

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC14/2014

[2018] SCSC 1002

THE PRINT HOUSE PROPRIETARY LIMITED
Plaintiff

Versus

THE VICTORIA TIMES LIMITED
Defendant

Heard:

Counsel: Mr Chetty for plaintiff

Miss Benoiton for defendant

Delivered: 26 October 2018

JUDGMENT

Robinson J

- [1] It is common ground between the plaintiff and the defendant that the plaintiff is and was at all material times a company incorporated under the Companies Act, 1972, of Seychelles, and is duly licensed to operate a printing business. The defendant was and is at all material times a company incorporated under the Companies Act, 1972, of Seychelles carrying on business *inter alia* as a publisher of the newspaper *The Victoria Times*.

The case for the plaintiff

[2] The plaintiff and the defendant entered into a written agreement on the 13th April, 2013, in terms whereof the plaintiff agreed to print the defendant's newspaper *The Victoria Times* for the consideration price of 8.50/- rupees per unit copy.

[3] Paragraph 4 of the plaint averred *inter alia* that it was an express term of the said written agreement that—

"...4.1 As per Clause 9 (a), the Plaintiff shall invoice the Defendant as per the price specified in Schedule 1 to the Agreement; 4.2 As per the Schedule 1 to the Agreement, **the printing price per unit would begin at SR8.50/- per unit**; 4.4 As per Clause 9 (h) if it becomes necessary to engage the services of any collection agency or attorney to collect outstanding payment from the Defendant, the Defendant agreed to pay all attorney fees and court costs and all collection costs in both pre-judgment and post-judgment collection actions, as well as any other related charges that the Plaintiff may incur in its efforts to collect the amount due".

(Emphasis is mine)

[4] The case for the plaintiff is that in and/or around early September, 2013, the plaintiff discovered that it had been wrongly invoicing the defendant for the printing of the newspaper *The Victoria Times* at the rate of 6.50/- rupees per unit copy instead of the agreed rate of 8.50/- rupees per unit copy.

[5] By reason of the said discovery, the defendant owes the plaintiff the sum of 268,666.75/- rupees, which on the 12th September, 2013, the plaintiff notified the defendant of the inadvertent error and claimed the said sum from it, despite such notice and claim the defendant failed, ignored or refused to pay the plaintiff any or all of the said sum.

[6] In breach of the said written agreement, (i) the defendant despite numerous requests, specifically a letter dated the 17th October, 2013, failed, ignored, refused and/or neglected to settle the outstanding sum of 268,668.75/- rupees owed to the plaintiff and (ii) on the 5th October, 2013, the defendant terminated the said written agreement with immediate effect.

[7] The plaintiff accordingly prays for a judgment ordering the defendant to pay to the plaintiff the sum of 469,147.40/- rupees owed to the plaintiff with interest of 18 percent per annum from the date of this plaint until the date of payment of the judgment debt and interest.

Particulars

- [8] According to The *PLAINTIFF'S ANSWER TO DEFENDANT'S REQUEST FOR FURTHER AND BETTER PARTICULARS OF PLAINT*, "the said written Agreement was terminated by the defendant on the 5th October, 2013, and the reasons and or grounds if any for the termination would be in the knowledge and possession of the defendant".
- [9] In relation to the outstanding sum of 268,668.75/- rupees (payment in lieu of notice), the plaintiff explained in the *PLAINTIFF'S ANSWER TO DEFENDANT'S REQUEST FOR FURTHER AND BETTER PARTICULARS OF PLAINT* that it has been calculated from the 5th October, 2013, to November, 2013, and invoiced for 1000 copies per day, totalling to 12,000 copies for the dates of 7th, 9th, 11th, 16th, 18th, 21st, 23rd, 25th, 28th and 30th October, 2013, which amounted to 123,337.50/- rupees (inclusive of 15 percent VAT).

The case for the defendant

- [10] The defendant admitted that the plaintiff had been invoicing the defendant for the printing of the newspaper at the rate of 6.50/- rupees per unit copy. The defendant averred that the consideration price agreed between the parties was 6.50/- rupees per unit copy and not 8.50/- rupees per unit copy. With respect to Clause 9 (h) of the said written agreement, the defendant averred that the said Clause applied only to the extent that the said written agreement was valid and subsisting.
- [11] The defendant admitted that it terminated the said written agreement with immediate effect on the 5th October, 2013; and that the plaintiff sent a letter dated the 17th October, 2013, which it refused to comply with. The defendant averred that the said written agreement was terminated in terms of Article 109-3 of the Commercial Code, due to the consistent breach of the said written agreement by the plaintiff, in providing poor print quality.
- [12] Consequently, the defendant denied that the plaintiff has suffered loss and damages and/or the defendant is liable to the plaintiff for damages in the sum of 469,147.40/- rupees and continuing. The defendant also averred that the said written agreement having been

terminated since the 5th October, 2013, the defendant cannot rely on the said agreement to claim Attorney's fees.

