

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC 174
CC 55/2015
(Appeal from / Arising in/20...)

In the matter between

Bajrang Builders (PTY) Limited
(rep. by Mr. Rajasundaram])

Plaintiff

and

1. Mr. Daniel Marengo
(rep. by Mr. Rouillon)

1st Defendant

2. Mrs. Doris Marengo
(rep. by Mr. Rouillon)

2nd Defendant

Neutral Citation: *Bajrang Builders vs Marengo* CC 55/2015) [2019] SCSC 174

6th February 2019

Before:

S.Nunkoo

Summary:

Building contract-breach of contract- claim for unpaid amount by contractor –counterclaim by defendant for work not done- claim for moral damages.

Heard:

16 January 2019

Delivered:

6 February 2019

ORDER

Award made on unpaid amount.

JUDGMENT

S.NUNKOO

[1] The plaintiff entered into a building contract with the Defendants, both husband and wife residing at Au Cap, Mahe. The contract provided for the construction of a two bedroom house with gazebo, a carport and swimming pool at Au Cap, Mahe.

- [2] The agreed price was SCR 2,900,000.00.
- [3] Later additional works for an agreed price of SCR 10,619.00 were also included in the contract.
- [4] The plaintiff avers that the Defendants started occupation without the occupancy certificate
- [5] The plaintiff aver that it started works swiftly and finished the major parts of the works as well as the extra works. A balance of SCR 307,444.00 was due from the Defendants. In spite of his requests for payment Plaintiff was not paid. A meeting was held between both sides to sort out matters and the plaintiff had insisted for its payment but to his surprise he was served with a claim from the Defendants through their attorney.
- [6] The plaintiff is now claiming the sum of SCR 307, 444.00, due on the contract, the sum of SCR 56,000.00 for expenses, and SCR 50,000.00 as compensation for moral damages.
- [7] The Defendants have averred in their defence that the plaintiff commenced the works as agreed but failed to carry out the works to a reasonable standard and provided defective works and certain items are incomplete.
- [8] In their defence the Defendants admit occupying the house without the occupancy certificate and they submit it was the responsibility of the plaintiff to complete the house and obtain the occupancy certificate.
- [9] The plaint is denied and the Defendants are counterclaiming the sum, of SCR 622,541.40 plus interest and costs at the commercial rate.
- [10] They are relying on an express term of the contract which reads as follows:
- i. *The contractor undertakes to hand over the building in a completed state and to the clients satisfaction as per the approved plans.*

- ii. *The Contractor shall be liable for rebuilding and correcting any defect in the building upon request by the client either during construction or within the maintenance period(6 months from completion of building)*
- iii. *The Contractor undertakes to complete the works and deliver the completed project to the client within 9 months of the commencement of the work (1 st April 2013) but in case of any natural hazard beyond its control and provided that it can be proven that all possible attempts had been made to avoid any delays, extension of time shall be considered by the Client.*

[11] The defendants are averring that they have paid all claims in time and agree that at some time they gave extra works to the contractor.

[12] They aver that during the construction time they had to live in rented premises and had to pay monthly rent of SCR 16,000.00 for the period May 2013 to December 2013 and in February 2014 they had to vacate the rented premises and had no option but to occupy the unfinished house.

[13] The house lacked kitchen facilities and the windows and doors had not been fixed.

[14] Regarding the works the Defendants aver that they were not according to the engineering plans and that there were short cuts resulting in savings for the contractor and poor finished quality of the house.

[15] As regards the swimming pool and the decks these were defective.

[16] The Defendants have averred that the swimming pool was leaking and that tiles that were meant be to used inside the swimming pool were used outside and they had to seek independent advice

[17] In that period the decking was not completed and the defendants were living a very inconvenient situation.

[18] The septic tank was constructed at an incorrect location and the soakaway was not according to sanitary standards.

[19] The electrical works were defective;

[20] The balustrades were defective;

[21] The Plaintiff did not pay the PUC water bills amounting to SCR 23,875.40 resulting in the disconnection of the water supply and thus causing problems to the defendants;

[22] The plaintiff deponed to say that his company was in agreement to build a two bedroom house for the Defendants as per the terms and conditions of a written contract marked as P1. The witness deponed to say that the works were to start on 1st April and finish in nine months. He also stated that while the main contract was being executed he was asked to do extra works as follows:

- i. a new roof,
- ii. extra wall;
- iii. ceiling for bedroom;
- iv. sitting area for living and dining area;
- v. kitchen cabinets
- vi. a small kitchen cabinet
- vii. gates and access road.
- viii. stone wall

[23] All these works were quoted at SCR 368,744.

[24] The witness stated that 98 % of the building works had already been completed when he started works on the new agreement for extra works.

[25] It is his contention that that he has completed 98 % of the extra works and the Defendants have not paid any money for that. Hence his claim for SCR 307,744.

