

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC ...
CC 22/2017

In the matter between:

MATHEW CHANGYUMWAI
(rep. by Joel Camille)

Plaintiff

and

SEYCHELLES YACHT CLUB
(rep. by Rene Durup)

Defendant

Neutral Citation:

Before: Pillay J

Summary: Claim for SCR 1, 418, 106.16 plus interest and costs on the basis that the Defendant acted in breach of the lease between the parties

Heard: 15th and 16th October 2018

Delivered: 13th March 2019

ORDER

Judgment in favour of the Plaintiff in the sum of SCR 1, 268, 010.3 with interest and costs.

JUDGMENT

PILLAY J

[1] The Plaintiff in this case seeks an order of the Court for the Defendant to pay the Plaintiff the sum of SCR 1, 418, 106.16 plus interest and costs on the basis that the Defendant acted in breach of the lease between the parties.

[2] The plaint reads as follows

- (1) *At all material time, the Plaintiff is and was a businessman and the Defendant an Association.*
- (2) *By virtue of an agreement dated 12th October 2015 (hereinafter referred to as 'Lease'), Plaintiff leased premises from the Defendant at Seychelles Yacht Club, Victoria (hereinafter referred to as 'Premises') from 12th October 2015 to 14th December 2020.*
- (3) *Clause 14 of the Lease states 'Either party may terminate this Lease by giving to the other party 6 months prior written notice.'*
- (4) *Furthermore, in order to evict the Plaintiff the Defendant was required to apply for eviction of the Plaintiff to the Rent Board and sought an Order for the Rent Board for eviction.*
- (5) *The Defendant wrote a letter dated 22nd April 2017 to the Plaintiff informing the Plaintiff that the lease was to be terminated on 6th May 2017.*
- (6) *The Plaintiff wrote back to the Defendant, by virtue of a letter dated 25th April 2017, informing the Defendant that he will honour the lease until its expiration.*
- (7) *The Defendant replied, by virtue of a letter dated 28th April 2017, threatening Plaintiff as follows: 'If your equipment is not removed by you by midnight on the 6th, it will be removed by our security and placed in the car park until the morning whereupon it will be disposed of at your own cost.'*
- (8) *On 6th May 2017 at 10.30pm, The Defendant removed all the equipment of the Plaintiff in the kitchen of the restaurant and put them outside in the car park. Further to police assistance, the Defendant had to put the equipment back in the kitchen after being ordered by the Police.*
- (9) *An email of 15th May 2017 from the Defendant to the Plaintiff alleged a report from Ministry of Health requiring that the kitchen had to be cleaned though such report was not given to the Applicant and Ministry of Health never contacted the Plaintiff himself. Furthermore, actions of Defendant prevented the Plaintiff from operating his business after 6th May 2017.*
- (10) *On 18th May 2017 the Defendant again removed all the equipment of the Plaintiff from the kitchen of the restaurant and placed them outside in the car park. Police assistance was sought and despite police informing the Defendant to put the equipment back in the kitchen the Defendant informed the police that they will take all responsibilities.*

- (11) *Defendant evicted the Plaintiff from the Premises by force and without an order of the Rent Board.*
- (12) *The actions of the Defendant are in breach of the Lease.*
- [3] The Defendant admitted paragraphs 1 through to paragraph 7.
- [4] In answer to paragraph 8 the Defendant averred that the lease was terminated after the Plaintiff committed several breaches of the agreement for which he was put on notice but failed to comply.
- [5] By virtue of Ruling dated 28th February 2018 the plea in limine of the Defendant was dismissed.
- [6] As agreed by the parties the issues for the Court are as follows:
- (i) *Was there a breach of lease agreement between the Plaintiff and Defendant.*
- (ii) *If so, what damages have been incurred.*
- [7] As the parties have agreed that the Defendant was required to apply for eviction of the Plaintiff to the Rent Board then the Court is required to consider the said issue as well.
- [8] The Defendant having been given time to file submissions failed to do so.
- [9] Counsel for the Plaintiff submitted that pursuant to the Control of Rent and Tenancy Agreement Act the Defendant was prohibited from ejecting the Plaintiff from the premises without an order of the Rent Board.
- [10] It was further counsel's submission that the evidence of the expert was uncontested by any other expert as to the damages incurred by the Plaintiff.
- [11] Section 9 of the Control of Rent and Tenancy Agreement Act reads thus:

No lessor shall eject or apply to the Supreme Court or the Magistrate's Court for the ejectment of or take any step towards the ejectment of or take any step towards the ejectment of his lessee:

Provided that nothing in this section shall prevent a lessor from giving his lessee notice to quit.

[12] Section 10 of the Act reads as follows:

(1) Every lessor wishing to eject his lessee shall apply to the Board for an order of ejectment.

[13] Section 10 (2) of the Act further provides for the circumstances in which the Rent Board can order the ejectment of a lessee.

[14] Section 13 of the Act provides as follows:

(1) This Act shall apply to any premises used for business, trade or professional purposes or for the public service as it applied to a dwelling-house and as though references to a "dwelling-house", "house" and "dwelling" includes references to any premises...

[15] It is clear that the lease can be terminated by giving of 6 months prior written notice to the other party by virtue of clause 14 of the lease agreement.

