

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 402
CC 49/2015

In the matter between

Roberto Rocchi
*(rep. by Francis Chang-Sam together with
Edith Wong and Olivier Chang-Leng)*

Plaintiff

And

Massimo Longobardi

1st Defendant

And

Felicita Pirozzolo
(both rep. by Rene Durup)

2nd Defendant

Neutral Citation: *Roberto Rocchi v Massimo Longobardi & Anor* (CC 49/2015) [2020] SCSC
(10 February 2020)

Before: Robinson sitting as a Judge of the Supreme Court

Summary:

Heard:

Delivered: 10 February 2020

ORDER

This court's judgment is in the following terms —

- (a) the first and second defendants shall jointly and/or severally pay the plaintiff the sum of Euros 85,964 (less the sums of 3,500 rupees and Euros 800) with interest at the legal rate of four per cent from the date of filing of the plaint until the date of payment of the entire sum of Euros 85,964 (less the sums of 3,500 rupees and Euros 800)
 - (b) the first and second defendants shall jointly and/or severally pay the plaintiff the sum of 100,000 rupees with interest at the rate of four per cent thereon, from the date of judgment until payment of the entire sum of 100,000 rupees
 - (c) with costs.
-

JUDGMENT

ROBINSON sitting as a Judge of the Supreme Court

The Background

- [1] In a plaint, the plaintiff sues the first and second defendants for damage in the sum of Euros 85,976 (less the sum of 3,500 rupees) and 200,000 rupees for moral damage for breach of an oral agreement between the plaintiff and the first and second defendants.
- [2] The first and second defendants put in a plea to the plaintiff's claim, denying the plaintiff's claim. They ask this court to dismiss the plaint with costs.

The evidence for the plaintiff

- [3] The plaintiff, an Italian national, came to the home of the first and second defendants, in the course of his holidays in Seychelles, in November 2013, after he had met the first defendant online. He met the second defendant when he came to the first and second defendants' home in the course of his holidays in Seychelles. The first and second defendants proposed that the plaintiff should invest in a company with them during the plaintiff's visit to their house. The company was involved in the importation in bulk of biscuits and sweets, from Italy, which it will then package for distribution and sale in Seychelles. The plaintiff accepted to invest in the said company.
- [4] The plaintiff and the first and second defendants agreed that the first and second defendants would obtain a licence for the business. After that, the plaintiff and his family will move to Seychelles.
- [5] The plaintiff transferred about Euros 85,700 to the account of the first defendant with the Mauritius Commercial Bank (Seychelles) Ltd ("MCB (Seychelles)"), which sum was to help Seycake and Biscuits Ltd financed the importation of stock to Seychelles.

- [6] The first and second defendants gave the plaintiff thirty-five shares in Seycake and Biscuits Ltd¹ for which he paid 3500 rupees - see exhibit P1 - Transfer of Shares - Company No. 8410952-1. The said sum of 3,500 rupees was paid out of his Euros 85,000 transferred to the account of the first defendant.
- [7] The first and second defendants were supposed to refund his money that was not used by Seycake and Biscuits Ltd but they used his money for all kinds of things and did not reimburse him any money.
- [8] The plaintiff filed a case against Seycake and Biscuits Ltd before the Employment Tribunal of Seychelles. According to exhibit P3, a judgment of the Employment Tribunal of Seychelles, the findings of the said Tribunal were: " - [o]ne month salary in lieu of notice. – unpaid salary from 22.10.14- 30.04.15. – 10.50 days annual leave and - compensation for length of service". Seycake and Biscuits Ltd has not paid him.
- [9] The plaintiff is asking this court for a judgment against the first and second defendants for the sum of Euros 85,976 (less the sum of 3,500 rupees). He is also asking this court to award him the amount of 200,000 rupees for moral damage with interest and costs.
- [10] When cross-examined, the plaintiff states that he met the first defendant through the latter's cousin, who lives in Italy. The plaintiff testifies about e-mail correspondence between him and the first defendant as follows.
- [11] A printed copy of an e-mail in Italian, dated the 23 October 2013, from the plaintiff to the first defendant - see the English translation of the said e-mail - informs the first defendant about the arrival in Seychelles of the plaintiff and his family on the 19 November 2013, and matters connected with their stay.
- [12] A document² in Italian, dated the 2 December 2013, from the plaintiff to the first defendant - see the English translation of the said document - informs the first defendant that the plaintiff would transfer more money to the first and second defendants than what

¹ Seycake and Biscuits Ltd was incorporated under the Companies Act 1972 on the 9 May 2012, see exhibit P2

² Exhibit D2

had been agreed initially, following the preliminary agreement for the sale of the plaintiff's house. The plaintiff did not sell his house.

