

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side:96/2012**

**[2016] SCSC557**

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**MARC HOUAREAU OF FAIRVIEW, LA MISERE, MAHE, SEYCHELLES**

Plaintiff

Versus

**EDMOND MUSSARD OF LA DIGUE, SEYCHELLES**

Defendant

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Heard: 19<sup>th</sup> day of May 2016.

Counsel: Mr. E. Chetty for Plaintiff

Mr. N. Gabriel/Absent-Absent/Defendant

Delivered: 28<sup>th</sup> day of July 2016

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JUDGMENT

**EX-PARTE**

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Govinden J

[1] This matter arises out of a Plaint filed by the Plaintiff of the 28<sup>th</sup> day of June 2012 wherein an Order is being sought from this Court against the Defendant in that the latter shall be made to pay to the Plaintiff the sum of S.R. 500,488/- along with interests at a rate of 12% and costs.

[2] The basis of the cause of action arises out of an executed promissory note of the 29<sup>th</sup> day of May 2008 for a sum of S.R. 475,488.00/-

(hereinafter referred to as “the debt”) and in the alternative an oral agreement by way of a “loan” of S.R. 25,000.00/- arising out of a payment by cheque of the 29<sup>th</sup> day of May 2008 of which the promissory note is as a beginning of proof in writing.

- [3] The Respondent was duly served with summons and Counsel also notified of the dates for the hearing and both failed to appear before the Court without due cause, hence the hearing proceeded ex-parte.
- [4] The Plaintiff testified in support of his Pleint in essence that at all material times himself and the Defendant were businessmen and that on the 29<sup>th</sup> day of May 2008, the Defendant executed a promissory note wherein he acknowledged having borrowed the sum of S.R. 475,488/- from the Plaintiff and which sum was used by the Defendant to pay a loan arrears that he owed to the Development Bank of Seychelles.
- [5] It was further testified by the Plaintiff, that the Defendant agreed to repay to the Order of the Plaintiff the debt on or before 31<sup>st</sup> day of December 2008 and in the event of default by the latter date, the debt or any unpaid sum was to become immediately due and payable.
- [6] The Plaintiff additionally testified that in breach of the promissory note, by the indicated date, the Defendant had failed to pay any payment towards the debt and consequently the whole of the debt became due and payable and which debt is still wholly due and payable.
- [7] Further to and in the alternative, the Plaintiff testified that the promissory note executed on the above-mentioned date is further a contract or a commencement of proof in writing of the existence of a contract between the Plaintiff and the Defendant, that the Plaintiff had lent to the Defendant the stated sum of S.R. 475,488/- subject to conditions as testified earlier.

- [8] The Plaintiff testified further that the Defendant breached the written contract or the oral contract by failing to honour his obligation to pay the whole amount by the due date hence the whole debt becoming due and payable.
- [9] Further, and in the alternative, Plaintiff further testified that in furtherance to the promissory note, the Plaintiff further lent to the Defendant the sum of S.R. 25,000/- on the 29<sup>th</sup> day of May 2008 by virtue of a cheque of Seychelles International Mercantile Banking Corporation Limited of number 585304 (which cheque was signed by the Defendant as proof of receipt by him), and which the Defendant was to pay back to the Plaintiff at the least by the 31<sup>st</sup> day of December 2008 and which the Defendant has failed to honour the entire sum by the agreed date.
- [10] In the final result, Plaintiff testified and prayed that the Defendant be made to honour his obligation under both transactions referred in the sum of S.R. 500,488/- in total, along with interests at the rate of 12% and costs in his favour.
- [11] Exhibits attesting to the existence of the promissory note and the relevant cheques and also bank statement proof of loan of the Defendant from the Development Bank of Seychelles were duly produced as exhibits P1 to P 4 respectively.
- [12] On the basis of the uncontested testimony of the Plaintiff whom the Court believes to have been very cogent and reliable (in the light of the admission of the Defendant of the averments of the Plaintiff albeit the matter proceeding ex-parte), this Court finds that the Defendant was party to the promissory note in favour of the Plaintiff in the sum of S.R. 475,488.00/- and that the Promissory note was to be honoured by

or on the 31<sup>st</sup> day of December 2008 and that to date the Defendant has failed and or neglected to do so.

[13] In the circumstances, I find that the Plaintiff has proved his Plaint to the satisfaction of this Court to the required standard and hence I Order as follows:

- (i) The Defendant is to pay to the Plaintiff the debt owed in the sum of S.R. 475,488.00/- as per promissory note exhibit P1 at legal rate in the absence of proof of the claimed rate on the promissory note;
- (ii) The alternative prayers remain on file in the light of the first Order as to the promissory note.
- (ii) Costs of the case is granted in favour of the Plaintiff.

Signed, dated and delivered at Ile du Port on 28<sup>th</sup> day of July 2016.

S.Govinden J  
Judge of the Supreme Court