

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS. 88 of 2009

[2018] SCSC 977

JACQUELINE LEON

Plaintiff

versus

LOITA CLAIRE LAURENCINE

1st Defendant

WINSLEY COOPOOSAMY

2nd Defendant

Heard: 4th March; 6th June 2014 and 3rd August 2017

Counsel: Mr. Rajasundaram for the Plaintiff
Mr. E. Chetty for the 1st Defendant
2nd Defendant (Absent and unrepresented)

Delivered: 26th day of October 2018

JUDGMENT

S. GOVINDEN J

[1] This Judgment arises out of a plaint filed by Ms. Jacqueline Leon (“Plaintiff”), of the 7th April 2009, against Loita Claire Laurencine (“1st Defendant”) and Winsley Coopoosamy (“2nd co-Defendant”) (Cumulatively referred to as “the Defendants”), claiming Seychelles Rupees Eighty Two Thousand Seven Hundred and Twelve (S.R. 82,712.00.-) as contractual damages; Seychelles Rupees Fifty Thousand (S.R.50, 000.00/-) in moral damages; the costs of the suit; and any additional relief the Court deems “fit and proper according to the nature and circumstances of the case.”

[2] The 1st Defendant, by way of amended statement of defence of the 1st August 2011 denies the plaint and further avers as outlined below.

- [3] The 2nd co-Defendant filed a statement of defence of the 25th July 2013, denying the claim of the 1st Defendant as against him and claims to have nothing to do with the transactions between the Plaintiff and the 1st Defendant and further avers that the 1st Defendant is being vindictive towards him due to a claim made against her in Cs No. 89 of 2009, wherein the 1st Defendant was ordered to pay the 2nd Defendant a sum of S.R. 7,700.00/- by way of a Judgment by consent.
- [4] Both Learned Counsels filed written submissions in this case of which contents have been duly considered.
- [5] The following is the relevant factual background as per the Records.
- [6] The Plaintiff as per plaint avers breach of an oral contract between herself and first Defendant.
- [7] She avers that upon her going to Chennai India for her medical treatment the 1st Defendant approached her to help her taking medical treatment in India and requested her and the 2nd Defendant being the Plaintiff's partner to accompany her to Chennai, India for a proposed surgery in her shoulder.
- [8] She further avers that she agreed to help the 1st Defendant who accompanied both her and her partner the 2nd co-Defendant early July 2008 and was hospitalized in Apollo Hospital Chennai India.
- [9] That in or about late July 2008, during the course of her treatment, the 1st Defendant sought the help of the Plaintiff to pay her bills and promised to return and refund the monies to the Plaintiff.
- [10] That the Plaintiff paid to Apollo Hospitals a sum of Indian Rupees (INR) 235,000 for and on behalf of the 1st Defendant and the Plaintiff further paid an additional Indian Rupees (INR) 9,000 the total amounting Seychelles Rupees Eight Two Thousand Seven Hundred and Twelve (S.R. 82,712/-).
- [11] That the 1st Defendant ignored the Plaintiff's claim and chose to refer the matter to her attorney as per a letter of the 11th February 2009.

- [12] That the Plaintiff has been caused mental stress, anxiety and agony as a result of the 1st Defendant's behaviour and refusal to refund her hence the claim of Seychelles Rupees Eight Two Thousand Seven Hundred and Twelve (S.R. 82,712/-) and moral damages at (S.R. 50,000/-).
- [13] The Plaintiff testified at the hearing and the representative of the 1st Defendant's estate and as indicated earlier, the matter proceeded ex-parte as against the 2ndco-Defendant.
- [14] The Plaintiff testified that the 1st Defendant was a family friend of her and her partner. The parties to the dispute were all advanced in age and thus prone to ill health. That during 2008, the Plaintiff and her partner, the 2ndco-Defendant, intended to travel to India to receive medical treatment. Their friend, the 1st Defendant asked that she travel with them for the purpose of receiving treatment of her own while relying on their familiarity with India as they were frequent visitors.
- [15] When they were in India the Plaintiff testified that the 1st Defendant discovered that her body was in need of more medical procedures than she had been aware of and so the cost of her treatment far exceeded her expectations. The Plaintiff testified that the 1st Defendant told her that she was having difficulty accessing her funds and asked her for two loan amounts to cover her hospital bills and committed to paying her back as soon as they returned home to the Seychelles.
- [16] The sums given were of Seychelles Rupees Eight Two Thousand Seven Hundred and Twelve (S.R. 82,712/-), being the price incurred for medical expenses in Seychelles Rupees according to the exchange rate at the relevant period of 2008. The Plaintiff further testified that she paid the first large sum by drawing a Cash cheque and asking her partner to make a copy of it and then cash it at the Bank of Baroda in India, for the bill to be paid in cash (*Item No. 1*).
- [17] The Plaintiff also introduced two copies of the First Defendant's hospital receipts (*Exhibits P1, 2 and 4*) and further testified that she had been diligent in ensuring that she made copies because she was the one paying the bills.