[13] A printed copy of an e-mail³ in Italian, dated the 14 December 2013, from the plaintiff to the first defendant – see the certified English translation of the said e-mail - informs the first defendant that the plaintiff was still trying to sell his house. After that, the plaintiff would do more money transfers.

[14] A sworn English translation of a document in Italian, dated the 14 December 2013, from the plaintiff to the first defendant, informs the first defendant that —

*"[...], on Monday morning I shall make the first money transfer, and I shall send you the documentation once done so that you may check that everything is all right and then as of the 21st I shall send you the rest even if I am not sure that I will be able to sell the house because **on the 20th I should be able to have enough for the whole share of the company** but until yesterday the bank had not yet disbursed the funds to those who are buying [...], but all will go well you will not regret to have chosen me as you associate, here with this opportunity, you are giving us [...]. "*

Emphasis supplied

[15] A printed copy of an e-mail⁴ in Italian, dated the 1 April 2014, from the plaintiff to the first defendant, informed the first defendant among other things of the arrival of the plaintiff and his family in Seychelles. Regarding exhibit D4, the plaintiff explains that he was coming to Seychelles to ask about the progress of Seycake and Biscuits Ltd.

[16] A printed copy of an e-mail in Italian, dated the 1 April 2014, from the plaintiff to the first defendant, asks the latter among other things to rent a house for the plaintiff and his

³ Exhibit D3

⁴ Exhibit D4

family. At the time the plaintiff wrote the said e-mail, he and his family were moving to Seychelles, and that he was going to work for Seycake and Biscuits Ltd.

- [17] A printed copy of an e-mail⁵ in Italian, dated the 7 April 2014⁶, from the plaintiff to the first defendant - see the English translation of the said e-mail - asks the first defendant if he had received the rest of the money transferred to him.
- [18] A printed copy of an e-mail in Italian, dated the 30 April 2014⁷, from the plaintiff to the first defendant - see the certified English translation of the said e-mail - concerns, among other things, the move of the plaintiff and his family to Seychelles.
- [19] The first defendant paid, on the plaintiff's behalf, a security deposit of 26,000 rupees for a house, which sum he refunded the first defendant in cash. He did not request a receipt from the first defendant because he trusted the first defendant and not because they were excellent friends.
- [20] A printed copy of an e-mail in Italian, dated the 16 June 2014, from the plaintiff to the first defendant, asks the first defendant among other things whether or not he [the plaintiff] could do another money transfer for the first defendant. The said e-mail also speaks about the imminent move of the plaintiff and his family to Seychelles. Regarding the said e-mail, the plaintiff states that he made the money transfer to the first defendant.
- [21] After he had bought shares in Seycake and Biscuits Ltd, he asked the first defendant to sell his [the first defendant's] sixty-five shares in Seycake and Biscuits Ltd to him as he [the plaintiff] was unaware of the affairs of the company. In that regard, he explains that he could not access the invoice record and accounts of the said company. The first defendant used his rupee and Euro bank accounts as personal and business accounts. Their relationship broke down completely because the first and second defendants refused to account for his money explicitly transferred for the business.

⁵ Exhibit D5

⁶ Exhibit D6, the printed copy of the e-mail in Italian language and the English translation

⁷ Exhibit D5

- [22] When cross-examined, the plaintiff reiterates that the first and second defendants and he agreed to import biscuits from Italy for Seycake and Biscuits Ltd, during a visit to the first and second defendants' home in November 2013. The plaintiff and the first and second defendants did not agree on a specific amount of money for the business in November 2013. They spoke about money over the phone and in some e-mails. He clarifies that the first and second defendants should have returned his money that was not used by Seycake and Biscuits Ltd, in the form of a money transfer upon his arrival in Seychelles in July 2014.
- [23] When asked by Counsel, "[w]hat could have been the balance then required to be refunded to [him] upon [his] arrival in Seychelles?", his response was, *"I do not know because I never saw all the accounts and this is why I am asking the court that the entirety I refunded to me because the whole thing was made in a way that should not have been made/happened. He said that he was going to open a company account, but this was never done. He said that the accountant would show me all the expenses, all the status, but this never happened"*.
- [24] He denies the suggestion of Counsel that there were no arrangements between him and the first and second defendants concerning Seycake and Biscuits Ltd. In that regard, he states that, had there been no such arrangements, he would not have been a partner in the said company. He also rejects the proposal of Counsel that, when he came to Seychelles in November 2013, he spoke to the first and second defendants only about an idea for a business, and that the only arrangement between him and the first and second defendants was for them to assist him and his family settle in Seychelles.
- [25] The plaintiff could not recall when he first transferred money to the account of the first defendant. He remembers that he transferred Euros 1,500 to the account of the first defendant in January. He also recalls making a second money transfer to the account of the first defendant in February. He made five or six money transfers. He denies the suggestion of Counsel that he transferred money to the account of the first defendant because the first defendant helped him settle in Seychelles. He rejects the proposal of

