

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC26/2013

[2018] SCSC 552

ADAM UMARJI
Plaintiff

versus

DHEVATARA PROPERTIES CO LTD
Defendant

Heard:

Counsel: Mr Juliette for plaintiff

Mr Rouillon for defendant

Delivered: 30 May 2018

JUDGMENT

Robinson J

The background

[1] This suit is concerned with a complex of four apartments located on Praslin on the land comprised in title number PR1981 (hereinafter referred to as "*the demised premises*"). Plaintiff, Mr Adam Umarji, has been at all material times the owner and landlord of the demised premises. Defendant, Dhevatarra Properties Co. Limited, (hereinafter referred to

as "Dhevatara") has been at all material times the tenant of the demised premises. It was not in dispute that Mr Umarji and Dhevatara verbally agreed the lease. Mr Umarji issued these proceedings seeking damages for breach of the lease as follows —

- "(i) The Defendant is in arrears of rent in the sum of USD 4000.00/- due for the period of 15 July 2012 to August 2012;
- (ii) The Defendant is in arrears of rent shortfall of USD 1800. 00/- for the period 15 May 2012 to 14 June 2012 and 15 June 2012 to 14 July 2012;
- (iii) The Defendant has breached terms and conditions (ii) to (ix) as stipulated above in paragraph 3 of this Plaint by failing to maintain and upkeep the outside boundary walls as well as internal rooms in the said demised premises;
- (iv) The Defendant is in further breach of the said lease agreement by having many items missing from the demised premises, which have not been replaced. These items include microwave cookers, as well as other kitchen and bathroom accessories and utensils;
- (v) The Defendant is in further breach of the said lease agreement for having damaged or allowed to be damaged the following items: - mattresses, pillow cases, armchairs and sofas. There is also damage to the plumbing system, damage to the water heaters and all air conditioning units are beyond economical repair;
- (vi) The full extent of the Defendant's breaches and remedies thereto are described in the report of Quantity Surveyor & Property Consultant, Nigel Antoine Roucou dated 27 September 2012, annexed herewith as Annex A;
- (vii) In further breach of the lease agreement, the Defendant used the demised premises for purposes other than that of a private dwelling in that it used the demised premises as a store for material/equipment and to house excessive construction workers."

[2] The Plaintiff averred that Mr Umarji suffered loss and damages as a result of the breach of the lease by Dhevatara particularised as follows —

"Unpaid Rent USD 5800.00 @ SR13.30 =	SR 77, 140.00
Works required re-instating the demised Premises to its original condition, wear and tear expected	SR 101, 030.00

Missing/Damaged furniture, fittings and equipment	SR 152, 055.00
Consequential loss of rental as a result of the breaches by the Defendant and the time it will take to reinstate the demised premises to its original condition USD 48000 @ SR13.30 =	SR 638, 400.00
Less Deposit Held	-SR 63514.00
Total	SR 905,111.00

- [3] Mr Umarji prayed the court to enter judgment against Dhevatarara in the sum of 905,111.00/- rupees plus interest and costs.
- [4] Dhevatarara filed a Defence denying the claims of Mr Umarji and asked the court to make order dismissing it with costs. In the alternative, Dhevatarara claimed to set off Mr Umarji's claims against the inconvenience allegedly suffered by Dhevatarara's staff; the "*corrections*" and "*improvements*" to the demised premises carried out by Dhevatarara; and the rental deposit payment held by Mr Umarji. With costs in favour of Dhevatarara.

