

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 146/2007

[2013] SCSC 77

MICHEL BENOIT

Plaintiff

versus

INTERIOR AND CONSTRUCTION DESIGN (PTY) LTD

First Defendant **SARAH SABADIN**
Second Defendant

Heard: 24 October 2013

Counsel: Mr. C. Lucas for plaintiff

Mr. A. Derjacques for defendants

Delivered: 24 October 2013

JUDGMENT

Karunakaran J

I believe I need not write a detailed judgment in this matter. The facts are simple, clear and straight forward. This is an action of breach of contract.

At all the material times the Plaintiff was the owner of a plot of land situated at Sorento, Glacis,

Mahe. The first Defendant is a company registered in Seychelles engaged in the business of construction, whereas the second Defendant Sarah Sabadin is one of its directors. Admittedly, on the 27th of January 2006 the Plaintiff and the first Defendant entered into a contract for the construction of a dwelling house as per Exhibit P1. Subsequently, the Plaintiff by a plaint dated the 9th May 2007 came before this Court alleging that the Defendants were in breach of contract, as a result of the said breach he suffered loss and damages in the total sum of Rs.792,338.88/-. Hence he claimed the said sum jointly and severally against the Defendants. The Defendants on the other hand in their defence completely denied the Plaintiff's claim and also made a counterclaim against the Plaintiff in the sum of Rs.1,092,967/- with interest at the commercial rate of 7.5% per annum inclusive of the sum Rs.115,000/- due for construction of the access road. The Plaintiff denied the counterclaim made by the Defendants.

The facts as transpired from the evidence are thus:-

A building contract was entered into on the 27th January 2006 between the Plaintiff and the first Defendant namely, Interior and Construction Design Pty Ltd. This was for the construction of a dwelling house at Sorento, Glacis on parcel H3451 for an agreed contract sum of Rs.1,795,145/-. In fact the contract did not include the construction of an access road to the actual site. However, due to the topography of the site it was impossible to access the steep terrain in order to carry out the construction work. Hence, the Defendants had to put up an access road to complete the main building. The contract in fact stipulated the building of the dwelling house should be completed over a period of approximately 12 months but no commencement date was set or confirmed. According to the Defendants although the building contract contemplated the instalment payments the first payment that is the down payment should be made at the commence date, the Plaintiff did not pay the agreed sum in full. Moreover, the second Defendant testified that although the original contract was for the construction of a dwelling house without giving due notice to the Defendant company the Plaintiff changed the dwelling house into a commercial tourism related premises. As a result the Defendants suffered inconvenience, hardship and had to change the original project from dwelling to commercial building. According to the Defendant, the Plaintiff unilaterally and unlawfully breached the said building contract with the first Defendant. Moreover, it is the case of the Defendant that the value of the works effected amount to the sum of Rs.1,099,355/- of which the Plaintiff has paid only Rs.475,000/-. Therefore, according to the Defendant the Plaintiff is liable to the first Defendant to pay the

balance in the sum of Rs.624,355/-. In the circumstances, the Defendants move for a judgment against the Plaintiff in the said sum with interest at the commercial rate of 7.5% per annum in this matter.

Before I consider the case on the merits I wish to mention that the Plaintiff despite repeated adjournments failed to appear in Court to give evidence in this matter. In fact, the last time the case had been set for hearing the Plaintiff's counsel moved for an adjournment stating that the Plaintiff was overseas, and the Court granted the adjournment on condition that it should be the last chance for the Plaintiff to be present in Court and proceed with the case. However again the Plaintiff defaulted, at the same time the Plaintiff's counsel informed the Court that the Plaintiff is not longer interested to prosecute the claim and therefore moved the Court to withdraw the claim of the Plaintiff. The Court accordingly granted leave and the Plaintiff's claim was set aside. Whereas the counsel for the Defendants, Mr. Derjacques, moved the Court to proceed to hear the counterclaim of the Defendant and give judgment for the Plaintiff.

Having considered the entire evidence on record, I am of the view that the Defendants have established the following facts to the required degree in civil law:-

- (i) The Plaintiff unilaterally and unlawfully breached the building contract between the parties dated the 27th January 2006;
- (ii) The value of the total work carried out by the Defendants on the Plaintiff's property amounts to the sum of Rs.1,099,355/-;
- (iii) The Plaintiff has so far paid only Rs.475,000/-, leaving a balance of Rs.624,355/- due and payable to the Defendants;
- (iv) Despite repeated request the Plaintiff has failed to pay the said sum to the Defendants.

In view of all the above I am satisfied that the Defendants have established their counterclaim to the extent of only Rs.624,355/- against the Plaintiff. On the issue of commercial rate of interest at 7.5%, since there is no agreement between the parties as to the rate of interest at the time of entering into the contract I am reluctant to award the rate of interest at 7.5%. Whereas I find the

Defendants are entitled to claim interest only at 4%, the legal rate as from the date of the plaint.

In the circumstances, I hereby enter judgment for the First Defendant in the sum of Rs.624,355/- with interest on the said sum at 4% per annum as from the date of plaint and with cost. For the avoidance of doubt I hereby confirm that the Plaintiff's claim is dismissed in its entirety.

Judgment entered accordingly for the Defendants.

Signed, dated and delivered at Ile du Port on

D Karunakaran
Judge of the Supreme Court