**IN THE SUPREME COURT SEYCHELLES**

**Reportable**
[2019] SCSC ..760
CS 78/2017

**PATRICK GRANDCOURT** **Plaintiff**
*(rep. by Anthony Derjacques)*

and

**SEYCHELLES PETROLEUM COMPANY LIMITED** **Defendant**
*(rep. by Samantha Aglae)*

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| **Neutral Citation:** | *Patrick Grandcourt v Seychelles Petroleum Company* (CS 78/2017) [2019] SCSC (09 September 2019). |
| **Before:** | Vidot J |
| **Summary:** | Contract; Breach |
| **Heard:** | 08.03.18, 10.07.18,20.09.18 & 10.10.18 |
| **Delivered:** | 09 September 2019 |

**JUDGMENT**

**VIDOT J**

**Background**

[1] On the 09th February 2017 the Plaintiff and the Defendant entered into an agreement for the purpose of operating premises, namely the Grand Anse, Praslin petrol station and for the supply of petroleum products for sale. Clause 3 of the agreement provides that for *"avoidance of doubt, the parties agree that the right..... granted* does *not confer any right in the land to the operator and neither a lease nor an agreement for a lease and*

*shall not be interpreted in any way so as to create between the company and the operator a landlord/tenant relationship."* It was a further term of the agreement that the Plaintiff would purchase its entire stock of petroleum from the Defendant (clause 5(2)(a) of the Agreement). Petroleum products is described in the Second Schedule of the Agreement. The Plaint avers that the Agreement lapsed in 2018. The Plaintiff nonetheless argues that the Agreement is presumed to subsist and continue inter partes and that it may only be terminated with 3 months notice after a fundamental breach of contract by the Plaintiff or by order of Court.

[2] In fact it is averred that the Defendant has been trying to eject the Plaintiff from the petrol station. However, the Plaintiff avers that the Defendant's action is in breach of the said agreement and is contrary to law.

[3] It is indeed correct that the Defendant pleads that the Plaintiff in breach of the Agreement owes the Defendant a sum of around SR10,378,092.29. The Defence and Counter-claim aver that the figures provided in the Plaint by the Plaintiff are based on miscalculations in that payment was misallocated and did not cater for cheques issued by the Plaintiff that were dishonoured. In the Counter-claim an amount of SR10,453, 092.29 is claimed being SR10,378, 092.29 for debts accrued and SR75,000.00 for moral damages.

[4] The Plaintiff however avers that most of the sums being claimed by the Defendant as debts have already been made and that the Plaintiff hired an accountant to consider all its invoices and state that the amount as quoted by the Defendant was erroneous. They claim that the actions of the Defendant is in breach of the agreement. Therefore they seek the following orders from Court;

(i) That the agreement subsist and exists in law;

(ii) That the Defendant may not eject the Plaintiff from the said petrol station unless and solely by an order of court; and

(iii) That the Defendant is granted permission to engage and contract with a certified chartered accountant who shall prepare a certified set of financial statement for the

agreed financial transaction between the Plaintiff and the Defendant from 2008 to 2017

**Plaintiff's Evidence**

[5] The Plaintiff testified that on the 10th July 2017 he had received a letter from the Defendant signed by Sarah Romain, General Manager Commercial, in which a claim of SR13, 437,700.29 for sums due to the Defendant. Further the letter alleges that several cheques issued by the Plaintiff to the Defendant have been dishonoured. Since it is averred that these were breaches of the Agreement, the Agreement is deemed terminated. On that day Seypec representatives including Sarah Romain and Paul Mondon had come to the petrol station giving him 6 hours within which to vacate. After some negotiations the request for vacate was abandoned and a meeting was organised for the 12th July 2017 (exhibit P4). He was accompanied by his accountant, Selwyn Philoe for the meeting.