The evidence

- [5] Mr Umarji gave evidence and called Mr Vivian Rassool and Mr Nigel Roucou to give evidence and Dhevatarara called Mr Gavindish Westlake.
- [6] Briefly summarised below are the relevant facts presented in the witnesses testimonies.
- [7] *The evidence of Mr Rasool.* Mr Rasool is an estate agent for the Arriva Real Estate Seychelles. Arriva Real Estate Seychelles advertised the demised premises, owned by Mr Umarji, for rental. At about October or November, 2009, Dhevatarara's representatives contacted Arriva Real Estate Seychelles for rental of the demised premises. Representatives of Mr Umarji and Dhevatarara visited the demised premises. After the said visit, representatives of Dhevatarara intimated to Mr Umarji that Dhevatarara was interested to lease the demised premises. An inventory of the demised premises was conducted before Dhevatarara took possession of the demised premises. On 10 November, 2009, Dhevatarara took possession of the demised premises for a term of 12 months at a monthly rent of United States Dollars (USD) 3000.00/- or USD 3100.00/-. Dhevatarara paid 3 months deposit

at the beginning of the lease. The agreement required Dhevatarata to use the demised premises for the dwelling of about eight or nine of its employees.

- [8] Dhevatra did not complain about the condition of the demised premises at the onset of the lease as alleged in its Defence. Dhevatarata complained about the condition of the sliding glass doors towards the end of the lease. In mid-2010, or mid-2011, Mr Umarji emailed him complaining about the condition and overcrowdedness of the demised premises, (Exhibit 2.32 of P1).
- [9] After the termination of the lease, at about November, 2010, the lease was subsequently renewed for different periods of time until about May, 2012, see exhibits 2.16, 2.17, 2.18, 2.24 and 2.25 of Exhibit P1. About May, 2012, Mr Umarji informed Dhevatarata that the monthly rent will be increased to USD 4000.00/-, if Dhevatarata did not notify him of the date that it will vacate the demised premises. About May, 2012, Dhevatarata, by email, notified Mr Umarji that it will vacate the demised premises (Exhibit P1). Dhevatarata did not make any payment to Mr Umarji in the sum of USD 4000.00/-. Dhevatarata by an email, (August, 2012), notified Arriva Real Estate Seychelles that it will vacate the demised premises in August, 2012, (Exhibit P1). In August, 2012, Dhevatarata vacated the demised premises and delivered the key to Arriva Real Estate Seychelles. Dhevatarata did not serve notice to quit. Mr Rasool was not present at the handover of the demised premises. Mr Westlake emailed Mr Umarji stating that Dhevatarata will restore the demised premises to its original condition after the termination of the lease.
- [10] When cross-examined, Mr Rasool confirmed that before Dhevatarata took possession of the demised premises, a representative of Dhevatarata asked, by email, dated 30 October, 2009, for new air conditioning units to be installed on the demised premises. He reiterated that Mr Umarji informed him about the condition and overcrowdedness of the demised premises.
- [11] *The evidence of Mr Roucou.* Mr Roucou is a quantity surveyor. Mr Umarji appointed him "to value the cost of reinstating the building to its condition prior to the lease including assessing the furniture and equipment, based on an inventory list provided to him". Mr Umarji appointed Mr Roucou to do the valuation after Dhevatarata had vacated the demised

premises. The demised premises comprised of four apartments - two apartments with two bedrooms each; and two with one bedroom each. Mr Roucou, Mr Umarji and Mr Wesley inspected the demised premises on 24 September, 2012. Mr Roucou obtained an inventory list from Mr Umarji. Mr Roucou, Mr Umarji and Mr Westlake compared the present condition of the demised premises to what it was according to the inventory, excluding anything that had deteriorated by wear and tear. Mr Roucou made notes and took photographs.