The evidence

- [13] *The evidence of Marc Houareau.* Mr. Houareau is the Chairman of VCS Proprietary Limited and a director of the plaintiff. He was involved in the said written agreement's negotiations. Mr. Laine, who was a director of the defendant, was also involved in the negotiations of the said agreement. One Karishma Moolraj signed the said written agreement on behalf of the plaintiff. The *PRINTING AGREEMENT for printing of THE VICTORIA TIMES Newspaper*, entered into by the plaintiff and the defendant, on the 13th April, 2013, (hereinafter referred to as the "*Printing Agreement*") is before this court as P1.
- [14] Mr. Houareau was not involved in the administration of the Printing Agreement. He did not communicate with Mr. Laine after the conclusion of the Printing Agreement and was not concerned with the printing of the newspaper. Krishna Moolraj and Mr. Chang-Yunn were running the company at the relevant time. Mr. Houareau's testimony is indicative of the fact that he did not have a hands on role.
- [15] When cross-examined, he stated that the Printing Agreement stipulated a price for printing of the newspaper. The plaintiff's account's department initially sent an invoice to the defendant for the correct printing price, but subsequently invoiced the defendant for the wrong printing price. Mrs. D' Offay, who conducted an audit, at the relevant time, discovered that the plaintiff had been wrongly invoicing the defendant. Officers of the plaintiff contacted Mr. Laine to inform him of the inadvertent error. During discussions in relation to the issue that the plaintiff had been wrongly invoicing the defendant for the printing of the newspaper, Mr. Laine introduced irrelevant matters. When asked by Counsel, "*Q: When you say they were irrelevant Mr. Hoareau, what if he was receiving a different type of product to that of what he was expecting and as a result he was paying a different price; that would be ... a fair deal?*", to which he answered, "*A: Not necessarily. If ... felt he was not getting the product there is a termination clause that he could have opted out of the contract, he could have given us the number of days that needed to be and move on. Or he could have picked up the phone and re-negotiated but then we would have*

had a new contract in writing with the new pricing...". Mr. Houareau denied the allegation of the defendant that its complaints with respect to print quality went unheard. He explained that the defendant's issues were heard and attempts were made by both parties to solve those issues.

- [16] *The evidence of Hervé Chang-Yunn.* This court is satisfied that Mr. Chang-Yunn was determined to give it his best recollection; and that his recollection had not been coloured by the passage of time and by the standpoint from which he was seeking to recollect matters. This court, therefore, is driven to the conclusion that it could regard the evidence of Mr. Chang-Yunn as reliable. This court has set its assessment of the impression made by the oral evidence of Mr. Chang-Yunn against the conclusions to be drawn from the Printing Agreement and other miscellaneous documents and by using those documents in particular as the best guide to what occurred. His evidence was supportive of the plaintiff's case.
- [17] Mr. Chang-Yunn was the General Manager of the plaintiff, in 2013, at the relevant time. He knows Karishma Moolraj who was his work colleague in 2013. He was involved in the Printing Agreement's negotiations and the administration of the Printing Agreement.
- [18] On the 5th April, 2013, Mr. Chang-Yunn sent an email to Mr. Laine with a *Quotation* of even date attached P3. He copied Stefan Houareau and Miss Moolraj *inter alia* into his email. Mr. Chang-Yunn said, "*Further to our meeting this morning, please find attached our costing for the 12 page newspaper as well as the options for a 14-page and 16-page newspaper for your consideration and feedback... We are also happy to inform you that we have already made the arrangements to start printing your paper on Sunday 14th April 13*". That *Quotation* listed different printing options. With reference to P3, Mr. Chang-Yunn stated that Mr. Laine opted for the first option contained in the *Quotation*, which was the "*cheapest option*", as follows —

Options	Description	Quantity (copies)	Unit price (SCR)	COST (SCR)
1.	Printing of 12-page Victoria Times Newspaper Size: A3 Folded (A2 open) Cover Page: N. pages – 4 pages Cover Page: Full colour, Double-sided print Cover Page: Paper Type – 70 gsm Woodfree	1500	8.50	12,750

	Inside Pages: N. of pages – 8 pages Inside Pages: One colour (black), Double sided print Inside pages: Paper type – 70 gsm Woodfree Finishing: Folded NB: Printing of 1 Edition Only			
			15% VAT	1,912.50
			Combined Total Cost	14,662.50

That option is contained in the Printing Agreement.