Counsel that he could not remember the exact amount of money he transferred to the account of the first defendant because they refunded him the money, and that the first defendant transferred money to his bank account. When he came to Seychelles on the 9 July, he had transferred about Euros 85,974 to the account of the first defendant. The plaintiff took some time to sue the first and second defendants because they kept stalling him.

- [26] When re-examined, the plaintiff testifies about an e-mail in Italian, dated the 2 December 2013, from the first defendant to him - see the certified English translation of the said e-mail. The certified English translation of the said e-mail states in part —

"Good day Roberto [...]. Friday morning, I have seen the consultant and he has said that maybe this week we should have the import license, but I will not believe it until I see it. I am waiting for them to call about this, but the consultant is very positive. He said that it is a matter of days and then we shall start work. On the request for the license for the production of liquors, in the meantime I am sending these [...] information we spoke [...] Massimo Longobardi, La Misere, Bellevue, Victoria, Mahe, Seychelles. Bank MCB, Eden Island, Iban [...] BIC [...]. While I am writing, the inspector from the licensing office has telephoned and I have an appointment at 2 local time. He will tell me what they want, let's hope all good. Bye greetings to your wife and your son. Massimo." Exhibit P4

Emphasis supplied

About the said e-mail, he testifies that he transferred money to the account of the first defendant after having received the first defendant's bank account details.

- [27] A printed copy of an e-mail in Italian, dated the 7 December 2013, from the first defendant to the plaintiff - see the certified English translation of the said e-mail, is before this court as exhibit P9. Exhibit P9 states in part —

*"Hello Roberto, how are you? [...]. I had set an appointment with the lawyer to talk about the exchange/transfer of shares of the company and also **further to that, I was moving to make the purchases needed by the business**, bearing in mind our different requirements, you with problems to sort out and resolve in a delicate moment of your life and I about to start work and because of that a whole series of issues to sort out and expenses to be undertaken. I would like to propose to freeze our reasoning, our line of thought until you are freer because one of the things that I would not like to do at this point, is to put pressure on you in this delicate phase and me too I am at a point where I cannot stop this mechanism, which is slow but is progressing. Obviously I would like to know what you think and if it is better for our communication, give me your telephone number that I will call you so that we can speak better/more easily on the phone. See you soon, Massimo".*

Emphasis supplied

- [28] A printed copy of an e-mail in Italian, dated the 16 December 2013, from the first defendant to the plaintiff - see the certified English translation of the said e-mail - is before this court as exhibit P8. Exhibit P8 states in part —

*"Hello Roberto, we are well and I hope you too. [...]. Let me know the date when you are due to arrive so that I can book a guest house for February. **Maybe this week we shall manage to have the license for the importation** and then I will dedicate myself for the license for the production of liquors. But in the meantime I am running a commercial trial that then we shall meet in February we shall talk about again and we shall choose together what to do. For now try to resolve the issues in Italy, we have been there and I do not envy you.*

At the soonest with regards to the programs to be downloaded, I shall let you know so that you will have some time to carry it out. When you

arrive one thing that you surely must not forget are the cigars, then later on I shall let you know the type and brand that I need. As soon as I have some news we shall contact each other. See you soon. Bye Max, Feli and Mary."