- [12] The report - REINSTATEMENT COST AND INVENTORY ASSESSMENT-YASAD APARTMENTS, ST SAUVEUR, PRASLIN, is before the court as exhibit P2A. The UPDATED INVENTORY is before the court as exhibit P2B. The REINSTATEMENT WORKS SCHEDULE is before the court as exhibit P2C. Based on Exhibit P2A, the *"reinstatement cost"* was 101,030.00/- rupees and the cost of the *"missing/damage furniture and equipment"* was 152,055.00/- rupees. Exhibit P2C detailed the *"reinstatement works"* to be undertaken to restore the demised premises to its condition before the lease agreement. Mr Roucou then referred the court to the photographs he took during the inspection of the demised premises.
- [13] Photographs 9 of Exhibit P2A and 1(A) and 1(B) of Exhibit P3 showed an electrical installation being in need of maintenance to restore it to its working condition. Photographs 11 of Exhibit P2A and 4A of Exhibit P3 showed a door in need of maintenance - *"repainting and adjusting"*. Photographs 12 of Exhibit P2A and 12B of Exhibit P3 showed a mattress which was too small for the bed (single mattress). He stated that the original mattress, which fitted the bed, must be missing. Photographs 13 of Exhibit P2A and 13A of Exhibit P3 showed a missing cushion and a missing dining table, respectively.
- [14] Photograph 14 of Exhibit P2A showed an air conditioning unit, which was missing some parts. Photographs 15 of Exhibit P2A and 8A of Exhibit P3 showed some tiles, which were different to the original ones. In Photograph 15 of Exhibit P2A the bidet tap was missing. Photographs 2A, 2B and 3B of Exhibit P3 showed the air conditioning units in their current condition and part of the exterior wall of the demised premises in need of repainting. Photographs 5A of Exhibit P3 showed a toilet in need of cleaning. He also pointed to a

"loose pipe" on the floor, which, he stated, needed to be refitted. Photograph 5B of Exhibit P3 showed a shower, which needed to be cleaned and partially grouted.

- [15] Photograph 6A showed a washing basin in need of cleaning and *"re-sealing"*. Photograph 6B showed a bidet in need of cleaning. Photograph 7A of Exhibit P3 showed a missing tap, which had to be replaced. Photograph 7B of exhibit P3 showed a washing basin in need of cleaning. Photograph 8B of Exhibit P3 showed a new *"copper pipe"*, which had been incorrectly fitted. He stated that the original pipe had been removed. He stated that such a pipe is always *"concealed behind the wall"*. In the photograph it has been fitted to the wall. Photograph 9A of Exhibit P3 showed an air conditioning unit, which needed to be replaced because it was not working properly. Photograph 9B of Exhibit P3 showed a worn out mattress. Photograph 10A showed that a refrigerator was missing from the place where it was kept. Photograph 10B of Exhibit P3 showed that cushions, on the main chair, were missing.
- [16] Photograph 11A of Exhibit P2 showed a *"different shower with broken pipes"*. A pipe has been fitted to the wall (see photograph 14A showing a typical shower). Photograph 11B of Exhibit P3 showed a missing curtain. Photograph 12A of Exhibit P3 showed that the socket of the air conditioning unit has been pulled out of its fitting. Photograph 13B of Exhibit P3 showed a bathroom in need of cleaning. Photograph 15A of Exhibit P3 showed an air conditioning unit with its cover removed and part of its electrical connection cut off. He has requested for the unit to be replaced. Photograph 15B of Exhibit P3 showed that *"general maintenance"* needed to be undertaken to the kitchen.
- [17] When cross-examined, Mr Roucou reiterated that Mr Umarji gave him an inventory list; and that he conducted the inspection, of the demised premises, in the presence of Mr Umarji and Mr Westlake. Learned Counsel contended that the value of the fridge was unreasonable. Mr Roucou's response was that it was an average price. He further explained that for each item an estimated value was obtained by comparing the item in question to a similar item for which the value was known. Mr Roucou stated that 1200.00/- rupees for a *"16 pieces dining set"* was reasonable. Mr Roucou denied the suggestions of Learned Counsel that he had made up the figures upon the instructions of Mr Umarji; and that

matters such as grouting were the responsibility of Mr Umarji and not that of Dhevatarara. In relation to Exhibit P3, photographs 1A and 1B, Learned Counsel only made the point that Mr Roucou had no evidence that Dhevatarara had removed the wires and casing.