[6] At that meeting they discussed mainly about the sum that was due and owing. His figures did not match that of Seypec. It was discovered in that the sum of SR13, 473,700.29 there was a reduction of SR4 million which the Plaintiff had paid. In actual fact Selwyn Philoe had after investigating the account and the bank statements discovered that out of the original sum being claimed he had already paid SR4,222,751.58.

[7] There was a second meeting on 19th July 2017. The Plaintiff's attorney was present at that meeting. The Plaintiff asked for an extension to consider their accounts.

[8] However at a meeting of 4th October 1997, the sum being claimed as owing was SR10,378,092.29. The Defendant undertook an exercise of verification of invoices and cheques paid to come to the figure. These were invoices issued by Seypec presented upon delivery of fuel and other petroleum stocks. Sitraka Ramanantsoa, an accountant produced an assessment, The audit account as of 10th July 2017 was produced as evidence. The amount outstanding was calculated to be SR1,490,675.73. On the 07th November 2017 she received a letter from the Defendant for him to vacate by the 08th February 2018.

[9] The plaintiff's day to day accounting was left to Josette Cadence. That was solely for doing the profit and loss, raise invoices, receipts and payments. She recounts about the meeting of 12th July 2017 which she attended and the subsequent reduction in the amount being claimed. She said that the sum claimed to be owed then was SR9,214,977.12. That was after the Plaintiff had requested some time to reconcile the accounts. Subsequently after further meeting and consideration of the accounts the debt owed was reduced to SR6,940,715.08

[10] Mr. Sylwyn Philoe checked the documents particularly the bank statement and invoices. For the meeting of 12th July 2017, he states that he was able to prepare statements showing revised amounts of invoices and those identified as having been paid from Seypec outstanding list. He produced exhibit P7 as a schedule which he prepared showing such sums paid. He therefore concluded that Seypec's claim was incorrect and exhibit P8 was produced as a statement of adjustment. The debt was even reduced from some SR3 million to around SR6. That was due to an arrangement whereby the Plaintiff was selling LPG to Le Muria hotel and the latter was making payment directly to the Defendant. After doing the final calculation he considers that the Plaintiff owes the Defendant only SR1,490,675.73.

[11] Sitraka Ramanantsoa was the accountant recruited by the Plaintiff to relook at the accounts. He looked at the bank statement and some emails from Seypec. He then compiled a report. That report was produced as exhibit P10. The amount was further reduced to SR9.491,903.77 from the reconciliation made by Sitraka. This was further reduced after considering the amount paid by Le Muria and other factors to SR3.7 millions and after calculating a margin retention of SR972,000.00, the entire sum was reduced to SR1,490,675.72. However, whilst doing the reconciliation Sitraka recognised that there were documents missing so he adopted what he called a *"holistic"* approach.

**Defence case**

[12] The Defence called 2 witnesses; Sarah Romain, Manager for Commercial and Paul Mondon. Chief Financial Officer.

[13] Mrs. Romain described that one of her main role is development of contracts and agreements among which are service station contracts. She is the one who signed service contracts with all 9 service station operators on behalf of the Defendant. She identified the Agreement on the 09th February 2017.

[14] In the Plaintiff's 2017 contract, a higher profit margin was agreed. Normally an operator gets 35 cents per litre of fuel sold. The Plaintiff was granted 55 cents as he had a debt with Seypec. This was seen as a way in which his debt could be repaid. However, the plaintiff refused to sign. Finally as per Schedule of the agreement it was provided that the sum of 50 cents per litre would be retained by the company from 85 cents per litre, as payment towards the debt of SR7,024,122.74 that the Plaintiff owes the Company effective 01st November 2015. When the contract of 2015 was signed Seypec placed a similar clause but Seypec was retaining 20 cents and the Plaintiff was getting 55 cents on every litre of petroleum sold. In 2015 the Plaintiff acknowledged that he owed a debt to the Defendant. The debt was for a similar amount since by 2017, the 2015 debt had not been paid.