- [26] He also stated that the defendants were retaining the sum of SCR 43,500.00 on the original contract; this being one percent on the total price of the contract price.
- [27] He also stated that in the original contract there were changes from two bedroom to three bedroom and one additional bathroom.
- [28] It was his evidence that the only work left to be done was the completion of the swimming pool which he added could not be completed as the requisite tiles had not been supplied by the defendants.
- [29] He deponed to say that he had completed the inside of the house for the defendants to live in.
- [30] He also deponed to say that the occupancy certificate that is delivered by the Planning Authority could not be obtained as the electrical facility had not yet been completed and hence no completion certificate could be submitted to the Planning Authority.
- [31] The witness also stated that it was not true to say that the electrical installations were defective as in fact these were unfinished. The underground cable had not yet been fixed and the meter box was not done properly.
- [32] He denied that the works were defective , that there was delay and that the workmanship was poor.
- [33] He maintained that he was claiming SCR 56000.00 as loss on expenses and SCR 50,000 as damages.
- [34] In their defence Defendants have averred that paras 1to are not disputed but the main bone of contention is the delay caused by the plaintiff. The Defendants are claiming the sum of SR 622,541.40 as damages from the Plaintiff, as follows:

1.New timber to redo decking:	R 46,900
2.Cost of shipment of materials:	R13,500.00

3. Cost of fixing timber floor,etc	R26,800
4. Electrical works including materials and labour.	R 62,000.00
5.Completion of swimming pool	R 62,000.00
6. Provisional cost	R175,000.00
7.Water reconnection	R23,875.40
Sub total	R422,451.40
Moral damage	R200,000.00
TOTAL	622,000,541.40

[35] The defendants have averred that they are not satisfied with the standard of the work, that there are defects in the works and that certain items falling under the contract are incomplete. Hence they have not settled the final claim of the plaintiff. The defendants aver that they moved into the house though they had not obtained the occupancy certificate and that it was the Plaintiff's obligation to get the occupancy certificate.

[36] They also deny that the Plaintiff suffered any moral damage.

[37] The second defendant, Doris Marengo, deponed in chief and stated as follows:

i. That the house had to be completed in 9 months.

ii That the contractor did not complete the work within the time stipulated and that they were compelled to move into an incomplete house with a number of inconveniences that they had to face.

[38] She denied that the plaintiff had done 98 % of the work. She stated that they had no choice but to put an end to the contract mainly because of the delay.

[39] She stated that the decking of the veranda was incomplete; only about 5 % had been done.

- [40] She produced a photograph showing the stage of works done in the decking.
- [41] She had to import the timber from Shri Lanka at a cost of USD 3475 and also pay the shipment costs amounting
- [42] She is claiming SCR 46,900.00 for 70 sq meters of decking.
- [43] She also deponed to say that she spent SCR 26,800.00 for a carpenter to do the decking and also spent SCR 62,000.00 to complete the swimming pool. No receipts were produced.
- [44] Her next claim related to the balustrade on the veranda that was not done by the plaintiff and she alleged having spent SCR 28,726 to have it done; SCR being 21,1173.00 for steel rods imported from Shri Lanka, as per receipt marked D5.
- [45] As regards the deck the defendant testified that she had spent SCR 26800.00 as payment to an Indian worker, named Mahendra. She produced payment receipt marked Item D2.
- [46] The next issue was the PUC bill. The Defendant maintained that it was agreed that the water bill would be paid by the Plaintiff.
- [47] The claim is for SCR 23875.40.
- [48] The witness testified that she needed a quotation for the cost of finishing the job. She testified that he obtained one from a company, Megadesign and they quoted SCR 175,000.00.
- [49] The witness referred to the wall that was not completed and also the external steps.
- [50] The defendant deponed to say that they moved in the house with a lot of disappointment as it was not finished and as they had no option but to move init.
- [51] She stated that she is entitled to a sum of SCR 622,541.40, of which SCR 200,000 is for moral damages.

- [52] In cross, she maintained that the incomplete works related to electrical installations, the swimming pool, the veranda and the deckings.
- [53] She also added that in October 2014 they had a meeting with the plaintiff, where the plaintiff stated that it could finish the remaining works within two weeks and the defendants agreed to give it one month..
- [54] The second Defendant stated that in spite of this agreement the works were not done; they therefore decided to terminate the contract. The defendant admitted that 80% Of the extra work had been completed. The witness stated that the house was fully completed in 2016. The decking was completed in February 2015. The electricals were also were completed in 2015.
- [55] Finally in the course of the hearing of this case a quantity surveyor, namely Mr Jacques Renaud was appointed on the 1st of June 2018 by the court with the consent of both parties. Mr Renaud was required to make a report setting out the monetary values of the works done by the Plaintiff and also the amount payable to the Defendants for works not completed and for the cost of remedying the defects in the said residential building.
- [56] The plaintiffs claim was for a total sum of SCR 307,444.00, on the contract of construction, for work executed, and a sum of SCR 56,000.00 for expenses incurred and SCR 50,000.00 for moral damages.
- [57] The Defendants have claimed the sum of SR 422,000, 541.00 for various items; as well as SR 200,000.00 for moral damages.

It is to be noted that at the end of the case the parties agreed to appoint a quantity surveyor to assess the value of the works done and works left undone, who would decide as to any payment due to either side. Mr Jacques Renaud was therefore appointed with the consent of the parties and each party agreed to contribute equally towards his fees. The court is now in presence of his report made on the basis of visit to the site, interviews with the parties and scrutiny of documents made available to him. Mr Renaud has computed the total sum of SCR 3,135,558. as being the sum payable to the plaintiff originally. He has also computed the sum already paid at SCR 2,900,000.00. As per his

calculation an amount of SCR 235,000.00 is to be paid by the Defendants to the plaintiff.

In the light of the above report the Court therefore orders the Defendants to pay sum of SCR 235,000.00 along with the retention money.

[58] The defendants to pay the costs in this matter.

Signed, dated and delivered at Ile du Port on 6 February 2019

Nunkoo Judge