- [18] Concerning the issue of repainting the wall, Learned Counsel suggested that the "*building looks fine*". Mr Roucou explained that the building may "*look fine*" in the photograph, but in reality it did "*not look fine*". The building had stains on it.
- [19] Learned Counsel had no complaint about the "*repair external drainage at apartment 3 incl new soak way*", which Mr Roucou had valued at 6,000.00/- rupees.
- [20] With respect to the door, Learned Counsel suggested that it was "*weathered by natural elements*"; and that he did not see any damage to it. Mr Roucou stated that the issue with the door in question was not wear and tear, but rather it was about its "*misuse*". He added that the door will have to be repainted.
- [21] Mr Roucou denied the suggestion of Learned Counsel that the damages to the demised premises shown in photographs 6A, 6B, 7A and 7B were part of normal wear and tear. With regards to the "*different tiles*" shown in photographs 8A and 15 of Exhibit P2A, Mr Roucou stated that their valuation was based on the replacement of those tiles. Mr Roucou denied the suggestion of Learned Counsel that the stained mattress shown in photograph 9B, was as a result of normal wear and tear. With respect to the air conditioning unit shown in photograph 9B, Learned Counsel suggested that it was broken, to which, Mr Roucou stated that he was unaware of such fact. Photograph 11A showed a missing curtain.
- [22] When questioned about an electrical socket that was not properly in its fitting, Mr Roucou explained that "*there was something wrong with the socket and they had replaced the socket but they have not screw it back properly*" (*proceedings of 6 June 2014, at 1 45 p.m., p.58 of 80*). He stated that he had probably valued it at 100.00/- rupees. However, he could not locate the electrical socket in Exhibit P2C. With respect to the toilet and shower, Mr Roucou stated that they needed to be cleaned, to which Learned Counsel suggested that it was Mr Umarji's responsibility to do so. Mr Roucou also identified a "*loose pipe*" depicted

in photograph 5A and a "shower pipe", which had been left on the floor, depicted in photograph 5B.

[23] Mr Roucou then stated that the building appeared to be a "fairly recent building" (*proceedings of 6 June 2014 at 1.45 p.m., pg.60 of 80*). He added that "90-95 percent of these reinstatement should go toward the tenant, because if they had used the building properly, there would not have been these issues" (*proceedings of 6 June 2014, at 1.45 p.m., p. 61 of 80*).

[24] Mr Roucou explained wear and tear as follows —

"Wear and tear to us is the normal uses of the building. If you use a building properly as I say, there should not be any major wear and tear on the building. Wear and tear would have mainly on the furniture or loose furniture and fittings as we call it. For example I was taken by the other side was the mattresses. Yes there will be wear and tear on the mattresses, it would lose its spring at the same time it would not be stained. You understand."

[25] *The evidence of Mr Umarji.* Mr Umarji is a businessman. Mr Umarji is the owner of the demised premises. Dhevatarra was the tenant of Mr Umarji at all material times. Miscellaneous documents relating to the lease of the demised premises and matters in dispute are before the court collectively as Exhibit P4. Mr Rasool of the Arriva Real Estate Seychelles negotiated the lease of the demised premises. The air conditioning units were repaired and other minor repairs were done at the onset of the lease. Dhevatra undertook such repair works and he [Mr Umarji] bore the repair costs.

