

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 06/2012

Appeal from Rent Board Decision RB 20/10 and RB 82/10

[2016] SCSC 15

EXCEL TRADING (PTY) LTD

Appellant

versus

LEVI KRISHNA CHETTY
C/O Elpris Boutique
Albert Street
Victoria

Respondent

Heard: 29th October 2015.
Counsel: Mr Anthony Derjaques for appellant
Mr Basil Hoareau for respondent
Delivered: 21st January 2016.

JUDGMENT

McKee J

- [1] This is an Appeal from a Judgment of the Rent Board [hereinafter referred to as “the Board”] dated 17th February 2012 in relation to two matters, RB No. 20/10 and RB 82/10, where the now Respondent was the Applicant before the Board.
- [2] The applications before the Board related to rented commercial property, namely [A] the store and offices premises at numbers 106, 107, 108 and 113 on the first floor, shop premises at numbers 5, 6 and 11 on the ground floor, the warehouse storage premises also on the ground floor together with the warehouse storage, all premises or areas being within the building known as the Srinivas Complex, Victoria [Application RB/20/10] and [B] the store or office on the first floor of the said complex and more particularly described as facing Trinity House on Albert Street Victoria and known as the “ex inter lotto centre” [Application RB 82/10].

[3] The Board, having heard all the evidence and considered the Submissions of Counsel, found in favour of the Applicant, Levi Krishna Chetty and made the following Order namely:

1. In Application RB 20/10, the Respondent, Excel Trading [Pty] Limited, owed arrears of rent in the sum of Rs 815,400.00 up to March 2011 with a continuing liability to pay rent, and
2. In Application RB 82/10 the Respondent, Excel Trading [Pty] Limited owed arrears of rent of Rs 915,000.00 up to March 2011 with a continuing liability to rent.
3. A period of three months was given for payment failing which the Applicant could apply for an order of eviction.

[4] It is against this Order that the Appellant, Excel Trading [Pty] Ltd now appeals. I understand that that this Order would have been stayed pending the outcome of this appeal.

[5] My first comment would be that the Board found that the total arrears of rent due to March 2011 was considerable, namely Rs 1,740,000 or approximately US Dollars \$140,000.

[6] The Petitioner before the Board, Mr Levi Krishna Chetty took as his Respondent the limited proprietary company, Excel Trading [Pty] Limited.

[7] In view of the monetary value in connection with this matter I deem it a serious issue and have considered all the papers before me.

[8] From a consideration of all the documents and exhibits I find that the original Petition to the Board arose following a dispute between members of the family Chetty in respect of payment of rents from a number of units within the commercial building known as the Srinivar Complex [“the complex”]. Put simply, this commercial building had been “in the family” for a number of years and individual family members’ interests have spanned a number of generations.

[9] Put very briefly, evidence was available to me giving the individual percentage shares of members of the family in the complex itself and also family business ventures within the building. It would also be fair to say that unrelated tenants also had occupation of various units under normal tenancy agreements. Ancillary papers indicate that there have been discussions and disagreements between members of the family over the years.

[10] In this case before the Board, there was considerable evidence and discussion concerning the position of a fiduciary in respect of businesses conducted within the complex and a member of the family Chetty having a usufructary interest relating to the whole property. I also take into account the two judgments which have been exhibited, namely, Ruling, Civil Side No. 341/2007 Lea Raja Maniickam Chetty versus Levi Krishna Chetty [the respondent in the present appeal] dated 5th May 2008 and Judgment, Civil Side No 444/2006, Mariapen Srinivasan Chetty and Levi Krishna Chetty [again the respondent in this appeal] and Mersia Chetty dated 27th November 2008. In the present proceedings

before the Board the Registrar of Business Names was called to give evidence in connection with a business called “Chez Milli” which business apparently occupied a unit in the complex and there was a connection between the proprietor of this business and a member of the Chetty family.

[11] I mention the matters in the preceding paragraph at this stage to highlight the care which has gone into their presentation. This can be contrasted with the different weight of evidence produced to the Board and this Court in respect of the proprietary limited company, a separate legal entity, known as Excel Trading [Pty] Ltd [hereinafter referred to as “the company”].

[12] There is no formal evidence in respect of its incorporation of the company or the date thereof. I know nothing of the purposes of this company. I do not know the identities of the shareholders of the company. The matter before the Board was instituted in December 2010. The earlier court decisions were made in 2008. This limited company was not referred to in either of the two judgments issued in 2008. I am not aware whether the company was incorporated before or after 2008. If before 2008 it is perhaps strange that it was not referred to in those proceedings. If incorporated after 2008, there is no evidence before this court as to the specific reasons, if any, for its incorporation.

[13] It is especially relevant that no lease or tenancy agreement has been produced in respect of any the units which were the subject matter of the Petition before the Board. There were no tenancy agreements produced to the Board in which the company, Excel Trading [Pty] Ltd was the named tenant.

[14] I consider what evidence there might be to show that the Company is involved in this matter.

[15] In the bundle of documents produced as exhibits there is a letter on the letter-headed paper of the Company purportedly signed by Mersia Chetty as managing director of the company. As such she would only be in the position of a director but with perhaps managerial responsibilities. She would only be an officer of the company.

[16] On looking to the copy bank documents produced I observe that the company has a bank account in its own name, namely, account number 00715854900. Bank records are produced but there is no specific detailed reference to these transactions in the evidence. These show regular payments from the Company Account to a Mrs L K Chetty or Mrs L R Chetty for Rs 8600 and to a Mr M Srinivasam Chetty for Rs 6500. There was no evidence before the Board as to the identity or status of Mr Srinivasam Chetty.

[17] It is also relevant to keep in mind that the findings in Civil case number 341/2007, Lea Raja Manickam Chetty versus Levi Krishna Chetty, where it was held that the business of leasing 26 units in the complex consisted of a co-ownership, administered by Levi

Krishna Chetty as fiduciary. There was no evidence before the Board in the present matter that the existence of the separate legal entity known as Excel Trading [Pty] Ltd had drastically altered that position.

[18] The company known as Excel Trading [Pty] Ltd has a separate legal existence. It is a proprietary limited company and, as I understand it, that may be a preferred structure for small businesses. I have no way of knowing what members of the Chetty family were involved in the formation of this company and whether the family or a particular member of the family had a specific purpose in mind.

[19] It is against this background that the Appellant, Excel Trading [Pty] Ltd, applies to this court to set aside the pecuniary order that it, the company, makes payment of the total sum Rs 1,740,000 to the Respondent Levi Krishna Chetty failing which that it is evicted from all the units specified in the application before the Board.

[20] I accept that certain payments were made from cheques issued from the company account but I consider this in the light of the full facts and circumstances before me. I find, in the light of the quality and totality of evidence before me, that I am unable to assess the true position of the company, Excel Trading [Pty] Ltd in relation to the various businesses conducted in the Complex or the interests of the various members in the Chetty family. On the available evidence, I am unable to make a definitive finding that the company, Excel Trading [Pty] Ltd is the tenant of any of the numerous units which were the subject of the application to the Board or that it has a liability to meet rental payments. In my opinion there was insufficient evidence before the Board, even on the civil standard of proof, that the Appellant, the separate legal entity known as Excel Trading [Pty] Ltd, had incurred a liability to make a payment of Rs 1,740,000 to the Respondent, Levi Krishna Chetty, or to be the subject of an order of eviction.

[21] CONSEQUENTLY I allow the Appeal and set aside the Order of the Rent Board.

[22] I make no Order for Costs.

Signed, dated and delivered at Ile du Port on 21st January 2016.

C McKee
Judge of the Supreme Court