- [19] He stated that the first invoice 13/0250 VAT INVOICE, dated the 4th April, 2013, was paid in full by the defendant because printing would only have taken place after that invoice would have been paid. That VAT INVOICE, dated the 4th April, 2013, relates to the printing of 3000 copies of *The Victoria Times* for the consideration price of 8.50/- rupees per unit copy and to the printing of 1500 copies of *The Victoria Times* for the consideration price of 9.50/- rupees per unit copy, which corresponded to rates contained in P3 and the Printing Agreement.
- [20] In September, 2013, the plaintiff, after an audit, learnt that it had been wrongly invoicing the defendant for the printing of *The Victoria Times*. The defendant was invoiced 6.50/- rupees per unit copy rather than 8.50/- rupees per unit copy as agreed by the plaintiff and the defendant.
- [21] Mr. Chang-Yunn admitted that, at the stage of negotiations, the plaintiff gave a quotation to the Defendant in relation to the printing price. In that quotation, the quoted price to print an 8-page newspaper was 6.50/- rupees. According to his evidence, the defendant at no point in time printed an 8-page newspaper. In the VAT INVOICE, dated the 4th April, 2013, the price stated to print a "12 page *Victoria Times*" was 8.50 rupees and "16 page *Victoria Times*" was 9.50/- rupees. The defendant paid the invoice in full.
- [22] When they learnt, at about the 12th September, 2013, that the printing price in the invoice was incorrect, they went to see Mr. Laine to discuss with him. After that meeting, Mr. Laine sent a notice to the plaintiff, dated the 5th October, 2013, terminating the Printing

Agreement with immediate effect P4 on the ground of poor print quality. In relation to the issue of poor print quality, Mr. Chang-Yunn stated that when such an issue would arise, they would discuss the issue with the defendant with the aim of finding solutions and coming to an arrangement.

[23] Mr. Chang-Yunn also testified that the defendant, at some point, wanted to reduce its printing costs. In this respect, Mr. Laine reduced the number of copies of *The Victoria Times* being printed and lowered the type of paper being used for printing. In an e-mail, dated the 10th September, 2013, the plaintiff provided, "*the cost for printing [his] newspaper on 60gsm... as follows —*

- Total No. of pages = 12 (4 colour and 8 Black & White)
- Size = A2
- Paper Type = 60gsm Woodfree
- Quantity = 1,000 copies per edition
- Unit Cost = SCR9.75 + 15% VAT
- Total Cost = SCR11,212.50" [P5].

[24] He testified that Mr. Laine did not fulfil the requirement under the Printing Agreement before he terminated it with immediate effect.

[25] When cross-examined, Mr. Chang-Yunn stated that initially the plaintiff was printing 1500 copies of *The Victoria Times*, but that, subsequently, the number of copies printed fell to 1000.

[26] The defendant chose the printing prices of 8.50/- rupees per unit copy and 9.50/- rupees per unit copy in the first invoice dated the 4th April, 2013. The plaintiff started printing *The Victoria Times* at about the 15th April.

[27] He admitted that Mr. Laine complained to him about print quality. He confirmed his evidence in-chief that when there were print issues, he [Mr. Chang-Yunn] and Mr. Laine discussed those issues with the aim of coming to an agreement. In answer to a question from Counsel, "*Q. Are you saying that there were mistakes or there was no mistake or there may be mistake ...?*", he answered, "*A: There were few issues in terms of printing but not hundred per cent. But I would also like to state that the printing does not entirely on the printer, it also depends on the quality of the art work being supplied to us*". When

asked further by Counsel, "*Q: So you accept then there could have been poor quality printing on occasions?*", to which he answered, "*A: I would not call it entirely poor quality but there would have been discrepancies.*".