[26] The lease of the demised premises started on 15 November, 2009, and it was for a duration of one year at a monthly rent of 28,000.00/- rupees. Dhevatarra at the onset of the lease paid Mr Umarji one month rent in advance, two months deposit and Goods and Services Tax in the sum of 96,000.00/- rupees. The demised premises was fully furnished. At the onset of the lease an inventory was done and photographs were taken. He stated that it was Dhevatarra's obligation to keep the demised premises in good condition and tenantable repair

- [27] Mr Umarji visited the demised premises on 10 April, 2012, and noticed that it was not being used to house about eight workers, but rather it was being used to house about thirty to forty workers. He also noticed that Dhevatarara had altered all the "*pipes*" and had installed bunk beds on the demised premises; and that the demised premises was in a dilapidated state. Dhevatarara was clearly not maintaining the demised premises. In addition, Dhevatarara had fitted six or seven external showers on the demised premises without first obtaining his permission. Mr Umarji wrote to Mr Rasool, by email dated 11 April, 2012, (Exhibit P4 2.51), about the poor condition of the demised premises. Concerning the soakaway, Mr Umarji refused to repair it and attributed the damages to it to Dhevatarara, which had housed thirty to forty people on the demised premises. Concerning the air conditioning units, Mr Umarji argued that Dhevatarara should have repaired them since he had already bore the costs, when Dhevatarara replaced them. During the lease Dhevatarara complained about the soak away pit and the broken sliding glass door wheels.
- [28] On 3 April, 2012, by email, Dhevatarara wrote to Mr Umarji informing him that its construction team had left Seychelles; and that it was planning to house its senior hotel staff. Mr Umarji stated that he allowed Dhevatarara's employees to remain on the demised premises after Dhevatarara had told him that it will restore the demised premises to a better state. However, when Dhevatarara did nothing, he decided to increase the rent by USD 1000.00/-. Dhevatarara did not accept the increase in rent and within a month or two vacated the demised premises. Dhevatarara did not give notice to quit, but only stated, by email, that it needed to vacate the demised premises by 14 August, 2012.
- [29] When Dhevatarara had vacated the demised premises, Mr Umarji sent his cousin to take photographs of the state of the demised premises and he also instructed Mr Roucou to conduct a valuation. He visited the demised premises in the company of Mr Roucou and the representative of Dhevatarara. Mr Roucou took photographs. Mr Umarji gave Mr Roucou some photographs (Exhibit P4 section) depicting the state of the demised premises prior to the lease. Mr Umarji also gave evidence about the damages which he alleged to have suffered.

- [30] Mr Umarji stated that it would be difficult to restore the demised premises to its original condition within a specified period of time, and, therefore, he was claiming one year "loss of rental" in the sum of USD 48,000.00/-.
- [31] When cross-examined, Mr Umarji stated that the demised premises was rented to Masons Travel for two years before they were leased to Dhevatarara. He gave the same furniture to Dhevatarara. In relation to the air conditioning units, he stated that he fitted those depicted in the photographs to the demised premises. Concerning the demised premises being overcrowded, he explained that he went on site and saw the workers; and that a representative of Dhevatarara was also present on that day. The showers were still on the demised premises. He clarified that he received Dhevatarara's notice to quit in July, 2012, but that he had expected to receive three months' notice commencing from July. It was suggested to Mr Umarji that most of his complaints relating to wear and tear, were petty and exaggerated, to which he denied.
- [32] *The evidence of Mr Westlake.* The evidence of Mr Westlake is to the following effect. Mr Westlake is Dhevatarara's representative. He was not present when Dhevatarara rented the demised premises. Dhevatarara rented the demised premises to house its staff during the construction phase of a 5 star hotel. There were only nine members of staff staying on the demised premises. He was not aware about the condition of the demised premises at the onset of the lease and had neither seen an inventory list, nor a written lease agreement. He complained about the septic tank, the cleanliness of the demised premises, and the air conditioning units.
- [33] A month after the handing over of the demised premises, he met Mr Roucou at the demised premises. Mr Roucou took some pictures. He made his own report and corrected some errors made by Mr Roucou. He stated that as a project manager, he had sufficient quantity surveying experience. Miscellaneous documents, including his report, are before the court collectively as Exhibit D1. He stated that the only time he saw an inventory list was when the owner came to claim the demised premises.
- [34] Mr Westlake agreed that there was a pipe protruding from a wall in one of the showers. He stated that it was a pipe installed to transfer water from the lower big tap to the shower,

which caused no structural damage to the demised premises. With regards to the septic tank, he stated that no work was ever done to it. His company paid for a "tanker" to empty the septic tank on a monthly basis. He explained that the septic tank became a sewerage holding tank, which was why it overflowed. There were three Seychellois welfare staff, who were employed to clean the demised premises until Dhevatarara's staff were repatriated. He accepted that showers were fitted outside because of a water problem. He stated that there would have been only about nine bunk beds on the demised premises. It was impossible to put two expatriate workers in a double bed together.