[15] There were several meetings with the Plaintiff in an attempt to resolve the issue of debt. The agreement was that the Plaintiff would pay SR125,000/- per month. The Plaintiff was take a bank guarantee for payment which Plaintiff never did. It seems that whatever payment plan the parties agreed to the Plaintiff did not comply with. On numerous occasion cheques drawn up bounced because of insufficient funds. There were numerous meeting organised but the debt was not paid.

[16] Mr. Paul Mondon is familiar with the accounts of the Plaintiff. He stated that contrary to his obligations the Plaintiff did not provide audited accounts to the Defendant. He explained that upon delivery of fuels and other goods the petrol station operator is issued with a delivery note and include an invoice and the operator is responsible for signing. From these documents they became aware that the Plaintiff was in default. He issued several cheques that were dishonoured. Sometimes the cheques were represented to the bank up to 4 times and some still bounced (exhibit D8)

[17] They calculated the amount owed by the Plaintiff from invoices raised by Seypec, and bank statements and cheques from the Plaintiff's bank statement. In trying to reconcile the Plaintiff's figures with that of the Defendant he had a few meetings with the Plaintiff accountant. As a result thereof, he was able to accurately recalculate the sum owed which amounted to SR10,047,295.29 He saw the figures arrived at by the Plaintiff's accountant and said that they were not accurate. As example he that the accountant who showed a reduction to SR11, million had erroneously left out some payments which he picked up when doing the calculations and corrected it. He mentioned that as per exhibit D10, he took into the credit note for LPG supplies with Le Muria..

**Discussions**

[18] There are in effect 2 issues to be decided in this case, (i) whether the Agreement still subsists and are there any breaches of the Agreement and if the Agreement can be terminated and (ii) is the Plaintiff indebted to the Defendant and if so how much and are the calculations in that respect correct.

**(a) The Agreement**

[19] The Agreement was signed by both parties. In terms with Article 1102 of the Civil Code of Seychelles this was a bilateral agreement which was valid, binding and enforceable. The consent to the Agreement was not given by mistake, or extracted by duress or induced by fraud,(Article 1109 of the Civil Code) thus the reason why it is admitted as being valid. There are no averments to suggest otherwise. Therefore since the Agreement of 9th February 2017 was lawfully concluded, it has the force of law as provided for by Article 1134 of the Civil Code.

[20] The Agreement was for the duration of 12 months (one year) beginning from the date of signature. After that period of time the Agreement will be terminated and under clause 7 of the Agreement the operator of the petrol station shall *"forthwith hand over all the keys to the pumps and other equipment, doors and offices, remove all moveables which belong to the operator from the station....."* However under clause 6 of the Agreement requires to give 3 months' notice in writing is given at the instance that either party decides to

terminate the Agreement. The Defendant may nonetheless treat the Agreement as having been determined by the Plaintiff forthwith and without further notice to the Plaintiff if in the reasonable opinion the of the Defendant the Plaintiff has materially fail to comply with his obligations under the Agreement for more than 3 times.

[21] The Agreement in any case has lapsed. It was signed on the 09th February 2017. The Plaintiff was supposed to vacate the property since February 2018. Once the Agreement terminates due to lapse there is no requirement on the Defendant to give notice to the Plaintiff. I do not subscribe to the Plaintiff's averments that the Agreement is presumed to subsist and continue inter partes and may only be terminated by 3 months notice. The 3 month notice is only applicable when the Agreement is determined not due to lapse of time.

[22] In any case I find that notices were given in 09th February 2019 (exhibit P6) and 7th November 2017 (exhibit P5). Therefore no further notice was required. I also note that on the 10th July 2017 (exhibit P3 (a)) notice was given. However, I shall not consider that since thereafter the Plaintiff was granted time to reconcile its accounts. Since time was granted to resolve reconciliation of the account I consider that notice to have been revoked. Nonetheless, it remains a fact that the contract is terminated due to lapse of time

[23] Furthermore, the Plaintiff is in breach of the Agreement. This is particularly due to non-payment of supplies. It is not in dispute that there was such late and non-payment. That in effect is a breach of clause 6 (b) of the Agreement. Furthermore, in breach of Clause 5(3)(1)(b), as per testimonies of Sarah Romain and Paul Mondon the Plaintiff failed to set up a payment guarantee as specified in the Fourth Schedule of the Agreement. All these were sufficient cause for termination of the Agreement.