- [28] He stated that the printing price - 8.50/- rupees per unit copy, in the invoice dated the 4th April, 2013, was correct. Subsequently, the plaintiff wrongly invoiced the defendant at 6.50/- rupees. In reply to the suggestion of Counsel that by quoting 6.50/- rupees per unit copy there was a variation of the Printing Agreement to allow the defendant to pay 6.50/- rupees, Mr. Chang-Yunn answered, "*No we a mistake, a genuine mistake in invoicing the client. If we varied the contract or whatever that you saying we would have never gone to Mr. Laine and say look there is a mistake here. If we had taken that step to vary the contract of putting it at Rs6.50...*". This court will address later the question of whether the Printing Agreement was varied.
- [29] Then Counsel put to him that, at some point in time, *The Victoria Times* was being printed on 60gsm paper to which he answered that he could not confirm as to whether or not it was the case. He explained that had steps been taken to print on 60gsm paper, the plaintiff would have formally advised Mr. Laine about it. He denied the suggestion of Counsel that the plaintiff has provided poor print quality by changing the type of printing paper - 70gsm to 60gsm.
- [30] When re-examined, in reply to Counsel's question as to whether or not "... *Mr. Laine ever tell write to and inform you that he suspected or he thought or he could prove that the paper being printed on was not the paper which was contracted?*", he stated, "*He asked us in one of an email he assumed that we had switched paper. Like I said I cannot say yes we had or no we hadn't because I cannot recall that far back in terms of that particular specification but if we had changed paper we would have had to inform him because there would have been costs implications that he would have raised.*". He stated that the defendant could not have terminated the Printing Agreement on the ground of a lower type of paper being used because Mr. Laine had wanted to print *The Victoria Times* on 60gsm paper.

- [31] *The evidence of Mrs. Pascale D'Offay.* Mrs. D'Offay came across to me as plainly honest and her evidence appeared genuine and broadly speaking reliable. She was also a knowledgeable witness. This court has also set its assessment of the impression made by the oral evidence of Mrs. D'Offay against the conclusions to be drawn from the Printing Agreement and other miscellaneous documents and by using those documents in particular as the best guide to what occurred. Her evidence was supportive of the plaintiff's case
- [32] Mrs. D'Offay, the General Manager of the plaintiff, took up employment with the plaintiff on the 17th June, 2013, as the Assistant General Manager. She did not take part in the dealings constituting the Printing Agreement. While she was acquainting herself with the Printing Agreement, she noted that the printing price contained in it was *inter alia* 8.50/- rupees per unit copy for 1500 copies per edition. However, the defendant's accounts illustrated that it was being invoiced 6.50/- rupees per unit copy of the newspaper for 1500 copies per edition. She informed the General Manager of the discrepancy, which she had noted. She came to know of this discrepancy after Mr. Laine had asked the plaintiff to print 1000 copies of the newspaper rather than 1500, at about mid-August.
- [33] She was present at the meeting with Mr. Laine. In the meeting they told Mr. Laine that he was being wrongly invoiced and gave him a written analysis of the issue. In the meeting Mr. Laine told them that he will examine the documents and get back to them.
- [34] The VAT INVOICE, dated the 14th October, 2013, showing adjustments from April, 2013, to the 20th September, 2013, is before this court as P6. The sum claimed in P6 is 231,150/- rupees (including 15 percent VAT). The invoice adjustments were made from April, 2013, to the 20th September, 2013, because as from Monday 23rd September, 2013, the new printing price per unit copy was 9.75/- rupees (e-mail exchanges-D2).
- [35] Based on the information contained in D2 and P6-VAT INVOICE dated the 14th October, 2013, the plaintiff is claiming, from the defendant, the sum of 231,150/- rupees and payment in lieu of notice of termination in the sum of 123,337.50/- rupees.
- [36] On the 5th October, 2013, Mr. Laine terminated the Printing Agreement with immediate effect. On the 17th October, 2013, she replied to Mr. Laine's letter, which is before this

court as P7. The invoice adjustments and a statement in relation to the plaintiff's claims were attached with that letter. P7 claimed a total sum of 392,006.25/- rupees. The plaintiff sent a letter of demand – "*Letter of Demand to pay outstanding indebtedness*", dated the 6th February, 2014, to the defendant, P8.