- [18] The Plaintiff further testified that the 1st Defendant did not honour her promise to repay the loan when they returned to the Seychelles, and that their relationship soured thereafter. That she had been relying on the money she had loaned to her friend, and that she had struggled to meet her needs, including medical needs, as a result of this breach. She testified that this resulted in her suffering immensely, physically and emotionally, and it is this suffering on which she bases her claim for Fifty Thousand (SR.50,000/-) as emotional damages.
- [19] Plaintiff further produced (*Exhibit P3*), the Plaintiff through her attorney, Mr Bernard Georges did put the 1st Defendant ‘en demeure’ but she failed to respond to date.
- [20] As above-referred, the 1st Defendant denied the plaint and further averred that she gave the 2ndco-Defendant pounds sterling eleven thousand to settle her various expenses and that the Plaintiff did not request the 1st Defendant to settle her bills as she was liaising with the 2nd Defendant and provided the latter with sufficient funds to pay for all her expenses including, the expenses of the Plaintiff and the 2ndco-Defendant, hence, moving for dismissal of the plaint.
- [21] The Executrix to the Estate of the 1st Defendant, Beryl Payet testified that the 1st Defendant had passed away before the conclusion of the case and so she was unable to testify in her own defence and she testified that she had been adopted by the 1st Defendant and that she was intimately aware of the 1st Defendant’s financial and medical affairs and thus that she could adequately dispute the claims of the Plaintiff.
- [22] She testified that before and after the 1st Defendant’s trip to India, they had sat together and discussed the particulars of her treatment. She claims that her mother was aware of exactly how much she would need to cover her expenses and that before she left she withdrew Eleven Thousand pounds sterling from a foreign exchange account she had tied to her pension in England. She says that she saw the money in cash and insisted that the money was paid in cash to the hospital, and that she “remembers” the 1st Defendant giving the money to the 2nd co-Defendant who had agreed to be her attendant in India as the hospital required an attendant in case of emergency.

- [23] The 1st Defendant however, other than the testimony of the executrix produced no further proof in support of their case other than a copy of the 1st Defendant's medical bill. Counsel for the Defence would later submit that the bill being in the name of the 1st Defendant was proof that she had settled her own expenses with her own money.
- [24] As indicated the 2nd co-Defendant filed a statement of defence as above referred denying the allegations of the 1st Defendant and failed to appear for the hearing hence ex-parte hearing ordered as against him
- [25] I shall now move to consider the legal standard to be applied and its analysis thereto.
- [26] The adjudication of this case requires the Court to analyse the varying factual averments and testimonies of the parties and adjudicate upon credibility noting that the Plaintiff bears the burden to prove her plaint on a balance of probabilities.
- [27] Upon analysis of the evidence as illustrated above, I find that the Plaintiff has adequately disposed of her burden of proof in this case. It has been established that it was common cause between the parties that the 1st Defendant travelled to India relying on the Plaintiff and the 2nd co-Defendant for certain forms of support. Albeit the cash cheque drawn at the Bank of Baroda was not admitted as evidence and remained as Item, the defence did not dispute the veracity of the Plaintiff's copies of the hospital receipts or tender a reasonable alternative explanation for why the Plaintiff was in possession of these details of the 1st Defendant's medical care. The only reasonable conclusion I can arrive at in this instance is that the 1st Defendant's expenses as claimed are more credible than that of the 1st Defendant's representative who in fact failed to disprove the claims of the 2nd co-Defendant and or the Plaintiff and it is to be further be noted that she was not in India at the relevant time either.
- [28] Moreover, the version of the 1st Defendant's representative is contradictory and inconsistent with the available evidence. There is also no documentary evidence to support the bare denials of the Plaintiff's claims and the executrix's second-hand account of the relationship between the 1st Defendant and the Plaintiff is not sufficient to implicate the second Defendant also.
- [29] I find thus, that the Plaintiff has produced consistent and credible evidence sustaining the claim of breach of contract as averred and proved.
- [30] As to the claim of moral damages, it is reasonable to conclude upon Plaintiff's evidence that she suffered distress as a result of the 1st Defendant's dishonoring her contractual obligation hence rendering moral suffering. Suffering more particularly in the 1st Defendant's refusal to acknowledge or negotiate the terms of the debt to date.

However, I am of the opinion that the amount claimed is grossly exaggerated in all the circumstances of this case.

- [31] I am guided with respect to the assessment of claim of damages by the case of (*Jacques v Property Management Corporation (2011) SLR 7*) wherein the Court ruled that moral damages may be claimed for inconvenience but the assessment of such damages are to be compensatory and not punitive for it is intangible and cannot be quantified in monetary terms.
- [32] I find thus, in that regards, based on the evidence of the Plaintiff herself as analyzed, that the claim for moral damages is grossly exaggerated and I award payment of the sum of Seychelles Rupees Five Thousand (S.R. 5000/-) as exemplary damages.
- [33] For these reasons, I accordingly finds in favour of the Plaintiff as against the 1st Defendant in the sum of S.R. Seychelles Rupees Eighty Two Thousand Seven Hundred and Twelve (S.R. 82,712.00/-) , being the amount to be refunded by the 1st Defendant to the Plaintiff for medical expenses incurred on her behalf and the sum of S.R. 5000/- as exemplary damages for moral damage, all amounting to a total of Seychelles Rupees Eighty Nine Thousand Eight Hundred and Twelve (S.R. 89,812.00/-).
- [34] The claim as against the 2ndco-Defendant/third party is dismissed.
- [35] Costs is awarded in favour of the Plaintiff.

Signed, dated and delivered at Ile du Port on the 26th day of October, 2018

S. Andre

Judge of the Supreme Court