

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: 22/2015

[2017] SCSC 650

KRONSTAT LIMITED

Plaintiff

versus

PAUL CHOW

Defendant

Heard: 7 December 2016 & 30 May 2017

Counsel: Mr. Serge Rouillon for Plaintiff
Mr. Frank J. Elizabeth for Defendant

Delivered: 20 July 2017

JUDGMENT

F. ROBINSON, J

[1] THE BACKGROUND FACTS

[2] This suit is before the Court on Plaintiff's Complaint, filed on 24 April, 2015, against Defendant, for allegedly failing to repay a debt in the sum of United States Dollars (USD) 106,900.00/-. Plaintiff is seeking the following reliefs from the court —

"... to give judgment in favour of the Plaintiff and against the Defendant:

a) *in the sum of United States Dollars One Hundred and Six Thousand Nine Hundred (R106,900/-);*

b) *and costs of this action*".

[3] On 29 July, 2015, Defendant filed a Statement of Defence generally denying borrowing or receiving any money from Plaintiff. Defendant is asking the court to dismiss Plaintiff's Plaintiff with costs.

[4] **THE CASE FOR PLAINTIFF**

[5] Plaintiff's Plaintiff stated that it is an International Business Company (No. 069636) duly incorporated in Seychelles on 17 December, 2009. Plaintiff is represented by its Director, Rastilav Kupka.

[6] Plaintiff alleged that as evidenced by an acknowledgment of debt, dated 17 December, 2014, which was allegedly registered on 26 March, 2015, and signed by Defendant, Plaintiff loaned Defendant USD106,900.00/-, which sum was "*repayable by the Defendant by the 30th December, 2014*".

[7] On 10 June, 2015, Defendant filed a request for further and better particulars of the Plaintiff. In the said request, Defendant requested for the certificate of incorporation and memorandum of association of Plaintiff, a copy of the acknowledgment of debt and proof of notice of "*mise en demeure*".

[8] On 12 June, 2015, Plaintiff submitted a reply to Defendant's request for further and better particulars, which namely included —

(a) a copy of Plaintiff's certificate of incorporation and memorandum of association;

(b) a copy of a two page document purporting to be the acknowledgment of debt,

- (c) copies of several miscellaneous documents purporting to indicate that Defendant was previously the director of Plaintiff; and that he resigned on 15 December, 2014.

[9] **THE CASE FOR DEFENDANT**

[10] On 29 July, 2015, Defendant filed a Statement of Defence generally denying borrowing or receiving any money from Plaintiff.

[11] **THE EVIDENCE IN THE SUIT**

[12] On 7 December, 2016, Mrs. Alexia Amesbury gave evidence in connection with the notarial acknowledgment of debt; and Plaintiff’s counsel submitted the testimony of Mr. Carl Pragassen on 30 May, 2017. Defendant, through counsel, elected not to call evidence.

[13] *The evidence of Mrs. Alexia Amesbury*— Mrs. Alexia Amesbury testified to being a notary public; and that Defendant was a long time client of hers. Plaintiff’s counsel questioned her regarding the acknowledgement of debt, which appeared to include Defendant’s name as well as her signature. However, she refused to confirm that Defendant had signed the document before her, stating that it would implicate her testifying against the Defendant, her client, and that, therefore, she could not answer. Moreover, regarding the two page acknowledgment of debt, she stated that:

"A: [O]n this document I have not signed as a notary. I do not know where this other document came, it was appended to which other document I do not know. Paul Chow has signed several things before me pertaining to other races.

....

COURT TO WITNESS:

Q: So your testimony before this Court is that you did not sign this document before you and you do not know where that second page came from. That is what I gather from what you have stated?

A: I am saying that on this document, the one that he showed my signature does not appear on it. There is another document attached to it yes and I do not know which debt he is talking about in that document. I do not know.

Q: So you have no idea what is in this document?

A: On the second page but on this document as I said I cannot testify against my client." (Proceedings of 7 December, 2016, at 9 a.m. at p. 9)

[14] On that day, the court adjourned the testimony of Mrs. Alexia Amesbury.

[15] On 30 May, 2017, Mrs. Alexia Amesbury, Plaintiff's witness was not in court. Plaintiff's counsel informed the court that he "*will proceed*" with Plaintiff's case (*proceedings of 30 May, 2017, at 10 a.m.*). Plaintiff then submitted the evidence of Mr. Carl Pragassen.

