

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 12/2016

Appeal from Magistrates Court Decision 73/2014

[2017] SCSC 930

VILLA DE CERF (PROPRIETARY) LIMITED

Appellant

Versus

**AGENCE IMMOBILIER DES SEYCHELLES
REPRESENTED BY DOMINIQUE GUICHARD**

Respondent

Heard:

Counsel: Guy Ferley for appellant

Rene Durup for respondent

Delivered: 11 October 2017

JUDGMENT

Robinson J

1. THE BACKGROUND FACTS

2. This is an appeal against the judgment of the learned magistrate delivered on 20 May, 2016, (hereinafter the "*Judgment*").

3. The dispute arose out of a contract "*MANDAT DE RECHERCHE DE LOCATAIRE GERANT*" entered into by the plaintiff (now the respondent) and the defendant (now the appellant) on 24 March, 2013, (hereinafter the "*First Contract*"). The claim is based on the following term of the First Contract, which provides —

"III – REMUNERATION DU MANDATAIRE:

Le MANDATAIRE percevra de la part du propriétaire des honoraires de 4 000 € (HT) pour la recherché et la presentation du locataire gérant, la preparation du dossier (bilan, prévisionnel, contrat ...) payable le jour de la signature du contrat de location gérance.

Le locataire gérant aura à sa charge les honoraires de la redaction de l'acte et des suites de cet acte qui seront verses au MANDATAIRE le jour de la signature du contrat de location gérance.

..."

4. Reliance was also placed on other terms of the First Contract —

"...

Par les présentes. Le MANDANT charge le MANDATAIRE de rechercher des candidats pour la location gérance du commerce ci-après désignés dont ils sont propriétaires, et ce pour une durée minimale d'une année.

Le MANDATAIRE accept cette mission, il s'engage à diligenter toutes les démarches juridiques relatives à cette location gérance.

I – PROPRIETE A LOUER:

Nature: Resort Villa de Cerf, villa avec 4 Chambres d'hôtes plus un logement tel que détaillé en annexe.

...

VII- OBLIGATIONS DU MANDANT:

Le MANDANT s'engage à:

...

- autoriser le MANDATAIRE à effectuer toute la publicité sur internet qu'il jugera nécessaire.
- autoriser le MADATAIRE à visiter le bien

IX – OBLIGATIONS DU MANDATAIRES:

Le MANDATAIRE s'engage à entreprendre toutes les démarches nécessaires pour mener à bien la mission qui lui a été confiée."

5. The plaintiff alleged that the defendant had breached the above mentioned term of the First Contract by failing to pay him the sum of Euro (€) 4000.00/-. The plaintiff also claimed the sum of €2,000.00/- on the ground of "bad faith"; plus interest and costs.
6. The defendant denied the claim of the plaintiff. The primary allegation of the defendant was that the plaintiff "*an estate agent knew or ought to have known that the "gérance contract" was unlawful or contrary to public policy*". In short, the secondary allegation of the defendant was that the management contract (hereinafter referred to as the "*Second Contract*") entered into between the defendant and Bernard Besomi (hereinafter referred to as "*Bernard*") and Nadège Techer Ep Ragheboom (hereinafter referred to as "*Nadège*"), (both French nationals), was illegal.
7. After hearing the evidence, the learned magistrate found that the plaintiff has proven his claim on a balance of probabilities and awarded him the "*contract sum*" of € 4000.00/- in full. The learned Magistrate dismissed the plaintiff's claim in the sum of €2000.00/-. She ordered payment of €4000.00/- plus interest at the commercial rate and costs.
8. **THE GROUNDS OF APPEAL**
9. The appellant sought to appeal the judgment on the following grounds —

"1. The Learned Magistrate was wrong in law in her pronouncement that "the question as to whether the delivered candidates were eventually candidates were eventually contracted

for the exact arrangement previously intended by the plaintiff is irrelevant as this court is looking at the substance of this contract rather than the form of it". And then find that the plaintiff was entitled to the sum of €4000 as he had done the research/work and presented Mr Besomi and Mrs Techer to the appellant. The substance of the contract is "location gerant" meaning a tenant who would rent and run the hotel not a person to be employed by appellant as was the case. The learned magistrate failed to appreciate what was the real substance of the contract.