- [37] The plaintiff is claiming interest on the sums owed by the defendant and attorney's fees under Clause 9 (g) and 9 (h) of the Printing Agreement, respectively. The plaintiff is also claiming payment in lieu of notice of termination under Clause 10 of the Printing Agreement.
- [38] She stated that the printing price per unit copy at 6.50/- rupees was not the price agreed by the parties and explained why it was not the case, "*A: Right from having referred back to the record I went back to the start of the discussions on the quotations between Mr. Chang-Yunn and the plaintiff and the defendant. And basically on the 28th of March there was a quotation for 6.50 for a lesser number of pages. Thereafter on the 4th of April there was an invoice raised for advance payment of Rs3000 12 page copies at 8.50. 1500 16 pages at 9.50, a total that came to RS45712.50. This was considered an advance payment or a deposit in the eyes of the defendant*". She stated that the invoice was paid in full by the defendant-VAT INVOICE Number 13/0250 and dated the 4th April, 2013, P7.
- [39] When cross-examined, she admitted that, in the correspondence, Mr. Laine complained about print quality and discussed printing prices. One Karishma Moolraj attended to discussions in relation to production.
- [40] She confirmed her examination-in-chief regarding the circumstances by which she came to discover the mistake with respect to print price; that she informed the General Manager Mr. Chang-Yunn of that issue; that Mr. Chang-Yunn and she [Mrs. D'Offay] went to see Mr. Laine to discuss with him; and that they gave Mr. Laine an analysis of the print price issue. After that meeting Mr. Laine sent to them his own analysis of the print price issue. According to her evidence, Mr. Laine's findings were practically consistent with theirs.
- [41] She stated that the plaintiff and the defendant did not agree to vary the Printing Agreement.

- [42] *The evidence of Mr. Barry Laine.* Although Mr. Laine came across to this court as a reasonably knowledgeable witness, this court considers that in some respects his evidence was not completely objective or completely reliable, being skewed towards the defendant's case, and noted that there were also some significant divergences between his oral testimony and the documents presented in this case. Accordingly, this court is unable to accept his evidence uncritically.
- [43] Mr. Laine is an, "*entrepreneur*". He has *inter alia* diplomas in, "*marketing, business studies*". He attended college after work for 3 days a week for 28 years, "*and acquired all the letters after his name*".
- [44] He and his wife founded the defendant. He was the Managing Director of the defendant and the defendant's secretary. He is now only a shareholder of the defendant. He does not work for the defendant anymore. He negotiated the Printing Agreement with Mr. Houareau and Mr. Houareau's son, one Stefan Houareau to print *The Victoria Times*. He signed the Printing Agreement P1 on behalf of the defendant.
- [45] According to D3, the *Quotation* dated the 28th March, 2013, the consideration price for printing *The Victoria Times* was 6.50/- rupees per unit copy. The size of the newspaper was, "*A3 folded into A2*" and the paper type was 70gsm. He stated that if the paper type for printing was less than 70gsm "*...you will see through the written on the back and you would not be able to read the newspaper*" (*sic*). According to option 1 in D3, the, "*number of pages 4. Four A3 folded A2*". He stated that that was the agreement arrived at between Mr. Stefan Houareau and him [Mr. Laine]. Mr. Laine stated that he could not have accepted to pay a print price of more than 8/- rupees per unit copy because the defendant sold a copy of *The Victoria Times* at 8/- rupees per unit copy.
- [46] When asked whether or not he should have paid 8.50/- rupees as per the Printing Agreement rather than the quoted price contained in D3, his response was that Schedule 1, Printing Rate Card to the Printing Agreement, sets out various rates and, "[i]t says here four cover pages and it says inside out. We only have four. So this schedule is for all inside pages which we did not have ... should the paper grow and we want more pages ... we go by the schedule. We have one contract and attached all the variants to the contract if you want it,

you exercise it." (sic). He added that during the subsistence of the Printing Agreement, the defendant printed a 4-page newspaper. Had the Defendant printed an 8-page newspaper it would have been charged 8.50/- rupees per unit copy.

- [47] He did not see any of the invoices sent by the plaintiff. All payments were made in advance by bank transfer. The relationship between the plaintiff and the defendant broke down because of poor print quality and not because of print price issue. He explained further, "*A: ... And the poor quality started first of all when I said bad folding ... (witness demonstrates how), so we called them in, they came in and we talked about it. Then the next thing that happened there was bad quality on the photographs. We called them in, they came in, we sat down, discussed, there are emails which we exchanged and they went back and the quality improved. One day two of them came, Mr. Chang-Yunn came with another lady sat down with our graphic designer and said to do it this way, it will improve everything. Our graphic designer did it exactly what they asked, the next day the newspaper was worse than before they came. So then we started to get a little dissatisfied. "*
- [48] He wrote to the plaintiff on the 5th October, 2013, giving it notice of the plaintiff's intention to terminate the Printing Agreement with immediate effect D4. He stated that the defendant terminated P1 because print quality worsened and it breached the Printing Agreement "... *for [it] to supply a merchantable product; they failed to do that and the contract was null and void. "* He testified that the defendant suffered loss of business income to the sum of 1,500,000/- rupees.
- [49] Mr. Laine acknowledged having received the plaintiff's letter, sent to the defendant on the 17th October, 2013, in relation to the, "*termination of the Printing Agreement*". The "*Letter of Demand to pay outstanding indebtedness*" sent by Mr. Laine to the plaintiff's Counsel, on the 24th February, 2014, is before this court as D5. That letter, in essence, denied that the defendant was indebted to the plaintiff in the sum alleged in the latter's letter dated the 6th February, 2014.
- [50] Mr. Laine on behalf of the defendant asked this court to dismiss the plaintiff's claim with costs.