Emphasis supplied

- [29] A printed copy of an e-mail in Italian, dated the 23 January 2014, from the first defendant to the plaintiff, together with a certified English translation of the said e-mail, is before this court as exhibit P10. Exhibit P10 is to the following effect —

*"Hello Roberto, how are you? Later I will go and give the advance deposit for the room, **but I wanted to show you the first packet of biscuit and know what you think about it. I hope that next week I can start organizing for the sale and I hope that everything goes well. In the meantime I am organising to increase the range of products. Bye, see you soon, Massimo"**.*

Emphasis supplied

- [30] A printed copy of an e-mail in Italian, dated the 28 December 2013, from the first defendant to the plaintiff - see the certified English translation of the said e-mail - is before this court as exhibit P5. Exhibit P5 states in part —

*"HELLO ROBERTO, how are you? We are all well here even if it has been raining for a couple of days and the weather is not nice. We have spent Christmas together with some Italian friends and we organised quite a nice little dinner But on the 25th I went on the beach to have a Christmas swim (it is a must for me, sea side on the 25th) thinking about the time when I used to work like crazy on the 25th. Now are you getting ready for New Year's Eve? And the Christmas Holidays how were they? **I have begun to keep purchase records and I would like to send them to you so that you can be award of the expenses I am undertaking, they***

are not great amounts but I still am carrying out purchases but if I send the lists alone maybe you will not understand clearly as we should clarify all aspects without leaving anything out. At any rate next time, I shall send you the purchases lists for November and December expenditure/purchases list and Christmas cakes to make you aware of the purchases/expenses that I am carrying out, they are not very large amount but I am carrying them out. And I am sending you only the list; maybe I cannot make you copy properly because we could clarify all the aspects without leaving any point unclarified or suspended. At any rate, next week I shall send them to you, the expenditure/purchase list for the month of November in December. You, have you decided when you are coming? Is your son coming with you? Now I need to pen off, see you next time".

Emphasis supplied

- [31] A printed copy of an e-mail in Italian, dated the 2 February 2014, from the first defendant to the plaintiff - see the certified English translation of the said e-mail - is before this court as exhibit P6. Exhibit P6 states in part —

"2-feb-2014 11.25

[...]

Hello Roberto, how are you? Here we are all well; everything is progressing. Let me know if they send you the confirmation e-mail for the room. Otherwise, I will let you know. Tell me that I will go personally. With regards to the things we need, I shall now prepare a nice list for you, and I hope that you can manage by the 18th.

1/ I will need a stamp with the following writing, SEYCAKE and BISCUITS GROSVERNOR HOUSE POINTE LARUE MAHE TIN 121 033 476 M. 00248 2733062 e-mail – seycakebiscuits@gmail.com

2/ a heat sealer machine, not too expensive, to close the plastic bags, in Italy, there is a variety of them, see that you get one that is not too heavy that you will then put in a suitcase.

3/ Some kimbo coffee.

4/ Some parmesan cheese.

5/ if you can get three large school exercise book with lines and three with squares.

6/ cigars, if you can when you are at an airport duty-free buy the brand Balmoral type panatela, these you can also check a tobacco shop in your city but if you do not find, any other brand is okay. Only two observations, one that they are not too expensive but they be large, with regards to the quantity, I leave it to you, here I cannot find anything.

7/ I would need some medicines, 2 x diprosalic ointment/ 1 x NEODUPLAMOX tablets / 1 X cefxoral tablets 400 mg

I hope this is all, and when you arrive, we shall sort out the payment. It has been raining cats and dogs for two days, but we are watching, and I have seen that in Italy the weather is also ugly. When you arrive, the paper for the transfer of company shares will also be ready. Bye, see you soon. Max and family".

[32] A printed copy of an e-mail in Italian, dated the 26 May 2014, from the first defendant to the plaintiff - see the certified English translation of the said e-mail - is before this court as exhibit P7. Exhibit P7 states in part —

"Hello Roberto, let us start by saying that no matter which way it goes it will be a success. I want to tell you that I wanted to ask the lawyer the following things;

1/ no furniture and refrigerator, no kitchen.

2/ Security of house.

3/ if he will supply the washing machine or if you bring it yourself and where will it be connected.

4/ Now, according to me, there is no bidet, I would like to ask if he is going to install it or not.

5/ air conditioning in the three bedrooms or two bedrooms and the lounge?

6/ Outdoor lighting.

7/ type and duration of the contract and prices.

8/ What will he do both at the front and the back of the house.

9/ House plan so that I can send it to you. I want to know if you have any other questions to put to the lawyer. Let it be clear that you will be the one to sign the contract and to re-check everything. If I have to do something else, let me know. The other houses that we have seen are houses that we can then see together and then you will have all the time for you to see. And find the best accommodation for you.

With regards to work, the first container will arrive on the 10th June and it is worth Euros15,513, the link to track it is <http://my.maerskline.com>.