[35] Mr Westlake gave notice of termination of the lease, on 27 May, 2012, when Mr Umarji wanted to increase the rent from USD 3100.00/- to USD 4000.00/-. With regards to the rent shortfall of USD 1800.00/- for the period covering 14 June, to 14 July, 2012, he stated that it was never accepted that they should pay USD 4000.00/-. He stated that three months' notice was an unacceptable period for the release of the demised premises.

[36] **Submission and analysis**

[37] This court has considered the evidence on record and the submissions of both Learned Counsel.

[38] In his Complaint, Mr Umarji is seeking damages as follows —

"Unpaid rent USD 5800.00 @ SR13.30 = SR 77, 140.00"

[39] Mr Umarji claimed unpaid rent as follows —

- " (i) The Defendant is in arrears of rent in the sum of USD 4000.00/- due for the period of 15 July 2012 to August 2012;
- (ii) The Defendant is in arrears of rent shortfall of USD 1800.00/- for the period 15 May 2012 to 14 June 2012 and 15 June 2012 to 14 July 2012".

[40] As opposed to a written lease agreement which comes to an end at the expiry of the period mentioned in the lease, an unwritten lease will come to an end when one of the parties

gives notice of termination to the other observing the time-limit fixed by the local practice in accordance with Article 1736.

[41] Mr Umarji, through Learned Counsel, in his written submissions, stated that he is longer seeking to recover the shortfall in rent arrears. Mr Umarji is only claiming damages in the sum of USD 3,100.00/- in unpaid rent.

[42] It was not in dispute between Mr Umarji and Dhevatara that Dhevatara was paying a monthly rent in the sum of USD 3100.00/-. On 23 July, 2012, Mr Westlake, by email, wrote to Mr Rasool informing him that "... [f]ollowing further internal discussions it has been decided to vacate the property by the 14th August 2012. Regarding the outstanding rent, can we agree to use some of the initial deposit and discuss inventory replacement/repair. Excluding fair wear and tear."

[43] The evidence clearly established, on a balance of probabilities, that Dhevatara failed to pay rent due under the oral agreement for a lease for the period covering 15 July, 2012, to 14 August, 2012, in the sum of USD 3100.00/-. The court makes order awarding Mr Umarji the sum of USD 3100.00/- under this head.

"Works required to re-instat[e] the demised Premises to its original condition, wear and tear expected"

[44] Mr Umarji in his Complaint averred that he has suffered loss and damages as a result of breach of the lease by Dhevatara as follows. "*Works required to re-instat[e] the demised premises to its original condition, wear and tear expected*" in the sum of 101,030.00/- rupees.

[45] Article 1730 of the Civil Code of Seychelles Act provides that "*[i]f an inventory of the condition of the premises between the landlord and the tenant has been made, the latter shall be bound to return the property in such condition as he received it according to the inventory excluding anything that has perished or deteriorated by wear and tear or by an act of God.*". If no inventory of the condition of the premises has been made Article 1731 of the Civil Code of Seychelles Act applies. Article 1731 of the Civil Code of Seychelles