- [51] When cross-examined, Mr. Laine stated that he did not work in publishing. He stated that, in London he, *"worked in a lot of IT companies, [he] was a consultant, [he] was a company doctor and when the company was dying they brought [him] in to sort out, fire people, get a new CEO, start a new culture in the company."* He added that, *"[he] was in charge of one company that already had a newspaper, a radio station and a TV station"*. Overall, Mr. Laine, at the suggestion of Counsel, described himself as a, *"very experienced businessman"*.
- [52] Problems between the plaintiff and the defendant started on the 8th September. On that date Mr. Laine emailed Mr. Chang-Yunn about poor print quality, specifically in relation to what he termed *"bad folding"*. In that email, Mr Laine said, *"Dear Herve, I was waiting to hear from you last Monday on the finalisation of the poor quality issue and the prices for printing 1,000 on the lower grade paper because I have a Board Meeting this Tuesday and we need to make some important decisions therefore I was wondering whether we could reach a settle by tomorrow please"*. Mr. Laine went on to say that about ten percent of *The Victoria Times* was *badly folded*. He did not have a *badly folded* newspaper to tender in evidence because he did not have access to the defendant's documents. When asked by Counsel, *"Q: is the company aware that you are giving evidence on their behalf?"*, his response was, *"A: Of course they are"*. When asked further by Counsel, *"Q: ...[a]nd they did not provide you of any of those documents which you are alleging?"*, his response was, *"A: [n]o, but if it is necessary I would like to ask the company to allow me to dig those bad products"*.
- [53] His e-mail of the 11th September, 2013, sent *inter alia* to Mr. Chang-Yunn and Mrs. D'Offay is also relevant to his testimony in relation to poor print quality. In that email, Mr. Laine stated, *"Dear Herve, Thanks to your new printing price for 1000 which seems it is costing us more to print less even though we go to the price you have quoted me is A2 whereas at the moment we have 4xA3 in colour and 8xA3 in black & white making a total of 12 pages of A#. If you price in A2 then we are talking about 2xA2 in black & white making a total of 12 pages of A3, which is what we have. Please clarify. Also has Printhouse started to use the 60gsm paper because Monday's paper felt very thin and it*

was crinkly like TODAY and the ink ran off a bit in the hands when handling the paper last night. Please confirm"(sic). (Emphasis is mine).

- [54] He stated that the plaintiff gave him the most competitive quotes. He received the e-mail dated the 5th April, 2013, which is before this court as P3. The *Quotation* contained in P3, which quoted the printing price of 8.50/- rupees per unit copy was sent to him in addition to the quotation contained in D3, the first quotation, dated the 28th March, 2013. P3 provided for four cover pages and eight inside pages. Between the 5th April, 2013, and the 13th April, 2013, he did not receive any other quotes. He admitted that the printing price of 6.50/- rupees per unit copy is not depicted in the Printing Agreement P1. He was adamant that the printing price of 6.50/- rupees per unit copy was the contracted printing price and not that of 8.50/- rupees per unit copy.
- [55] He stated that as soon as Stefan Houareau agreed to the price of 6.50/- rupees, he organised for the payment of the invoice with the Savings Bank. With respect to the VAT INVOICE dated the 4th April, 2013, P7, he stated that he has never had sight of it; and that he was asked by his accountant to authorise its payment. He then added *inter alia* that he paid 45,712.50 /- rupees, but that he did not know what he had paid for. He explained that he paid the deposit to the sum of 45,712.50/- rupees in accordance with the Printing Agreement. He agreed that the rates 8.50/- rupees and 9.50/- rupees featured in the Printing Agreement.
- [56] On the 4th October, print quality was at its worse. Print quality was bad from the 9th September, 2013, to the 5th October, 2013. He received complaints from the public in relation to poor print quality. In his opinion, on account of poor print quality, the Printing Agreement was null.

The Submissions and analysis

- [57] This court has considered the evidence in this case with care. Written submissions were submitted on behalf of the defendant. The plaintiff did not submit written submissions.

