IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 56/2012

Appeal from Magistrates Court Decision CS257/2011

[2014] SCSC

MARCO PROSS DESIGNS [PTY] LTD
Appellant

versus

BAY VIEW ESTATE LIMITED
Respondent

Heard: 27 January 2014

Counsel: Pesi Pardiwalla for appellant

Lucie Pool for respondent

Delivered: 4 March 2014

JUDGMENT

Egonda-Ntende CJ

[1] The appellant was the defendant in the Magistrates Court of Victoria. Dissatisfied with the judgment of the trial court it has appealed to this court seeking to set aside the judgment of the court below.

[2] The respondent, as plaintiff in the Magistrates Court, has sued the appellant seeking to recover SR85,500.00 with interest and costs, on account of breach of contract by the appellant. The respondent contended that it had entered into a contract with the appellant to design a number of beach villas for a project at Glacis. The respondent completed the

work and in breach of the agreement the appellant had failed to pay the sum of €4,750.00 which was equivalent to R85,500.00 only.

[3] The appellant conceded that the there was a contract between the parties but contended that all sums due under the contract had been paid. It counter claimed for a sum of €3,200.00 which it contended had been an over payment, made mistakenly by the appellant. In answer to the counterclaim the respondent stated that appellant had requested for changes in the designs including computer 3D impressions of the landscape design; 2 additional corrections from 27 and 29 July 2009 and approved soft copy of General Landscape Design Proposal for which the respondent furnished the appellant with a further quotation for the work. He prayed that this counter claim be dismissed with costs.

[4] The trial court dismissed part of the plaintiff's claim with regard to additional works as it had not been articulated on the pleadings but allowed the plaintiff a sum of €2,400.00 on account of its monthly salary for three months which it found outstanding. The trial court dismissed the counter claim finding that there was no over payment as claimed by the appellant. The judgment for the plaintiff and dismissal of the counter claim aggrieved the appellant hence this appeal.

[5] The appellant set forth three grounds of appeal which I shall set out though at the hearing of the appeal they were argued concurrently.

> '1. The learned magistrate erred in concluding that the contract did not terminate in September 2009 when the final payment of 2000 euros was made and completion certificate signed, but rather in April 2010, when the evidence showed otherwise.
>
> 2. Consequently the learned magistrate erred in finding that there has no mistaken overpayment by the Appellant.
>
> 3. The learned magistrate erred in failing to take into account that the Euros 800 monthly was limited to the time spent by the Respondent in "supervising during installation/construction" in terms of clause 3 paragraph 2 of the contract, and that if no installation work had started or was in progress, the amount was not payable.'

[6] It appears to me that largely the facts of this case are not in dispute. What is ultimately in dispute is how you interpret the contract between the parties. I will therefore set out the essential parts of this contract. The scope of services were set out in clause 3 thereof which states,

> '3. DESIGNERS SCOPE OF SERVICES.
> The ID will submit visual mood board renderings or drawing to the following localized areas: Beach Villa, Glacis
> (i) The Designer will:
> PART 1
>
> - Make site visits to become familiar with site conditions and opportunities; Present a landscape concept;
> - Present to the client the "mood boards" for their approval; Design solutions for all positions as discussed; interior and exterior;
> - Designing and providing detailed drawings for the workshops engaged, in order of priority works;
> - Designing of water-features and landscaping including outdoor illumination; concept and implementation
>
> PART 2
>
> - Present specification of materials required;
> - Supervision of all interior and exterior design works; prior and during an installation/construction, until successful completion of works.
>
> (ii) Definition of the "Mood Board" is as follows:
> Present A3 Boards showing concept ideas for villa decoration.
> Give Suggested ideas for lighting.
> Present ideas for wall painting.
> Present ideas for water feature.
> Provide a written brief to the contractor on design requirements.'

[7] Clause 5 dealt with payments. Clause 6 dealt with work schedule. I set both of them below.

> '5. PAYMENT SCHEDULE:
> EURO 2,000 nett upon successful commencement of work
> EURO 800 monthly
> EURO 2,000 upon the successful completion of work.
> 6. WORK SCHEDULE:
> Part 1 of (i) to be submitted within 24th June to 15th July 2009

Part 2 of (i) and (ii) to be submitted by 1st August 2009.'

[8] Exhibit P3 was the acceptance report signed by both parties in relation to the Landscape Design Concept. It stated,

> 'Re: Landscape Design Concept
> This is to confirm that on 10th September the following works have been completed by Zoran Prosic
> – Initial landscape design concept were presented in July 2009
> –Amendments to landscape design concept was presented in August 2009
> The following documents were presented:
> 1. Soft copy of presentation
> 2. Master plan (soft copy/hard copy)
> 3. Concept design details (photographs, plants description)'

[9] The respondent started performing his obligations under the said contract and by 10th September 2010, it appears it had completed the design part in terms of clause 3, Part1, of the schedule of work. What remained at that stage was Part 2, which was 'presentation of specification of materials required **and supervision of all interior and exterior design works; prior and during an[d] installation /construction, until successful completion of works**.' At this stage the appellant was up to-date with payments to the respondent and in fact paid the respondent the €2,000.00 due upon successful completion of work. It is only the design the work that was complete at this stage but it appears that the parties interpreted their contract that this sum was due at the completion of Part 1 of the scope of the works.

[10] It appears that the works did not progress to implementation and on 16 April 2010 the appellants decided to suspend the contract. It wrote [exhibit P5] to the respondent the following letter:

> 'Re: Contract- Val de Mer Builders
>
> Following some delays with obtaining approval from respective authorities to carry on with our project, I wish to advise that your "interior Design Agreement" dated June 2009 is being put on hold effective January until further notice. Once all documents are in order, we will be in a better position to start the project and

> thereafter you will be contacted to carry on with your designing work.
>
> We apologise for any inconvenience that this situation that is beyond our control may cause to your business and thank you for your patience and understanding.'

[11] Exhibit P5 destroys ground no.1 of the appeal in relation to whether or not the contract terminated on the payment of €2,000.00 to the respondent in September 2010. The appellant was aware that the contract was still running as what had been completed was only the design phase. The respondent was required to be available for the implementation phase during which he was to be entitled to the monthly payment of €800.00 as per clause 5 of their agreement. I cannot fault the learned trial Magistrate for coming to the conclusion that she did that this contract was only terminated in April 2011. And once that is accepted grounds 2 and 3 would be devoid of merit.

[12] The construction of the agreement or rather the interpretation of the contract between the parties which Mr Pesi Pardiwalla pressed upon this court was that this contract had terminated in September 2010, hence any payments thereafter, were by mistake, and not due. The argument continues that monthly payments would only have become due only when implementation of the design had started. I think this is a strained reading of the written contract that does violence to the clear language of the clause 3 which set out the scope of works. There was no anticipated break in the contract as this strained interpretation would wish to suggest. In fact exhibit P5 puts to rest any such arguments.

[13] In any case even for argument's sake even if one were to accept that it was possible to interpret the contract in two different ways and both parties interpreted it in one way and followed that interpretation the mere fact that another interpretation is possible does not render the earlier interpretation invalid by way of mistake. It is clear that what was being implemented must have been the intention and understanding of the parties in the performance of that contract. I see no room for claim that it was a mistaken interpretation.

[14] I am not persuaded that the trial court erred in reaching the decision it did. I affirm the judgment of the trial court and dismiss this appeal with costs.

Signed, dated and delivered at Ile du Port on the 3rd day of March 2014

F M S Egonda-Ntende
Chief Justice