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-
-

The second container of the worth of Euros19,133 should depart this week from Italy and very probably will arrive when you are here. If you want a detailed list of expenditure, I shall send it to you or should I wait until you are here. In the second container there is the trolley for the airport so that we shall start also the activity at the airport. The premises for the production of liquors, I have searched for a lot and now we have found it but it is not ready yet. Subsequently I will explain all the steps after. I hope you are well, here we are all okay, we are very impatient to begin work. We are well and we hope you are too, we are waiting for you".

Regarding the said e-mail, he states that the contents of the "container" were for the company, that the first and second defendants did not give him a list of expenses, and that the first and second defendants did not transfer money to his account.

[33] The plaintiff states that he had an employment agreement with Seycake and Biscuits Ltd. A company was not incorporated to manufacture and sell liquor.

[34] The plaintiff repeats that things were good between him and the first and second defendants at the beginning. However, things got bad between them when the first and second defendants refuse to allow him access to the money, company documents, records and accounts. He reiterates that the first defendant did not refund him any money.

[35] He paid rent and living expenses in Seychelles out of his pocket. He refunded the first defendant one month rent paid as a security deposit. He did not receive a salary from the company. He would not have brought a case against the company, had he received a salary from the company.

[36] Mr Marc Ally, who works in the compliance section of MCB (Seychelles) testifies that the first defendant is a client of MCB (Seychelles). The first defendant holds a Euro bank account and a rupee savings bank account with MCB (Seychelles). Regarding a printed copy of a bank statement in the name of the first defendant, exhibit P11, Mr Ally states that the plaintiff transferred the following sums to the Euro bank account of the first defendant —

- Euros 1,488 was transferred on the 18 December 2013
- Euros 1,488 was transferred on the 3 January 2014
- Euros 39,980 was transferred on the 1 April
- Euros 29,982 was transferred on the 3 July 2014.

[37] The sums of Euros 7,988 and Euros 5,038 were transferred by the plaintiff to the Euro bank account of the first defendant on the 28 January 2014, (exhibit P12 A) and the 12 March 2014, (exhibit P12 B), respectively.

[38] When cross-examined, Mr Ally states that he does not know why the plaintiff transferred money to the bank account of the first defendant. Regarding exhibit P11, he states that the first defendant transferred Euros 800 to the account of the plaintiff.

[39] After the testimony of Mr Ally, the plaintiff was recalled with the consent of the first and second defendants through Counsel. He admits to receiving Euros 800 from the first defendant. He used the money to purchase a plastic bag sealer for the company. When cross-examined, he states that he gave a purchase receipt to the first defendant concerning that purchase.

The evidence for the first and second defendants

[40] The first and second defendants are husband and wife - the first defendant came to Seychelles in 2011. The first defendant's cousin introduced him to the plaintiff in October 2013. The first defendant and the plaintiff corresponded by e-mail, and he met the plaintiff for the first time on the 19 November 2013, in Seychelles. They went out quite often together.

[41] A printed copy of an e-mail in Italian, dated the 4 December 2013, from the plaintiff to the first defendant - see the certified English translation of the said e-mail - is before this court as exhibit D2. He clarifies that the said e-mail, exhibit D2, informed him that the plaintiff was in the process of selling his house in Italy, and that, after the sale of his house, the plaintiff will send him some money.

[42] A printed copy of an e-mail in Italian, dated the 6 December 2013, from the plaintiff to the first defendant is before this court as exhibit D8. The sworn English translation of the said e-mail states in part —

"Hello Massimo I am sorry for this because here your project because Sabrina and I like your project very much. I hope you did not think that we wanted to pull out, it is only that when we got back in 2 or 3 days a lot things over that; the sale of the house like I said. By the 20th of December I should have the pre-sale and lastly 3 days ago the death of my 99 year old Aunt.

And the only the heirs are my cousin and I and Wednesday 11th of December we have a meeting with the Attorney for the will. And here we

are not talking small stuff between property and money, at any rate the mastermind the creator this project is you. Therefore if for any reason you decide to freeze the situation you are the one to decide and I can only take stock. And I understand the situation because it is not easy to start an activity with a partner an associate that is not present and cannot help you and I am sorry for this. But it would please that for the little that we have known each other I would not like you to think bad of me because of this 1st transfer. Because it really is a question of a few days and I am telling you that as soon as the 1st operation becomes viable unblock that is the full amount of the agreed sum of the company shares.

