

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CC34/2013**

[2016] SCSC 979

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**MARYLENE ETHEVE**  
Plaintiff

versus

**HARIKRISHNA BUILDERS (PROPRIETARY) LIMITED**  
Defendant

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Heard:

Counsel: Mr. Basil Hoareau for plaintiff

Mr. Clifford Andre for defendant

Delivered: 1 December 2016

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**RULING**

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**Robinson J**

[1] **Introduction**

[2] By a written contract made between Plaintiff and Defendant, on 21 August, 2012, Defendant agreed to construct "*a storey building*" on the land comprised in title number PR492, which land belongs to Plaintiff. Plaintiff claims that Defendant had failed to construct the building in accordance with the terms of the written contract. The plaint

avers that "a test conducted by the Seychelles Bureau of Standards has confirmed that the building is not structurally sound".

- [3] The issue for the consideration of the court is whether Miss Hazel Tomkin, a technician, employed by the Seychelles Bureau of Standards, is a competent witness to qualify as an expert on the subject of two tests conducted, namely, the schmidt rebound hammer test and concrete core test and the results obtained thereof.
- [4] The court held a *voire dire* to determine whether Miss Hazel Tomkin is properly qualified as an expert on the subject of the schmidt rebound hammer test and concrete core test and the results obtained thereof. The defence did not call evidence on the *voire dire*. Learned counsel for Plaintiff in his closing submissions highlighted the fact that Miss Hazel Tomkin holds the qualifications and experience required to constitute her as an expert witness.
- [5] In order to adduce expert evidence, Plaintiff will need to prove that the expert evidence of Miss Hazel Tomkin is needed and relevant in the circumstances and she is a qualified expert. Having considered the present facts, the court is satisfied that expert evidence of opinion is relevant and needed in the circumstances. On the question of necessity in assisting the Judge, Lawton L.J stated in *Turner (1974)*, 60 Crim. App. R. 80, at p. 83 —

"An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary".

In the *voire dire* Miss Hazel Tomkin describes her qualifications and experience. She studied for 2 years at the Seychelles Institute of Technology. She holds various certificates of unit credits in construction awarded by The City & Guilds of London Institute, a body providing training for construction technicians, among other things, worldwide. Miss Hazel Tomkin received a certificate from the Seychelles Institute of Technology and the Seychelles Bureau of Standards, all related to the field of a construction technician. Miss Hazel Tomkin states that her knowledge through study

permits her to determine whether "*concrete*" with respect to a building is of the required standard. In respect of the schmidt rebound hammer test and concrete core test and the results obtained thereof, Miss Hazel Tomkin states that her knowledge stems almost entirely through practical experience over 9 years.

[6] The general rule is that the evidence of a witness in the form of opinion is inadmissible in both civil and criminal cases, and that a witness is confined to giving evidence of facts. The admissibility of expert evidence is the principal exception to the rule. The evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify.

[7] What constitutes an expert for the purposes of giving expert evidence of opinion and deciding on the competency of a person to be considered an expert remains at the discretion of the trial judge. The main considerations that the court will take into account are the possession of knowledge of the expertise in question and an ability to use that knowledge as a result of training or education in that specialism. During argument in R v Silverlock [1894] 2 QB 766 Vaughan-Williams J stated that —

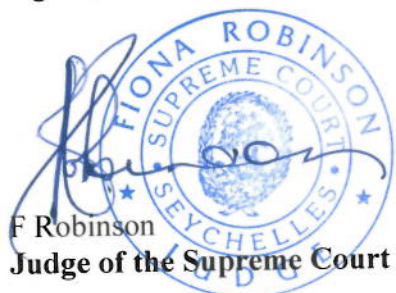
"No one should be allowed to give evidence as an expert unless his profession or course of study gives him more opportunity of judging than other people."


[8] The court agrees with learned counsel for Plaintiff that whether the expertise stems entirely from practical experience or from formal study or a mixture of both is irrelevant once the person can prove that he or she has acquired the knowledge that gives him or her an expertise not possessed by the ordinary person.

[9] Learned counsel for Defendant did not cross-examine Miss Hazel Tomkin with regards to her expertise with respect to the matters on which she undertakes to testify. The court considers such failure in the present circumstance to amount to a tacit acceptance of Miss Hazel Tomkin's evidence-in-chief.

[10] Having considered the evidence of Miss Hazel Tomkin on the *voire dire* the court is satisfied that she has acquired special knowledge through study, training and experience in respect of the matters on which she undertakes to testify. The court in the exercise of its discretion permits Miss Hazel Tomkin to give expert evidence with regards to the two tests conducted, namely, the schmidt rebound hammer test and concrete core test and the results obtained thereof.

Signed, dated and delivered at Ile du Port on 1 December 2016

  
Fiona Robinson  
Judge of the Supreme Court



The seal of the Supreme Court of Seychelles is circular. It features a central emblem with a sunburst and a star. The text 'FIONA ROBINSON' is written in a semi-circle at the top, 'SUPREME COURT' in a semi-circle at the bottom, and 'SEYCHELLES' in a semi-circle at the very bottom. Two small stars are positioned on either side of the bottom text.