Act provides that the tenant shall be presumed to have received the premises in good repair, suitable for the tenancy, and he shall return them in the same condition, unless there is evidence to the contrary. Note 30, *JURIS-CLASSEUR CIVIL*, Art. 1708 à 1762, states — "30. — *la présomption de l'article 1731 s'applique exclusivement aux réparations locatives, et non aux réparations de gros entretien* (Cass. Civ. 26 janv. 1936: D. 1936, 148. — Trib. Civ. Seine 6 juill. 1912: Gaz, trib. 1912, II, 2, 864.". The enumeration of the "réparations locatives" provided by Article 1754 of the Civil Code of Seychelles Act is not limitative (See Cass. Civ. I, 6 fév. 1963: D. 1963, 402). Article 1754 of the Civil Code of Seychelles Act provides —

"Tenant's repairs, or those of minor importance which bind the tenant unless there is agreement to the contrary, are those considered as such by local practice; among others these repairs shall include repairs to fireplaces, chimney-backs, casings and mantelpieces;

The replastering of the lower part of the walls of flats and other residential premises up to the height of one metre.

Floor slabs and tiles of rooms, when only a few are broken;

Window panes, unless they are broken by hail stones or other extraordinary occurrences resulting from acts of God for which the tenant cannot be held responsible;

Doors, windows, partitions or shutters of shops, hinges, bolts and locks."

- [46] The presumption of Article 1731 can be defeated by evidence to the contrary, and this proof — "35... *portant sur un fait matériel et non juridique peut être faite par tous moyens, et notamment par témoins et par présomption, quel que soit l'intérêt du litige.*" See Note 35 *JURIS-CLASSEUR CIVIL*, Art. 1708 à 1762, Cass. Civ. 28 juin 1892: D.P. 93, 1, 378. — Paris 18 mars 1895: D.P. 95, 2, 240. — Adde, Cass. Req. 27 juill. 1896: D.P., 1, 421... ". *JURIS-CLASSEUR CIVIL*, Art. 1708 à 1762, at note 36, states "36. — *Le juge peut tenir compte de la vétusté des lieux lors de l'entrée en jouissance et distinguer entre les dégradations selon qu'elles résultent de l'utilisation normale ou, au contraire, anormale et abusive de la chose louée* (Cass. Civ. III, 5 nov. 1976, Merly c. Geiswiler. — Paris 6 juill. 1973: Gaz. Pal. 1975, 1, somm. 155).

- [47] Mr Rasool and Mr Umarji testified that an inventory of the demised premises between the representatives of Mr Umarji and Dhevatarara was carried out at the onset of the lease. The evidence established that only a site visit between the representatives of Mr Umarji and Dhevatarara was carried out on 30 October, 2009, (email dated 30 October, 2009, at 9:29 a.m.). There is no evidence be it documentary or otherwise to support Mr Umarji's contention that an inventory of the demised premises between Mr Umarji and Dhevatarara was conducted before Dhevatarara took possession of the demised premises.
- [48] Mr Roucou testified that he [Mr Roucou], Mr Umarji and Mr Wesley inspected the demised premises on 24 September, 2012. Mr Roucou obtained an inventory list from Mr Umarji. They compared the present condition of the demised premises with such condition as Dhevatarara had received it according to the inventory, excluding anything that had deteriorated by wear and tear. It is noteworthy that Mr Westlake, who gave evidence for Dhevatarara was not present at the initial takeover of the demised premises and, therefore, could not give evidence as to whether an inventory was conducted between Mr Umarji and Dhevatarara at the onset of the lease. In such circumstances, it is clear that the presumption of Article 1731 of the Civil Code of Seychelles Act applies. Dhevatarara shall be presumed to have received the demised premises in good repair, suitable for the tenancy, and shall return it in the same condition, unless there is evidence to the contrary.
- [49] With regards to the various claims of Mr Umarji, Learned Counsel considered most of them to be unreasonable and undue. Mr Westlake wrote to Mr Rasool, by email, on 23 July, 2012, informing him that *"following further internal discussions it has been decided to vacate the property by the 14th August, 2012. Regarding the outstanding rent, can we agree to use the initial deposit and discuss inventory replacement/repair. Excluding fair wear and tear"*. Dhevatarara did not adduce a counter report and did not object to the testimony of Mr Roucou and the production of the report. On a balance of probabilities, this court is of the view that the said expert report is credible evidence on which it can safely act. Another issue which also needs to be considered is the weight to be attached to the expert report. Having considered the report and the evidence of Mr Roucou, this court is satisfied that the reasons given by Mr Roucou for coming to the conclusion that he did is demonstrably valid, reliable and borne out by an objective evaluation and assessment.

