

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2019] SCSC :763
CS 34/2017

In the matter between:

DAVIS PADAYACHY
(rep. by Elvis Chetty)

Plaintiff

and

SEYCHELLES COMMERCIAL BANK
(rep. by Charles Lucas)

Defendant

Neutral Citation: *Padayachy v Seychelles Commercial Bank* [(CS 34/2017) [2019] SCSC
(..... September 2019).

Before: Pillay J

Summary: Debt

Heard:

Delivered:

ORDER

JUDGMENT

PILLAY J

[1] The Plaintiff seeks an order of this Court:

(1) Declaring that the Plaintiff is not a debtor of the Defendant;

(2) That the negative information regarding the Plaintiff be removed from the Credit Information System owned and operated by the Central Bank;

(3) In the alternative to (2) above, to issue a mandatory injunction against the Defendant, compelling it to cause the Central Bank to remove the negative information in respect of the Plaintiff from the Credit Information System owned and operated by the Central Bank;

(4) For the Defendant to pay damages to the Plaintiff in the sum of SCR 400, 000.00 along with interest and costs; and

(5) As it deems fit and necessary in the circumstances of the case, including if necessary, declare that the loan/s by virtue of which the Plaintiff is/are a debtor of the Defendant is prescribed in terms of Article 2271 of the Civil Code.

- [2] The Plaintiff claims that he is neither a debtor nor a guarantor of any debtor of the Defendant.
- [3] The Plaintiff further claims that if it is proven that he is indebted to the Defendant then such debt is prescribed by virtue of Article 2271 of the Civil Code.
- [4] The Plaintiff alleges that the Defendant has illegally and unlawfully provided negative information namely that the Plaintiff owes money to the Defendant to the Credit Information System owned and operated by the Central Bank.
- [5] It is the Plaintiff's claim that in spite of demands to the Defendant to furnish documents proving his indebtedness to the Defendant, the requested information has not been forthcoming.
- [6] The Plaintiff claims that the Defendant has committed a fault towards the Plaintiff since as a result of the negative information provided to the Credit Information System the Plaintiff has been declined loans by other financial institutions. The Plaintiff claims that as result of such fault he has suffered moral damages.
- [7] The Defendant denied the claims and averred that the cause of action did not arise when the loan was disbursed and the collection of the debt remains a continuing process unless abandoned by the Defendant for a period in excess of 5 years.

- [8] The Defendant further averred that the information on the Plaintiff is contained in its books and was provided in good faith and pursuant to its conduct of business as a financial institution.
- [9] The Defendant averred that the Plaintiff was a Director and guarantor of an unpaid loan of Premium Security Services Limited which was adjudged bankrupt in CS 23/2012 on 23rd October 2013 by the Supreme Court.
- [10] The Defendant averred that had the Plaintiff settled the debt as guarantor of the bankrupt Premium Security Services Limited, the Central Bank would have removed him from the Credit Information System as a bad debtor.
- [11] The Defendant proceeded to counterclaim from the Plaintiff the sum of SCR 124, 724.75 being the outstanding loan of Premium Security Services Limited of which he was the Director and a personal guarantor for the loan.
- [12] Neither counsel opted to file submissions leaving the matter for the Court to decide on the evidence presented.
- [13] Mr. Davis Padayachy testified that he created the company Premium Security Services. Business was good until due to certain unforeseen circumstances they had to apply for liquidation. The company had an overdraft facility with the Seychelles Commercial Bank and then took over the car loan from its ex-director. He denied being a guarantor to any loans taken by the company with the Defendant bank. In cross examination he accepted that he was a guarantor for the loan before reverting back his denial in re-examination.
- [14] Mr. Peter Rosalie testified that he is a qualified account and auditor. He knows the Plaintiff. The witness testified that he presented a final dissolution report to the Court with regards to the liquidation of a company called Premium Security Service Limited. Mr. Rosalie explained that the Credit Information System is a system whereby the Central Bank assesses a person's credit worthiness. He explained that a person who is technically undischarged bankruptcy meaning who has been unable to clear his debt during the dissolution process will have his debt follow him.

- [15] Mr. Jonathan Valentin testified that he is financial inclusion analyst at Central Bank. He explained that the Credit Information System provides information on credit facilities that banks offer to their customers¹. Mr. Valentin testified that the information on the Credit Information System shows that Premium Security Services has five reports of facilities, two with Seychelles Commercial Bank and three from Development Bank of Seychelles. It was his evidence that the system shows that the Plaintiff is a guarantor for Premium Security because he has three records under his name as guarantee. He further explained that the facility number for the three facilities (records) is the same as the facility number for Premium Security².
- [16] Mrs. Jena Thelermont testified that she is the General Manager of Seychelles Commercial Bank. She explained that in the Credit Information System report the Seychelles Commercial Bank features only under the name of Premium Security Service and not Davis Padayachy. She explained that the Seychelles Commercial Bank reported to the Central Bank against the company and not Davis Padayachy personally. Mrs. Thelermont testified that the loan was granted to Premium Security Services Limited and Davis Padayachy was not a guarantor.
- [17] The Defendant's case is that whatever information it provided to the Central Bank for the Credit Information System, it did so in good faith and pursuant to its conduct of business as a financial institution.
- [18] It was also the Defendant's case that the Plaintiff was a guarantor of an unpaid loan of Premium Security Services and as the guarantor had he settled the debt of the adjudged bankrupt company he would have been removed from the Credit Information System as a bad debtor.
- [19] Was the Plaintiff a guarantor of an unpaid loan taken by Premium Security Services from the Defendant bank?