I will send it to you equally as well and the little bit more for the stuff that needs to be purchased. Then you will use it as you think fit. We firmly believe in this activity both Sabrina and I and we have been very well with you character-wise. And for a question of a few months we would not like everything to fall apart. Do not think that you are putting us under pressure it is not so, we are at fault for this infrequent situation of temporary or transient situations. And we are very sorry for this, Sabrina and we were also thinking of how to shorten the necessary time. Nevertheless Massimo my telephone number is 335-76-16-000-7. And see what is best for you, at any rate I will send the money, our best wishes to Marie from us. And talking about her, him, it to our son, he is curious. Bye Massimo at any rate in February we were talking of coming back, bye and all the best".

[43] A printed copy of an e-mail in Italian, dated the 14 December 2013, from the plaintiff to the first defendant - see the certified English translation of the said e-mail - is before this court as exhibit D3. He explains that this e-mail informed him, among other things that the plaintiff will transfer more money to him after the sale of his house.

[44] A printed copy of an e-mail in Italian, dated the 21 January 2014, from the plaintiff to the first defendant is before this court as exhibit D9. The sworn English translation of the

said e-mail informs the first defendant of the upcoming trip of the plaintiff and his family to Seychelles.

[45] The plaintiff returned to Seychelles on the 19 February 2014, till the 28 February 2014. The plaintiff stayed in a guest house close to the first and second defendants' home for the reason that he wanted to learn about Seychelles from them as he wished to settle in Seychelles.

[46] A printed copy of an e-mail in Italian, dated the 1 April 2014, from the plaintiff to the first defendant - see the certified English translation of the said e-mail - is before this court as exhibit D4. The said e-mail informed the first defendant that the plaintiff and his family had decided to move to Seychelles, and that they wanted the first defendant to find a house for them.

[47] A printed copy of an e-mail in Italian, dated the 7 April 2014, from the plaintiff to the first defendant – see the certified English translation of the said e-mail - is before this court as exhibit D6. According to his evidence, the said e-mail concerns the imminent move to Seychelles of the plaintiff and his family.

[48] A printed copy of an e-mail in Italian, dated the 30 April 2014, from the plaintiff to the first defendant - see the certified English translation of the said e-mail - is before this court as exhibit D5. This e-mail informed him of the imminent move to Seychelles of the plaintiff and his family and matters connected with the said move.

[49] A printed copy of an e-mail in Italian dated the 16 June 2014, from the plaintiff to the first defendant is before this court as exhibit D10. The sworn English translation of the said e-mail states —

"Good morning all I am sure that my brain will remain connected until the 7th of July at 11 o'clock in the morning. I think that I will just explode before then but should I get there. But if I do manage I will be reborn, now Sabrina and I are very taken up and messed up with all the things

that we need to do. Massimo, I wanted to ask you, could I make only a quarter of a container with our things those that we need the most? Or is it better to do it all in one go? And another thing if I should make a bank transfer like the last one around, would I put you in difficulties? If it is not a problem, otherwise I will find an alternative, bye to all".

About this e-mail, exhibit D10, the first defendant states that the plaintiff did not say why he wanted to transfer money to his account. Moreover, he [the first defendant] had never asked the plaintiff for any money. He sent his bank account details to the plaintiff because the plaintiff wanted to transfer money to his account. None of the e-mails explains why the plaintiff transferred money to his account.

[50] Between February and July, they communicated a lot by e-mail and phone because the plaintiff wanted information about Seychelles as he wished to come and live in Seychelles. The plaintiff returned to Seychelles on the 8 July. The first defendant rented a house for the plaintiff. The cordial relationship between their two families lasted from November 2013, to February/March 2015.

[51] The first and second defendants incorporated Seycake and Biscuits Ltd, which was closed down in August 2015, and will be liquidated. He admits that the plaintiff has thirty-five shares in Seycake and Biscuits Ltd. About the judgment of the Employment Tribunal of Seychelles, exhibit P3, the first defendant states that Seycake and Biscuits Ltd has not paid the plaintiff any money.

[52] Concerning exhibit P6, para [31] hereof refers, he explains that he told the plaintiff to buy the items mentioned in the said exhibit because he did not know where to buy them in Seychelles. Regarding the "stamp", also mentioned in the said exhibit, he states that he did not know where to get it in Seychelles.