- [58] With respect to the Printing Agreement, this court refers only to some particular issues regarding to its terms, which apply to the areas of disputes between the plaintiff and the defendant.

Rate

- [59] An issue has arisen in relation to the rate element of the Printing Agreement. The issue is whether or not the plaintiff had been wrongly invoicing the defendant for the printing of *The Victoria Times* at the rate of 6.50/- rupees per unit copy instead of the printing price of 8.50/- rupees per unit copy. *SCHEDULE 1 Printing Rate Card* to the Printing Agreement provided *inter alia* for the printing of a 12-page newspaper at the price of 8.50/- rupees per issue. That rate is the lowest printing rate.
- [60] D3, the first Quotation dated the 28th March, 2013, was made about two weeks before the execution of the Printing Agreement and referred to two quotations. One of those quotations, referred to as option 1, provided a rate of 6.50/- rupees per unit copy for the printing of 1500 copies of *The Victoria Times*. That rate was not contained in Schedule 1 to the Printing Agreement. The paper type was 70gsm and the combined total cost, including fifteen percent VAT, was 11,212.50/- rupees D3.
- [61] P3, an e-mail dated the 5th April, 2013, is very significant evidence. It was made about eight days before the execution of the Printing Agreement. Mr. Chung-Yunn went on to say in the e-mail P3, *"In the meantime, we would like to take the opportunity to thank you again for the opportunity and we hope that our revised offer will be of value to Victoria Times."* (Emphasis is mine). The Quotation attached to the e-mail contained a list of rates, which were included in Schedule 1 to the Printing Agreement. Mr. Chang-Yunn stated in the e-mail P3, *"Further to our meeting this morning, please find attached our costing for the 12 page newspaper as well as the options for a 14 page and 16 page newspaper for your consideration and feedback... We are happy to inform you that we have already made the arrangement to start printing your paper on Sunday 14th April 13".* (Emphasis is mine).

[62] In the light of the documentary evidence, this court is unable to accept the argument of the defendant that the plaintiff and the defendant had reached agreement for a unit price of 6.50/- rupees; and that the 5th April, e-mail did not accurately reflect what had been agreed. This court must regard this aspect as casting considerable doubt on the reliability of Mr. Laine's evidence because if that had been the case one would have expected a prompt response from Mr. Laine, who took part in all the dealings constituting the Printing Agreement, challenging and correcting Mr. Chang-Yunn's 5th April, e-mail and reminding him that the agreement was for the consideration price of 6.50/- rupees per unit copy consonant with the 28th March-*Quotation* and not for any other price. No such response was laid before this court. This court is convinced that not only did the Printing Agreement and the e-mail message (P3) indicated the plaintiff's and the defendant's understanding of what had been agreed, but it made it clear to the defendant what that understanding was.

[63] It is noteworthy that The VAT INVOICE number 13/0250 dated the 4th April, 2013, for the total sum of 47,712.50/- rupees was paid in full by the defendant. Mr. Laine made the point stating that he did not see that VAT INVOICE, but that he was asked by his accountant to authorise its advanced payment. This court has some difficulty to believe the version of Mr. Laine, who according to the documentary evidence, was greatly involved in the dealings constituting the Printing Agreement. As mentioned above, one would have expected a prompt response from Mr. Laine challenging and correcting the plaintiff's VAT INVOICE of 4th April, 2013, reminding it that the agreement was for the consideration price of 6.50/- rupees per unit copy and not for any other price. No such response was laid before this court.

[64] Further, in this court's judgment, D2 should not be seen in isolation. In the e-mail message dated the 19th September, 2013, Mr. Laine stated —

"Thanks for the new price for 1000 copies which we would like to start from Monday 23 September 2013. It is a waste of natural resources that bugs me.

I noticed the new price including VAT is SR11,212.50 which is the same amount as the current standing order for payments with the Savings bank therefore there is no need to alter the payment arrangement since we do not want Savings Bank to make a mess of arrangement.

Regarding the underpayments I am in a position of finalising my analysis which will be completed tomorrow."