**Plaintiff's Debt**

[24] Under the Fourth Schedule of the Agreement of 09th February 2017, under the heading "Margins", the Plaintiff acknowledged being indebted to the Defendant in the sum of SR7,024,122.74. This sum was being carried over from the Agreement for the station signed by the parties on 01st November 2017. The only difference is in the amount of

margin profit of bulk fuel being supplied. In fact in 2017 that was increased to SR0.85 whereby the Defendant was to retain SR0.50 as payment towards the debt. Therefore, I believe that both parties produced as evidence that was somewhat irrelevant. The Plaintiff tried to adduce evidence to show that the calculations from in 2008 up to 2013 had discrepancies and were incorrect.

[25] Sikatra Ramanantsoa produced exhibit P10. He said he looked at statements produced by Seypec . He calculated invoices from 2008 to 2017. Such statements should not have been considered as they date prior to the Agreement of 09th February 2017. Any calculation that considers statement before that date is erroneous. When he signed the Agreement the sum of SR7,024,122.74 show shown and the Defendant admitted to owing that sum. He can only calculate figures which is from the date of the Agreement. He noted that he did not have all the information of accounts at hand and therefore he adopted a holistic approach rather than going through individual documents. That holistic approach is based on an assumption and that gave them an approximate figure. However, these were not figure post signing of the Agreement but dealt with figure pre-agreement, which will definitely make the figure erroneous.

[26] Mr. Ramanantsoa also produced certain Statement Adjustments documents as exhibits (exhibit P8 and P9) where he shows a depreciation in the sum claimed. In exhibit P8 he gave as amended balance due as SR9,214,977.12 and in P9 the revised balance due is SR6,941,715.08. Again such adjustment are not limited to the dates after the signature of the Agreement.

[27] Seypec relied on their accountant to produce figures of the debt owed. I believe that Mr. Mondon produced a more accurate picture of the debt. He produced exhibits D9 to D12 inclusive to show his calculations. Even after the signing of the Agreement, it is shown that the Plaintiff continued to incur debts. His final adjustments was the the sum of SR10,047,295.29. Even then these adjustments took into account debts alleged to have been paid for the period pre-Agreement. He explained that the individual on the Plaintiff side working with the figures had erroneously left out some figures and gave information about those figures and that the individual never requested for documents. Mr. Sekara

never contacted them for the figures. As far as the figure was concerned they even included in their calculation for sums paid, cheques that had bouced. Copies of those cheques were exhibited. In his calculation, despite the Plaintiff having signed the Agreement that the Plaintiff owed SR7,024,122.74, Mr. Mondon took into consideration sum as per credit notes from Le Muria for LPG that the Plaitiff supplied and payment done to the Defendant.

**Findings**

[28] I therefore find that the Plaintiff failed to satisfy the burden of proof necessary to establish that the sums were that that as per plaint; see **Abel v Echtler [1988-1983] SCAR 187**. Therefore the counterclaim succeeds in as far as the sum claimed but I will not make an award for moral damages as the Defendant/counter-claimant is a company.

[29] I therefore make the following Orders;

(i) The Plaint is hereby dismissed;

(ii) The Plaintiff shall pay the Defendant/Counter-Claimant the sum of SR10,047,295.29

(iii) The Plaintiff is given 2 months within which to vacate the Grand Anse Petrol Station and hand over vacant possession to the Defendant

(iv) Cost to the Defendant/counterclaimant

(v) Interest at the commercial rate from the date of this judgment.

Signed, dated and delivered at Ile du Port 09th September 2019

Vidot J