2. The Learned Magistrate erred in reading and interpreting Part III of the contract which clearly stated the sum of €4000 was payable "le jour de la signature du contrat location gerant". (Paragraph 6 of the judgment). As the evidence shows there never was a "contrat location gerance". The contract signed by the appellant and Besomi and Techer were employment contracts, which circumstances, as the evidence shows, compel the parties to enter into.

3. The Learned Magistrate erred in fact and in law when she states (at paragraph 8) of the judgment that "the issue of policy of ministry to apply for sanctions has nothing to do with this contract. " On the contrary this has everything to do with the contract as the respondent who was/is an estate agent ought to have known about government policy preventing the rental and management of tourism establishment of less than 15 rooms to foreigners, any reasonable estate agent is expected to have knowledge of such a basic fact affecting his trade. Had he informed the appellant of that fact the appellant would not have contracted him at all."

10. THE RELIEF

11. The appellant sought the following relief from the court —

"An order setting aside the judgment of the learned Magistrate and dismissing the plaint against the Appellant with costs, both at Magistrates' Court level and this court, for the Appellant."

12. THE CASE FOR PLAINTIFF AND DEFENDANT

13. The plaintiff pleaded the following in support of his claim —

- (1) the plaintiff *"selected [Bernard] and his concubine, [Nadège]."* [para. 6 of the plaint];
- (2) *"... Part III of the Agreement [First Contract] states that the Plaintiff would receive the sum of 4,000 Euros payable the day of the signature of the Agreement."* [para. 8 of the plaint];
- (3) *"the parties attended the office of the Seychelles Investment Bureau and an officer advised wrongly that the management contract is illegal and suggested that the Defendant applied merely for simple GOPs"* [para. 12 of the plaint];
- (4) *"On the 10th October 2013, [Bernard] got his GOP as manager and [Nadège] got her GOP as Assistant Manager with the Defendant and they start their duties from the 1st November 2013"* [para. 12 of the plaint].

14. The defendant pleaded the following, in answer to the allegations contained in the plaint

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- (1) the *"[defendant] contracted the Plaintiff to find for it a client for a contract "de location gerance libre" which means that the client was to rent and to manage the business independently from the Defendant and the client was to pay a fixed rental to the Defendant. The Plaintiff had promised and the Defendant had relied on that promise, the Plaintiff being a well-established estate agent that such a contract was legal and possible to attain".* [para. 5 of the defence];
 - (2) *"... the Plaintiff as estate agent knew or ought to have known that the "gerance contract" was unlawful or contrary to public policy as Mr. Besomi and Mrs Techer were permitted by regulations to manage hotel establishment with less than 15 rooms, they being non-Seychellois."* [para. 5 of the defence];
 - (3) *"the contract was a contract for a "gerance libre"* [para. 6 of the defence];

- (4) *"that the parties attended that the parties were advised that the management contract was illegal and that the parties were advised to apply for simple GOP'S"* [para. 8 of the defence];
- (5) *"the Defendant avers that it had to employ the two persons named on humanitarian grounds, who because of the misrepresentation by the Plaintiff they had left their home and were present in Seychelles without the contract they had been promised by the Plaintiff. Mr. Besomi and Mrs. Techer have filed a case before the court claiming back fees they paid to the Plaintiff."* [para. 9 of the defence].

15. **THE BRIEF FACTS OF THE CASE**

16. The evidence adduced before the trial court in support of the claim was as follows. On 24 March, 2013, the plaintiff and the defendant entered into the First Contract, pursuant to which, the defendant obtained two applicants, Bernard and Nadège, both French nationals. On 25 May, 2013, the defendant and Nadège and Bernard entered into the Second Contract, which would have established Bernard and Nadège as *"locataire gérant"* of the defendant's Guest House and restaurant. The plaintiff contended that on 6 October, 2013, he informed Bernard and Nadège that they will, respectively, not be issued with a gainful occupation permit (*"hereinafter referred to as "GOP"*) as *"locataire gérant"* in view of the Government of Seychelles' policy of not permitting foreigners *"to run the hotel as tenants"*. The plaintiff stated that Bernard and Nadège obtained their respective GOP on 10 October, 2013; and that the defendant employed Bernard and Nadège as manager and assistant manager of the defendant's Guest House and restaurant, respectively. The First Contract stipulated that the defendant will pay the plaintiff the sum of €4000.00/- on the date of the signature of the Second Contract. The defendant did not pay him the invoiced amount - €4000.00/- on the date of the signature of the Second Contract. On 15 October, 2013, the plaintiff sent an invoice to the defendant. The plaintiff has pleaded a written notice of *"mise en demeure"*, which is before the court as Exhibit P8.