- [65] In D3 the invoiced amount 11,212.50/- rupees concerned the rate of 6.50/- rupees per unit copy for printing 1500 copies of *The Victoria Times* on 70gsm paper. In D2 the new printing price offered to Mr. Laine was 11,212.50/- rupees, which concerned the rate of 9.75/- rupees per unit copy on 60gsm paper for a 12-page newspaper. In the course of his testimony Mr. Laine stated that if the paper type for printing was less than 70gsm, "...you will see through the written on the back and you would not be able to read the newspaper" (sic). In addition it is pertinent to note that the combined total cost for printing of a 12-page *The Victoria Times*, including VAT was 1,912.50/- rupees. In the light of the evidence, this court fails to understand why Mr. Laine, who stated in evidence, that he would never have accepted a print rate of more than 8/- rupees per unit copy, by reason of the fact that a copy of *The Victoria Times* was being sold at 8/- rupees, would have accepted a print rate of 9.75/- rupees per unit copy on 60gsm paper. The documentary evidence clearly establishes, on a balance of probabilities, that Mr. Laine printed a 12-page newspaper in accordance with the Printing Agreement; and that he knew that he was being incorrectly invoiced, but that he chose to do nothing about the incorrect invoices, until he was alerted by the plaintiff.
- [66] Further, it is noteworthy that the evidence of Mrs. D' Offay, with respect to the invoice numbers 13/0911, 13/0912 and 13/0913, dated the 14th October, 2013, P7 was not seriously challenged by the defendant. Invoice number 13/0911 dealt with invoice adjustments from April, 2013, to 20th September, 2013. Counsel put to Mrs. D' Offay, "*Q: ... madame if your invoice for quite some time had been accepting the price of 6.50, I am suggesting to you that there was a variance of contract of which Mr. Laine paid and you accepted without hesitation? "* Was there a variation of the Printing Agreement such as to permit the defendant to pay 6.50/- rupees per unit copy? This court states that it is not open to the defendant on its pleaded case to contend that there had been a variation of the Printing Agreement to provide that the printing price per copy was 6.50/- rupees if that was not the agreement between the plaintiff and the defendant.

- [67] In the light of the above, this court concludes that the defendant owed the plaintiff the outstanding sum of 297,550.27/- rupees calculated at 8.50/- rupees instead of 6.50/- rupees per unit with interest, interest on the sum of 278,666.75 at the rate of 18 percent from the 25th October, 2013, until the 30th May, 2014.

Print quality

- [68] The defence averred that the Printing Agreement was terminated in terms of Article 109-3 of the Commercial Code, due to consistent breach of the Printing Agreement by providing poor print quality of the newspaper. Article 109-3 of the Commercial Code provides —

"When a breach of a commercial contract occurs, the party innocent of the breach, shall be entitled to treat the contract as discharged by operation of law.

The rules of article 1184 of the Civil Code, in so far as they require that when a breach of contract occurs discharge thereof shall be obtained through proceedings, shall not apply to commercial transactions."

- [69] Having considered the evidence, this court is not satisfied that the defendant has established any material breach of the Printing Agreement in relation to print quality. According to the evidence the defendant terminated the Printing Agreement with immediate effect on the 5th October, 2013, on the ground of poor print quality. This court finds this contention unpersuasive. It is pertinent to note that the letter terminating the Printing Agreement with immediate effect was sent to the plaintiff about 17 days after the plaintiff and the defendant had agreed to the new price stated in the 19th September - email. That e-mail stated in part, *"Thanks for the new price for 1000 copies which we would like to start from Monday 23 September 2013."* That email did not raise any issue about consistent breach of the Printing Agreement by providing poor print quality of *The Victoria Times*. In the light of that e-mail, the only outstanding issue between the plaintiff and the defendant was *"underpayments"*. This court concludes that the account of Mr. Laine is clearly inconsistent with the e-mail exchanges D2.

- [70] In the light of the above, this court finds that the plaintiff is entitled to payment from the 5th October, 2013, to the 3rd November, 2013, in the sum of 123,337.50/- rupees in lieu of notice of termination with interest on the said sum of 123,337.50/- at the rate of 18 percent

from the 5th October, 2013, until the 30th May, 2014, for breach of Clause 10 of the Printing Agreement.

Attorney fees and continuing

- [71] This court is satisfied that the plaintiff is entitled to Attorney's fees and continuing under Clause 9 (h) of the Printing Agreement in the sum of 35,000/- rupees.

The Decision

- [72] In the light of the above, this court finds that the plaintiff has established its claim on a balance of probabilities. This court orders the defendant to pay to the plaintiff the sum of Seychelles Rupees Four Hundred and Sixty Nine Thousand One Hundred and Forty Seven and Forty cents (469,147.40/- rupees) owed to the plaintiff with interest at the rate of 18 percent per annum from the date of the plaint until the date of payment of the judgment and interest.

- [73] Signed, dated and delivered at Ile du Port on 26 October 2018

A handwritten signature in black ink, appearing to be 'F Robinson', written over a horizontal line.

F Robinson
Sitting as a Judge of the Supreme Court