[50] In considering the issue in question, this court has considered the following. The duration of the lease agreement; the fact that the damages arose because of the abuse of enjoyment of or failure to maintain the demised premises by Dhevatarara; and anything that had deteriorated by wear and tear. Mr Roucou stated that "90-95 percent of these reinstatement should go toward the tenant". Applying Articles 1731 and 1754 of the Civil Code of Seychelles Act, the jurisprudence in this area of the law and having considered the evidence on record, this court is satisfied that it should make order awarding the sum of 92,654.00/- rupees to Mr Umarji under the head "[w]orks required to re-instat[e] the demised Premises to its original condition, wear and tear expected". [Ninety-five percent of the sum claimed (101,030.00/- rupees) = 97,530.00/- rupees].

[51] This court did not award the following items valued in the sum of 3,500.00/- —

"a attentive works at electrical/TV incoming mains ... 2,000.00

c attentive works to roof above apartment 3 ... 1,500.00".

This court is of the opinion that both items did not fall under minor repairs, which bind Dhevatarara under Article 1754 of the Civil Code of Seychelles Act.

[52] **"Missing/damaged furniture, fittings and equipment"**

[53] Mr Umarji in his Complaint averred that he has suffered loss and damages as a result of breach of the lease by Dhevatarara as follows. *"Missing/Damaged furniture, fittings and Equipment SR152, 055.00 "*.

[54] In the circumstances this court makes order awarding Mr Umarji ninety percent of the cost of the items under the head "[m]issing/damaged furniture, fittings and equipment" in the sum of 136,849.50/- rupees. [Ninety percent of the sum claimed (152,055.00/- rupees) = 136,849.50/-].

"Consequential loss of rental as a result of the breach by Dhevatarara and the time it will take to reinstate the demised premises to its original condition"

[55] Mr Umarji in his Plaint averred that he has suffered loss and damages as a result of breach of the lease by Dhevataras as follows. "*Consequential loss of rental as a result of the breach by Dhevataras and the time it will take to reinstate the demised premises to its original condition SR638,400.00*". The evidence under this head is scant and brief. Mr Umarji did not provide this court with any expert evidence in relation to the issue in question. He only stated that it would be difficult to restore the demised premises to its original condition within a specified period of time and, therefore, he was claiming one year "*loss of rental*" in the sum of USD 48000.00/-. Having considered the claim of Mr Umarji, on a balance of probabilities, this court makes order awarding him USD 9300.00/- under this head, which it considers to be reasonable in all the circumstances of the case. [USD 3100 × 3 months' rent].

[56] Having considered the evidence on record this court is not satisfied that Dhevataras has established the matters alleged in its Defence namely, the inconvenience suffered by its staff and the "*corrections*" and "*improvements*" to the demised premises carried out by Dhevataras and dismissed its claim.

[57] **The Decision**


[58] In light of the above, this court awards Mr Umarji the sums of —

(a) USD 12400.00/-; and

(b) 229,503.50/- rupees less 63,514.00/- rupees = 165,989.50/- rupees,

and orders Dhevataras to pay to Mr Umarji the sums of USD 12400.00/- and 165,989.50/- rupees with interest at the legal rate payable as from 29 August, 2013, with costs.

Signed, dated and delivered at Ile du Port on 30 May 2018



F Robinson

sitting as a Judge of the **Supreme Court**

