

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA02/2016

Appeal from Rent Board Decision RB51/2015

[2017] SCSC

CONTINENTAL STORES

Appellant

versus

COLOUR PRINTING

Respondent

Heard: 19 May 2017

Counsel: F Bontefor appellant

--for respondent

Delivered: 17 July 2017

JUDGMENT

Dodin J

[1] The Appellant is dissatisfied with the judgment of the Rent Board delivered on the 16th February, 2016 in favour of the Respondent despite the fact that the Respondent failed to appear or present any evidence at the hearing. Learned counsel for the Appellant submitted that the Rent Board erred in finding in favour of the Respondent considering the circumstances of the case.

[2] The brief facts of the case are that Respondent had a one year lease of the Appellant's property paying a monthly rent of SCR 21,850 inclusive of VAT. The said lease expired on 31st December, 2014 and was never renewed but the Respondent continued to occupy the property. It appears that the Respondent continued to pay rent albeit with 2 months arrears until the judgment of the Rent Board in February, 2016 when payment ceased with 2 months' arrears still outstanding.

[3] At the hearing before the Rent Board, the Respondent despite having been aware and having made previous appearances, did not appear but was represented by counsel when the Appellant testified. On the date set for the Respondent's case the Respondent did not appear and learned counsel for the Respondent informed the Tribunal that he had no contact with the Respondent. No evidence was adduced by or for the Respondent and the case was set for judgment which was delivered on the 16th February 2016 in favour of the Respondent.

[4] Proceedings before the Rent Board are guided by the provisions of section 17 of the control of Rent and Tenancy Agreement Act which states:

"17. (1) The Board before making any order shall give all interested parties the opportunity of being heard and of producing such evidence as may to be Board seem relevant.

(2) The Board may examine witnesses and may summon any person to appear before it and may require such person to produce any document including a document of title which it considers relevant.

(3) The laws of Seychelles relating to witnesses and evidence shall be applicable to all witnesses appearing and to all evidence taken before the Board which is hereby authorised through its Chairman to administer an oath to any witness appearing before it or allow an affirmation or a declaration to be made by such witness.

(4)..."

[5] Section 22 regarding appeals states:

"22. (1) Any person aggrieved by any decision or order of the Board may appeal to the Supreme Court on a question of law or of fact or of mixed law and fact, and the Supreme affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Board with the

directions of the Court thereon, and may make any orders as to costs and all such orders shall be final and conclusive on all parties.

(2)...”

[6] It is trite law that where there is no specific provision guiding the Rent Board on matters of procedures applicable in the Act, basic provisions of the Seychelles Code of Civil Procedures Act would apply. In this case section 65 of the SCCP Act which states:

“65. If on the day so fixed in the summons when the case is called on the plaintiff appears but the defendant does not appear or sufficiently excuse his absence, the court, after due proof of the service of the summons, may proceed to the hearing of the suit and may give judgment in the absence of the defendant, or may adjourn the hearing of the suit ex parte.”

[7] In this case, the Rent Board after hearing the Appellant, adjourned the case for the Respondent to appear and still on the day set for defence the Respondent did not appear but were represented by counsel who it seems was not having any contact or instructions from the Respondent. The Board therefore rightly proceeded to give judgment but in favour of the absent Respondent.

[8] The general rule and in ordinary course of fairness if one party to a case doesn't appear in Court on the proper day at the proper time, the case is normally decided in favour of the other who appeared. Because the defendant is not present to contradict anything said, usually the Court will rule in favour of the party present as long as the party state the bare bones of a valid legal claim which would stand uncontradicted. It is not a therefore foregone conclusion that if the Respondent fails to appear the judgment must be in favour of the Applicant.

[9] Going over the records of the hearing of evidence of the Applicant, it is obvious that the Appellant did the needful reciting that evidence in line with the pleadings and the claim. Such was clearly sufficient to allow the Board to enter judgment in favour of the Applicant. In fact, the records show that there was not even any submission by learned counsel for the Respondent to the contrary as at the time he was no longer receiving instructions from the Respondent. The determination of the Rent Board is devoid of any

factual basis and it appears the Board expected the Applicant to establish its case to a very high degree of probability which was not necessary in the circumstances.

[10] Consequently I find that the Rent Board erred in giving judgment in favour of the absent Respondent in the circumstances. I quash the judgment of the Rent Board and instead enter judgment in favour of the Appellant as follows:

1. The Respondent is ordered to vacate the premises of the Appellant forthwith;
2. The Respondent is ordered to pay to the Appellant arrears of rent in the sum of SCR 21,850 per month from the month of January, 2016 to the date of this judgment.

[11] I award costs to the Appellant.

Signed, dated and delivered at Ile du Port on 17 July 2017

G Dodin
Judge of the Supreme Court