[16] ***The evidence of Mr. Carl Pragassen***— Mr. Carl Pragassen stated that he is the Managing Director of ACT Offshore; that ACT Offshore is Plaintiff's current registered agent; and that it maintains Plaintiff's company documents. He testified that Plaintiff's previous registered agent was Fifco Offshore Services; and that the change in registered agents occurred on 5 February, 2016, (Exhibit P1, Extract of the Resolution of the Director of Kronstat Limited Appointing Act Offshore as the Registered Agent, dated and stamped, 5 February, 2016, by the Financial Services Authority). When he attempted to give evidence about the acknowledgment of debt document, Defendant's counsel raised an objection that he lacked authority to do so and represent the Plaintiff. The court upheld the objection and ruled that Mr. Carl Pragassen did not have the authority, under the law, to give evidence, on behalf of Plaintiff, in relation to the facts in issue. The examination in chief of Mr. Carl Pragassen ended on that point.

[17] Defendant's counsel did not cross examine Mr. Carl Pragassen.

[18] Plaintiff's counsel realising that he had a difficulty, made application to adjourn the suit. He indicated to court that he will call Rastilasv Kupka and one other person to give evidence on behalf of Plaintiff. After hearing objections on the application to adjourn, the court refused the application and ordered Plaintiff's counsel to close his case. In response, Plaintiff's counsel vehemently maintained his position, for the record, that he will not close his case.

[19] Having made the ruling, the court asked Defendant's counsel to commence Defendant's case. He indicated to court that Defendant will not call any evidence. Defendant's counsel on behalf of Defendant was put to his election to call no evidence. He is aware that the election to call no evidence is binding and that the case will be decided on the evidence brought so far (*see Ebrahim v Rene No. 37 1974 [SLR] 212*).

[20] **DISCUSSION**

[21] The court refused the application to adjourn on the following grounds. The representative of Plaintiff, Rastilasv Kupka, was not present on 7 December, 2016, for the hearing of the suit for the reason that he was sick. In support, Plaintiff's counsel tendered a print out of an email attachment. However, the said attachment was in a language, which the court is not familiar with. Plaintiff did not have the said attachment translated. In the email, dated 6 December, 2016, Mr. Rastilasv Kupka wrote the following to learned counsel —

"Hi Serge,

I am not coming, I am out till next week (hospital). Seems my partner did not contact you in this matter. I must believe in Alexia, everything will be OK. Thanks for your service.

Regards

Rasto".

[22] On 30 May, 2017, Rastilasv Kupka was not in court for the hearing of this suit. Plaintiff's counsel did not explain the absence of Rastilasv Kupka. Plaintiff's counsel had planned

to tender only the evidence of Mr. Carl Pragrassen, the Managing Director of Act Offshore, to establish Plaintiff's claim. In the case of *DF Project Properties v Fregate Island Private Limited Civil Appeal SCA MA 4/2016*, M. Twomey J.A., delivering the ruling, of the Court of Appeal of Seychelles, reiterated that commercial cases should be completed within six months pursuant to a "*Practice Direction by the Chief Justice*". This suit commenced on 24 April, 2015, and is still not completed by the court.

[23] The court now brings finality to this suit. The court ruled that Mr. Carl Pragrassen did not have the authority, under the law, to give evidence on behalf of Plaintiff. The court now gives reasons. Section 161 (1) of the International Business Companies Act, 2016, so far as relevant, provides —

"161 (1) Subject to subsection (2), a company shall at all times have a registered office in Seychelles.

(2) The registered office of the company shall be the same address as the principal place of business in Seychelles of its registered agent.

...".

Section 172 of the International Business Companies Act, 2016, so far as relevant, provides —

"172 (1) Service of a document relating to legal proceedings or any other document may be effected on a company by leaving it at, or sending it by registered post or any other prescribed method to

—

(a) the company's registered office; or

(b) the principal place of business in Seychelles of the company's registered agent."

[24] In light of the above provisions and the evidence of Mr. Carl Pragrassen, the court is of the considered opinion that a registered agent is not empowered to represent an international business company in legal proceedings. Section 172 (1) of the International

Business Companies Act, 2016, only refers to "*service of a document relating to legal proceedings*". There is no evidence before the court, which goes to show that Plaintiff had appointed Act Offshore to represent it in legal proceedings.

[25] **DECISION**

[26] For the reasons stated above, the court dismisses Plaintiff's Plaintiff with costs.

Signed, dated and delivered at Ile du Port on 20 July 2017.

F. Robinson

Judge of the Supreme Court