[16] It is also clear by virtue of clause 13 of the lease agreement that in the event of default the lessor can serve notice of termination to the lessee specifying the date of such termination. In fact that is what the Defendant did by its letter to the Plaintiff dated 22nd April 2017 giving the Defendant until the 6th May 2017 to vacate the premises for a number of reasons amongst which were (i) staff not being uniformed (ii) failure to provide evidence of staff medical check-ups (iii) providing catering services to non-members.

[17] The Defendant by letter dated 25th April 2017 informed the Plaintiff of the Defendant's intention to honour its lease to its expiry on 14th December 2020, effectively refusing to accept the notice of termination.

- [18] Subsequently there were exchanges between the parties which culminated in the Plaintiff's equipment being removed from the Defendant's premises on 18th May 2017.
- [19] On a perusal of the letter dated 22nd April 2017, the allegations of health concerns that were raised in the defence were certainly not a concern at the time the notice of termination was issued. Furthermore the letter from the Public Health Authority, DE2, dated 15th May 2017, makes clear reference to a complaint lodged on 8th May 2017, two days after the Defendant had attempted to evict the Plaintiff.
- [20] In his testimony the Plaintiff made clear that he had never had complaints from customers nor had he had visits from the Health Department or letters from the latter.
- [21] The photographs produced by the Defendant I note were photos that were taken after the heavy equipment had been removed. If the Defendant's intention had been to show a true and fair picture of the state and condition of the kitchen under the Plaintiff's management then the photos would at least include ones showing the kitchen before any equipment was moved.
- [22] I cannot help but note the personalities of the two main players in this case, Mathew Changyumwai and Mark Davidson. From the evidence there is no indication that the Defendant had any issues with the manner in which the Plaintiff ran his restaurant on the Defendant's premises prior to the new committee taking over the reins in 2017. In answer to Mr. Durup's question Mark Davidson accepted that things changed with the Plaintiff when the entirely new committee took over.
- [23] Mr. Davidson also made clear that the Defendant did not apply to the Rent Board for eviction of the Plaintiff since "there was no reason to. He breach the contract and we terminated the contract."
- [24] Indeed the proviso in section 9 of the Control of Rent and Tenancy Agreement Act allows for a lessor to give notice to his lessee to quit.
- [25] However if the lessee refuses to vacate the premises following the notice of termination the lessor has to revert back to the main provisions of section 9 which effectively forbids

a lessor from ejecting a lessee or from applying to the Supreme Court or the Magistrates Court for such ejection.

- [26] In as much as the Defendant was within its rights to issue notice of termination of the lease under clause 13 of the Lease Agreement, the Defendant could not after the expiry of the notice period evict the Plaintiff on his failure or refusal to vacate the premises without going to the Rent Board.
- [27] The Plaintiff having failed and refused to vacate upon the issue of the notice of termination the Defendant should have applied to the Rent Board for eviction rather than take the law into its own hands and then attempt to formulate a case against the Plaintiff. I note at this point that the Defendant more or less abandoned the reasons listed in the letter of 22nd April 2017 and focused more on the issue of Public Health in defending this matter.
- [28] In any event, in my view, it is irrelevant for the purpose of these proceedings whether or not there was a breach of agreement by the Plaintiff. The breach would have been relevant for the Rent Board on a consideration of grounds for eviction.
- [29] With regards to the claim for moral damages, the Plaintiff stated that he was embarrassed as a business man for him to close down the place and having to leave his other business to deal with these issues.
- [30] To my mind that it the nature of being a business man. One has deal with these situations of terminations of lease and changing of locations especially if one is running a business in rented premises. For that reason I decline to make any awards for moral damage/
- [31] As for the claim of damages to business, the Plaintiff claims SCR 1, 318, 106.16 I note the report produced by Mr Moutia, which he made clear he produced using information gathered from the Plaintiff and third parties.
- [32] I note that the Bill of Entry for the equipment is dated 24th November 2015. The lease agreement was signed in October 2015. There is also no evidence from the Defence that these items had not been installed in the kitchen at the Defendant's premises and removed

on 18th May 2017. On that basis I accept the claim for the loss of the equipment at SCR 139, 429.30.

[33] As for the loss of profits, the Plaintiff explained that the restaurant at the Defendant's premises and his other restaurant at Docklands had the same business number but different POS systems. I note that the POS report slips attached to the report reflect Le Marlin which was the restaurant at the Defendant's premises. There being no evidence of a decline in the number of customers at Le Marlin during the time it was in operation, I accept the report of Mr. Moutia that the lost profit from 19th May 2017 to 14th November 2020 would be SCR 1, 128, 581/-.

[34] I decline to make any awards on the component for extra expenses. The supporting documents indicate that the employees were those of Moloko. No explanations were offered as regards that and I am not prepared to assume that they were employed by Moloko to work at Le Marlin since Le Marlin operated under the licence of Moloko, in the absence of clear evidence.

[35] Similarly the utility bills do not show any connection with the Plaintiff's business at the Defendant's premises.

[36] On the basis of the above I enter judgment in favour of the Plaintiff in the sum of SCR 1, 268, 010.3 with interest and costs.

Signed, dated and delivered at Ile du Port on 201...

Pillay J