17. The director of the defendant stated that it employed Bernard and Nadège for the reason that the First Contract and Second Contract were illegal. The court reads part of a letter, dated 4 October, 2013, from the defendant to one Mrs. Helda Hortère, Facilitation & Aftercare Officer Seychelles Investment Board —

"...The fact is that we are not aware of the government policy of renting out businesses and the procedure that you have explained is a long one. I have decided to employ Mr. Bernard Besomi as Manager and Mrs. Nadege Techer Ep as Assistant Manager. I would be grateful if a letter can be issued by your office for me to provide the Ministry of Employment so that their GOPs can be approved."

On 6 October, 2013, the plaintiff wrote to Bernard and Nadège informing them that (Exhibit D4) —

"Après que les demandes de permis aient été examinées par les différentes administrations avec des réponses contradictoires (immigration, bureau de l'emploi, Seychelles Investment Board) nous avons appris hier que les Seychelles ne veulent plus donner de GOP pour la gerance libre des hotels jusqu'à 15 chambres (reserves aux Seychellois) alors que cette restriction ne s'appliquaient qu'à la propriété de l'établissement."

The director of the appellant added that he obtained a GOP for Bernard and Nadège, respectively; and that they were employed as manager and assistant manager of the defendant, respectively.

18. **SUBMISSIONS AND DISCUSSIONS**

19. The court has considered the record of proceedings, the judgment, the grounds of appeal and the written submissions of counsel for and against the appeal that frame the following issues for its determination.
20. Has the trial Magistrate wrongly decided —

Ground 1 —

(A) that ***"whether the delivered candidates were eventually contracted for the exact arrangement previously intended by the plaintiff is irrelevant as this court is looking at the substance of this contract rather than the form of it"***.

Ground 2 —

(B) at para. 6 of the judgment, that ***"6. ... Part III of "Remuneration du mandataire" ... simply means in English that the plaintiff was entitled from the defendant the sum of Euro 4000 for his research/work and presentation of the tenant gerant on the day of the signing the contract ..."***.

Ground 3 —

(C) that ***"the issue of policy of ministry to apply for sanctions has nothing to do with the contract"***.

21. The court considers the three Grounds of Appeal together.
22. The main argument of the appellant in the court below and reiterated on appeal was that the First Contract was illegal or contrary to public policy. It is trite that the object of the *"mandat"* must be legal. It is not possible to make a *"mandataire"* accomplish *"un acte"*, which is not permitted by the written law. However, the court notes that there is no evidence on record in support of the defendant's allegation that the object of the First Contract was illegal. Further, there is also no evidence in support of the defendant's allegation that the First Contract was contrary to public policy. It is also significant to note that the plaintiff was not a party to the Second Contract.
23. For the reasons stated above, the court is of the considered opinion that the learned Magistrate was right in her determination that the plaintiff/respondent had performed his obligations in accordance with the terms of the First Contract; and that therefore, in light

of the evidence, the "*forme*" of the First Contract did not arise for the consideration of the learned magistrate. The trial court correctly rejected the appellant's defence.

24. In light of the above, the court upholds the judgment of the learned Magistrate entering judgment for the plaintiff/respondent against the defendant/appellant in the principal sum of €4000.00/- together with costs of the suit.
25. As regards interest, the court awards interest fixed by law on the principal sum of €4000.00/- due from 26 February, 2014, until payment in full.
26. The appeal is dismissed with costs.

Signed, dated and delivered at Ile du Port on 11 October 2017

F Robinson
Judge of the Supreme Court