

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 157/2012**

**[2017] SCSC 1044**

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**D & D DEVELOPMENT LTD**

Plaintiff

versus

**SIMON ALCINDOR**

Defendant

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Counsel: Mrs. Aglae for plaintiff

Mr. Camille for defendant

Delivered: 7 November 2017

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**JUDGMENT**

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M. Twomey CJ

**[1]** The Plaintiff filed a claim against the Defendant for the sum of SR580, 000 arising either from a breach of contract to repair a “car mix” or a delict arising from his retention of the same when the Plaintiff came to collect it.

- [2] The Defendant denied the claim averring that an agreement had been reached in which a deposit of SR5, 000 had been paid by the Plaintiff for purchase of parts for the car mix.
- [3] The Defendant further averred that he managed to get the engine of the vehicle going but discovered further defects of which he informed the Plaintiff.
- [4] He was asked for a quote for the repair works to be done and he provided the same to the Plaintiff.
- [5] He denied ever retaining the vehicle, averring to the contrary that he had asked orally and in writing to the Plaintiff to remove his vehicle from his garage which the Plaintiff did not do.
- [6] He averred that the Plaintiff had suffered no losses or as claimed. He counterclaimed instead for the cost of the vehicle being parked at his garage from June 2012 to February 2013 amounting to SR135, 000, for work done on the vehicle in the sum of SR7, 500 all for the inconvenience and distress caused by the car mix being forcibly garaged on his premises.
- [7] The Plaintiff denied the counterclaim. He averred that the quotation of SR80, 000 was not accepted and that on his return to collect the vehicle, the Defendant has refused to release it without payment of SR2, 200.
- [8] There then followed several court adjournments and the matter was not proceeded with through the Plaintiff's default of appearance.
- [9] The Defendant has indicated to the Court that he wishes to proceed with his counterclaim. This was granted and the Plaintiff served with notice to appear.
- [10] At the hearing the Plaintiff again defaulted appearance and the matter proceeded ex parte. The Defendant testified and supported the averments in his counterclaim with documentary evidence, namely the contract for works to be undertaken on the vehicle that the Plaintiff refused to sign (Exhibit P1) and the letters to the Plaintiff to remove his vehicle (Exhibits P2 and P3).

**[11]** I am satisfied on the evidence adduced by the Defendant that he has suffered loss as a result of the Plaintiff's breach of contract. I find that he has made out his claim for the parking rental as claimed in the sum of SR135, 000 and for the work carried out on the vehicle in the sum of SR7, 000. In regard to his claim for inconvenience and distress, I am of the view that the claim is supported and I find that SR30, 000 would be reasonable in the circumstances. In total the Defendant is entitled to the sum of SR172, 000 together with costs.

**[12]** I therefore order the Plaintiff to pay the sum of SR172, 000 together with costs of this suit to the Defendant.

**[13]** I also order the Plaintiff to remove forthwith his vehicle from the Defendant's garage.

Signed, dated and delivered at Ile du Port on 7 November 2017

M. Twomey, CJ  
Chief Justice