[53] Concerning exhibit P7, para [32] hereof refers, the first defendant states —

"[t]he mail is dated 26th of May and the context is that I was starting with the Seycake, we had made the 1st purchase of Euros 2,200 worth of items and we were on the way to making another purchase of Euros

15,500 worth of goods. And I tell him what I am doing, in total the goods that were purchased for Seycake was about Euros 17,000. In that period January to July 2014 Seycake made purchases for goods worth Euros 17,000 plus about Euros 4,000 worth of – transfers, expenses therefore around Euros 21,000. Mr. Rocchi states that he has sent Euros 85,000 for Seycake. I find that there is no balance no equilibrium”.

[54] About exhibit P8, para [28] hereof refers, he mentions that the company concerned with the manufacture of liquor was incorporated as an alternative source of income in case he could not find work. The plaintiff had nothing to do with the said company. He never asked the plaintiff to transfer any money for the company.

[55] For the payment referred to in exhibit P10, para [29] hereof refers, he states that it concerns an advance payment for a guest house.

[56] This court records the interaction between Counsel for the first and second defendants and the first defendant concerning exhibits P11, P12 A and P12 B —

”Q. Mr. Longobardi what was the purpose of these transfers into your bank account?

A. On the paper on the document in some cases it is written for activity, business.

Q. Can you please state on the records what purpose it is stated in the bank transfer? When the money comes into the bank account what is stated on your bank account?

A. For activity.

Q. Mr. Longobardi can you please state what the purpose of those transfers into your bank account?

A. The reason for the bank transfers on my account is only personal between myself and Mr. Rocchi. In all the e-mails it transpires that there is this climate this atmosphere of openness, sociability, friendliness. He sends his money he

come here on holiday, he comes back a 2nd time on holiday and every time he asks me for permission to send this money. Without any reference made whatsoever to Seycake.

Q. Did you have any obligations when these money came into your account to purchase any goods for Seycake?

A. No I was under no obligation, the money for Seycake as I highlighted earlier in that specific point in time. Seycake was buying about Euros20,000 of goods and he was sent Euros 85,000. For me it is obvious that Seycake has nothing to do with it".

[57] Concerning the claims of the plaintiff, the first defendant states that he did not ask the plaintiff to invest in the company (Seycake and Biscuits Ltd), that he did not arrange for the plaintiff to be employed by the company, that he was not responsible for getting a gainful employment permit for the plaintiff, that he did not offer to pay the plaintiff a salary of 25,000 rupees, and that he did not offer to pay the rent of the plaintiff. Further, he states that the freshly incorporated company did not require the services of an expatriate, international marketing manager - a restaurant owner, who did not speak English.

[58] On being asked, "*Mr. Longobardi they have also alleged that you undertook to refund the funds upon the plaintiff's arrival in Seychelles*", his response was, "*I have not refunded, he has sent money on my account and I gave those to him on his arrival*". He adds that he returned all the money to the plaintiff in "*cash or rupees or euros*" because the plaintiff did not have a bank account.

[59] Later in the proceedings, he was asked the following about the plaintiff's claim that he and the second defendant were refusing to refund the plaintiff his Euros 85,000 —

"Q. They are saying that it is his funds, the funds that were transferred in your account.

A. *I have refunded them entirely.*

Q. *And how did you refund this?*

A. *In the manner and following the modalities as requested by Mr. Rocchi. In the period of time between July 2014 and March 2015 we have regularly seen each other and when he wanted money the money was on the account and they would take them out and give it. Very often he did not to go and convert them and he would ask me to give the funds in rupees and I would give the funds in rupees.*

Q. *Now Mr. Longobardi when you say you refunded Mr. Rocchi did you refund him in one totality or was in several portions?*

A. *In different portions".*

[60] After that, the first defendant sought to give oral evidence of various sums of money above 5,000 rupees which he alleged to have given to the plaintiff on various dates from the 20 November 2013, in an attempt to show that he refunded the totality of the money to the plaintiff. At that stage of the first defendant's evidence, Counsel for the plaintiff, invoking Article 1341⁸ of the Civil Code of Seychelles, objected to oral evidence being adduced in relation to those sums above 5,000 rupees by the first defendant. The first defendant through Counsel invoked Article 1348⁹ of the Civil Code of Seychelles.

⁸ "Article 1341 Any matter the value of which exceeds 5000 Rupees shall require a document drawn up by a notary or under private signature, even for a voluntary deposit, and no oral evidence shall be admissible against and beyond such document nor in respect of what is alleged to have been said prior to or at or since the time when such document was drawn up, even if the matter relates to a sum of less than 5000 Rupees."

