

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS110/2016

[2018] SCSC 249

**CHRISTINE DOYLE
REPRESENTED BY JENNIFER ZATTE**

Plaintiff

versus

JIM PHILOE

Defendant

Heard: 19 January 2018
Counsel: Mr. N. Gabriel for plaintiff
Mr. C. Lucas for defendant

Delivered: 12 March 2018

RULING

Vidot J

[1] On 30th July 2016, the Plaintiff filed a complaint claiming breach of a construction contract. The contract signed between the parties is dated 15th October 2012 and pertains to the construction by the Defendant of a house for the Plaintiff in the sum of SR431,582.04. The Plaintiff avers that the Defendant built foundation and the main walls but then abandoned construction altogether. Despite repeated requests to complete the works, the

Defendant failed, refused and neglected to complete the same. She now claims for refund of moneys already paid which is the total contract price.

[2] The Defendant filed a plea in limine on 2 grounds, namely;

i. The Plaintiff is bad in law. The Plaintiff lacks representation; and

ii. The cause of action has been prosecuted in the wrong forum contrary to the terms of the contract.

[3] As regards the first ground of the plea in limine, Learned Counsel for the Defendant had argued that Jennifer Zatte who is listed as representing the Plaintiff could not do so due to absence of necessary legal appointment, namely a Power of Attorney. He had referred to Article 1984 to Article 1990 inclusive of the Civil Code of Seychelles which deal with the nature and forms of agency. The Court agrees with Mr. Lucas that in normal course of action a Power of Attorney would have been necessary to allow Jennifer Zatte to represent the Plaintiff in this matter.

[4] However, it was pointed out to Mr. Lucas that Jennifer Zatte was in fact granted a Power of Attorney by the Plaintiff. The same is dated 07th October 2013 and registered at the Office of the Registrar of Deeds on 19th November 2013. The same was attached to the Plaintiff filed in court but unfortunately a copy was not attached to the copy of Plaintiff served on the Defendant. Having taken note of the same and voicing his disappointment of failure by the Plaintiff to have served a copy of the Power of Attorney on the Defendant, he agreed to abandon this ground in limine.

[5] As regard the second plea in limine, Counsel referred to clause 5 of Agreement of 15th October 2012, signed between the parties. The clause reads as follows;

“in case of dispute between the parties as to the amount of money payable or as to quality of work, the matter shall be referred to a person experienced in building works whose decision shall be final and binding on them.”

[6] Counsel for the Defendant therefore argues that clause 5 amounts to an arbitration clause that ousts such matters from the jurisdiction of the Supreme Court. Thus the case has been filed before the wrong forum.

[7] Mr. Gabriel, Counsel for the Plaintiff referred to Article 1134 of the Civil Code of Seychelles which provides that “*agreements lawfully concluded shall have the force of law for those who have entered into them..... They shall be performed in good faith*”

I fail to follow argument of Counsel for the Plaintiff that Article 1134 can absolve the parties from following the terms of the Agreement. The Agreement is valid and the terms and conditions have to be observed and put in application.

[8] In the Plaintiff, the Plaintiff seeks to recover the moneys already paid for the project. The Plaintiff is not challenging the quality of the works albeit that the works as per plaintiff include only the foundation and main walls. The Plaintiff is not seeking specific performance. The Plaintiff avers that by failing to adhere to the 6 month period for completing the works, the Defendant is a breach of the Agreement. Therefore, the issue of quality of works as provided in clause 5 has no application here as it is not in dispute.

[9] Under clause 5, the other instance that calls for arbitration is in respect “*amount of money payable*”. In this case the entire contract price has been paid. Under the agreement, payment was to be by instalment. Considering the spirit of the agreement, I am of the view that what was anticipated that each time a portion of the work is completed, then an instalment corresponding to the amount completed will be paid. The clause anticipates the application of the clause in instances where there is default in payment by the Plaintiff. Since the entire sum had been paid, then the clause will in this case have no applicability. Therefore, the case has been prosecuted in the correct forum.

[10] Therefore, the plea in limine is dismissed and the Defendant is called upon to file his defence.

Signed, dated and delivered at Ile du Port on 12 March 2018

M. Vidot
Judge of the Supreme Court