¹ Page 26 of the proceedings of 18th March 2018

² Page 27 of the proceedings of 19th March 2018 – on PE4 list of facilities for Davis Padayachy facility numbers 002102000829 and 002102000205 match those on PE5 being the list of facilities offered to Premium Security Services by DBS

[20] From PE2A and PE2B the loans to Premium Security Service reflected in the books of Seychelles Commercial Bank are:

(1) An overdraft facility of SCR 50, 000.00 to Premium Security guarantor being the Plaintiff

(2) Loan of SCR 85, 445.42 to Premium Security guarantor being the Plaintiff

(3) Loan of SCR 87, 960.58 to Premium Security pledge on vehicle S14058

[21] PE4 and PE5 show that two loans from Development Bank of Seychelles to Premium Security Service share the same facility number as the records in the Plaintiff's personal name in the Credit Information System, being 002102000829 and 002102000205. On the evidence of Mr. Valentin the fact that the Plaintiff shares a facility number with a corporate entity in the Credit Information System shows that the Plaintiff guaranteed those loans³. On that basis the reverse would be true in that the fact that the loans from Seychelles Commercial Bank to Premium Security Service does not share a facility number in the Credit Information System with the records in the Plaintiff's name then the Plaintiff could not have been a personal guarantor for the said loan by the Defendant to Premium Security Service. In fact on PE4, which is the information from the Credit Information System relating to the Plaintiff personally, there is no facility in the name of Seychelles Commercial Bank.

[22] It is noted that PE2, PE4 and PE5 both emanate from the Central Bank's Credit Information System. While PE2 shows the Plaintiff as guarantor for a loan and an overdraft given to Premium Security Services the same is not reflected on PE4 and PE5.

[23] In the letter from counsel for the Defendant⁴, the Defendant seeks to hold the Plaintiff liable for the debt of the company on the basis that the Plaintiff was a guarantor of the loan and as such is personally liable for the said debt. However, other than PE2 there is no other evidence of the Plaintiff being guarantor of the loan. The Plaintiff denied being the guarantor of the loan to Premium Security Services⁵ though in cross examination he

³ Page 27 of the proceedings of 19th March 2018

⁴ DE2

⁵ Page 7 of the proceedings of 19th March 2018

accepted that as “guarantor for a corporate loan which company has gone bankrupt, [he] as guarantor became personally liable for repayment.⁶” before back tracking in re-examination. In fact the Defendant’s witness confirmed that she was not aware of any guarantee from Mr. Padayachy⁷.

- [24] Furthermore on the evidence of Mr. Valentin⁸, that all “the information [on the Central Information System] is quoted by the [Central] bank without intervention.” According to him “only the bank will be able to answer why we have Mr. Padayachy as stakeholder because the agreement was done within the bank and Mr. Padayachy.” If there was indeed an agreement with Mr. Padayachy being the guarantor it was for the Defendant to produce the said agreement and satisfy the Court that indeed the Plaintiff guaranteed the loan.
- [25] This Court finds that there is insufficient evidence to show that the Plaintiff personally guaranteed the loan from Seychelles Commercial Bank to Premium Security Services.
- [26] On the basis of the above the Defendant has not provided any information to the Credit Information System as to the Plaintiff being a bad debtor personally. On the contrary information as to the Plaintiff’s bad debts emanate from the Development Bank of Seychelles who is not a party to the case. In cross examination the Plaintiff explained that he was paying off the loan from DBS to Premium Security Services because after the company was liquidated a case was brought to court against the directors to get them to fully repay the loan to DBS⁹. Even though the Defendant raised the issue of the Plaintiff being a Director, it did not specifically plead that the Plaintiff was liable for the loan as a Director nor was the issue canvassed in evidence or submissions in which case I decline to delve further into this issue.
- [27] On that basis the claim for moral damages has to fail in that the Defendant is not responsible for the Plaintiff’s name appearing on the Credit Information System and his resulting inability to secure a loan.

⁶ Page 19 of the proceedings of 19th March 2018

⁷ Page 16 of the proceedings of 12th March 2019

⁸ Page 27 of the proceedings of 19th March 2018

⁹ Page 23 of the proceedings of 19th March 2018

[28] As regards the Plaintiff's prayer that the Court order that the loans are prescribed under Article 2271 of the Civil Code I decline to consider this point or make any order since no evidence was adduced nor were any submissions filed on that point.

[29] In the circumstances this Court declares that the Plaintiff is not a debtor of the Defendant.

[30] The Plaintiff's claim succeeds to the extent stated at paragraph [29].

[31] The Defendant's counter-claim fails.

[32] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on ... *11th September 2019*



Pillay J