff when cross-examined could not give details of the works that were carried out on the site.

The Plaintiff was neither the person who did the works and nor was he on the site during the period the alleged works were carried out.

The Defendant testified that the Plaintiff came on site before the work started when he explained to him the works that he wanted to carry out and he asked the

Plaintiff for a quotation. The Plaintiff could not and did not give him any idea how much it was going to cost except that he will be fair in his charges. The Defendant agreed for the works to be carried out. Later the Plaintiff brought the Excavator on site. It was a Saturday and the Operator started working on the next day Sunday from 10 a.m. to around 3 p.m. The Excavator stayed on site for 6 days but was not working every day because it was raining. On certain days work went on for 2 hours and on other days it went on for 3 hours. Only once did the work went on for 5 hours. After the job was completed the Plaintiff indicated to him that the work would come to about SR85,000.00. The Defendant testified that he was shocked with that price. The Plaintiff then agreed to reduce it to SR65,000.00 after further discussions. The Defendant asked for an invoice as he needed to get the money from the Bank. The Plaintiff then gave him Exhibit P1 to sign. He testified that he did not realize what he was signing but believing that it was the invoice he had asked for. When the Plaintiff later on came to see him, he told the Plaintiff that the price was too high but that he will pay by installments. The Defendant also testified that the works were not properly done and not sufficiently completed to allow him to build his pig sties on it as the land is not properly leveled. According to the Defendant the price is exorbitant. According to him the works carried out by the Plaintiff is worth not more than SR23,000.00.

Mr. Rodney Mathieu was called as a witness by the Defendant. He testified that he has his own Excavator Business. He assessed the excavation works that was carried out on the Defendant's property and gave him a quotation. He quoted SR24,000.00 for the works on the basis that it will take 4 days at 8 hours per day to complete the works charging SR750.00 per hour - **Exhibit D1**. The works

involved excavating the soil to build pig sties. He testified that he visited the site before the works were carried out and as he was very busy at that time he could not undertake it. He also visited the site after the works were done by the Defendant. According to him one would require only 4 days to do that job. There were no big rocks to be removed on that site. He also testified that he saw the works that had been done and found it to be very unprofessionally done because the Defendant would not be able to build his pig sties on it the way it has been done. He opined that SR65,000.00 for the works carried out is ridiculous and too harsh. A reasonable sum should have been SR25,000.00. He considered himself as a professional in his line of work. He also believed that it is cheating if a person charged a client higher than what the work is worth. When he does his excavation works he took his excavator to the site in a pick up truck.

There is no evidence that the Plaintiff send any *"mise en demeure"* to the Defendant although he claimed to have made repeated requests.

There is no contract or agreement between the parties prior to the works being carried out. The consideration is in dispute and it is for the Court to resolve that dispute. In such a situation the Court will assess the cost and come to a fair price based on evidence before it.

In this case there is no doubt that the Plaintiff knew the rates he usually charged for such works and he could have easily at least informed the Defendant of that. Secondly, the cost for the transportation of his excavator to the site must have been within his knowledge prior to its being transported there. These two

essential figures were within his knowledge prior to the work being carried out and he could have at least inform the Defendant of that. It was also within his knowledge that he charges SR725.00 per hour for the operation of his excavator and for an 8 hour day that would have come to SR5,800.00 per day. With this information the Defendant would have at least know whether the rate was reasonable before the works were carried out. Also, the Defendant would have assessed his means and stopped the works when it exceeded his means or his cost expectation or negotiate for a better deal with the Plaintiff or make alternative decision. The Plaintiff failed to do any of these but instead told the Defendant that he will charge him a fair price after the works was completed.

I also note that the Plaintiff was not personally on site when the works were being carried out. He based his charges on hearsay basis when he said that the job went on for 10 days working 8 hours per day at SR725.00. The Plaintiff did not bring any witness to support his contention as to the number of hours it took for the works to be completed. If that was indeed true he could have at least bring as a witness the operator who carried out the works and that witness would have been subjected to cross examination to verify that fact.

I do not believe the Plaintiff when he said that the works were carried out over a period of 10 days operating 8 hours per day. I also do not believe the Plaintiff that SR7,000.00 is a fair price to transport the small excavator as can be seen in Exhibit P2, to the site and back. It is common knowledge that it takes not more than one hour to drive from any point on Mahe to any other point. Therefore from Victoria to Anse Boileau it could not take more than one hour. For a truck to charge

SR3,500 per hour would amount to SR28,000.00 as the costs of operating a truck on any day of 8 hours. That is indeed ridiculous by any standard and this Court cannot be made to believe that.

The Plaintiff went further to state that he had to hire a Trailer to transport that small excavator to the site. I do not believe him on that score. It is common to see such small excavator being carried on a pick up truck almost everyday on our roads. Had the Plaintiff really hired a Trailer to transport his excavator to that site as he stated, he would have at least have receipt or invoice from the Trailer Hirer to prove that to my satisfaction. Again I do not believe the Plaintiff when he said that he used a trailer to transport the excavator to the site and I reject his evidence to that effect as being untruthful.

The Defendant testified as to the number of hours the excavator actually operated on his site and he stated that that could not have been more than 20 active hours over a 6 day period. The Defendant's witness who is experience in that kind of business quoted a maximum of 32 hours was sufficient for carrying out the job and that SR750,00 per hour would have been the fair price.

On the basis of evidence before me I conclude that the excavator works carried out on the site of the Defendant was for not more than 32 hours or at the most I will allow for 40 hours. I find that the rate of SR725.00 per hour charged by the Plaintiff is reasonable. I find that the charges for transporting the excavator from Victoria to the site Anse Boileau is exaggerated and is on the high side. A fair rate



is SR2,000.00 for the going and return trips amounting to SR4,000.00. In the final analysis I find that the Defendant owes the Plaintiff the total sum of SR33,000.00.

I accordingly enter judgment in favour of the Plaintiff as against the Defendant in the sum of SR33,000.00 plus cost and interest at the legal rate from the date of judgment.

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B. RENAUD

**JUDGE**

Dated this 11<sup>th</sup> day of February 2011