⁹ "Article 1348 They shall also be inapplicable whenever it is not possible for the creditor to obtain written proof of an obligation undertaken towards him.

This second exception shall apply :

1st To the obligations that arise from quasi-contracts and delicts or quasi-delicts.

2nd To necessary deposits made in case of fire, ruin, riot, or wreck and to those made by travellers staying at an hotel or guest house, and all this in accordance with the standing of the persons and the circumstances of fact.

3rd To the obligation undertaken during unforeseen accidents when the persons were unable to enter into written transactions;

Articles 1341 and 1348 of the Civil Code of Seychelles concern the admissibility of oral evidence. In the present case, when Article 1348 of the Civil Code of Seychelles is invoked, the court has at the outset, to decide whether or not to admit oral evidence¹⁰. This court proceeded to hear evidence from the parties to determine whether or not the exception under Article 1348 of the Civil Code of Seychelles applies.

[61] Having carefully gone through the evidence and written submissions with respect to the question in issue, this court ruled that the objection of Counsel for the plaintiff was well founded, and that the exception under Article 1348 of the Civil Code of Seychelles did not apply as the issue of "*impossibilité morale*" finds no application in this case. The oral ruling informed the plaintiff and the first defendant that this court would justify its ruling at the time of judgment.

4th To the case in which a creditor has lost the document which served as written proof as a result of an accident which was inevitable and unforeseen and which was the consequence of an act of God."

¹⁰ The principle enunciated under Article 1341 of the Civil Code of Seychelles is not "*d'ordre public*". This court refers to Dalloz, Méga Code Civil, 10e` édition article 1341 note 15: 15. Caractère supplétif de l'art. 1341. "*Les dispositions de l'art. 1341 ne sont pas d'ordre public. L'exigence d'une preuve littérale ne vaut qu'autant que les parties ne s'en sont pas dispensées. Civ. 1 re , 5 nov. 1952 : Bull. civ. 1, n o 286. ...*" "*... Mais les dispositions de l'art. 1341, quoique n'étant pas d'ordre public, s'imposent aux juges dès lors que les parties n'y ont pas explicitement ou tacitement renoncé. Civ. 3 e, 16 nov. 1977 : Bull. civ. III, n o 393.*" See Michaud v Lucia Cuinfrini SCA 26/2005 (2006 -2007) SCAR 175 in which the Appellate Court held, "[i]f a party does not object to oral evidence when it is given, that evidence is assumed admissible. If a party objects to oral evidence on the grounds of non compliance with article 1341, then the **Judge must hear the evidence and arguments from the parties** to determine whether an exception under article 1347 or 1348 applies. The Judge must give a ruling on the admissibility or otherwise of the evidence before the proceedings are resumed." As this court understands it the Appellate Court held that the court should have initiated the procedure known as a "*trial within trial*". In the case of Michaud the Appellate Court was concerned *inter alia* with whether or not the learned Chief Justice erred in law when he accepted oral evidence of the plaintiff as evidence in respect of the loan contrary to article 1341 of the Civil Code of Seychelles despite the objection of Counsel for the defendant. See also the judgment of Pamela Cooposamy v Joe Morel Duboil SCA1 of 2011 (delivered on 31 August 2012), in which the Appellate Court held: "*11. As we have pointed out there are two possible objections that can be made under article 1341 and the procedure differs depending on which particular objection is made. Neither requires a voir dire as in any case in Seychelles there are no jury trials for civil cases*".

- [62] This court returns to the examination-in-chief of the first defendant. The first defendant states that the plaintiff did not ask him to refund his money. The plaintiff was given whatever sum of money that he asked for. He came to know of the plaintiff's request for that sum of money pleaded after having received a notice of "*mise en demeure*" emanating from the plaintiff's Counsel.
- [63] When cross-examined, the first defendant admits that the plaintiff transferred Euros 85,000 to his account. Next, he explains in detail that he refunded the plaintiff the money transferred to his account. He gave various sums of money to the plaintiff in Euros or in rupees whenever the plaintiff requested for them. He adds, "*[t]he payments were made according to Mr. Rocchi's wishes. If he asked for 300,000 Euros I would give him 300,000 Euros. If he asked me for Rs100, 000/- I would give him Rs100 000/- I did not have a problem with that*". This court observes that the first defendant relies on his *ipse dixit* for proof of due refund. This court adds that where there is need for proof, a mere *ipse dixit* is not enough. When asked why he did not transfer the money to the bank account of the plaintiff, the first defendant's response was that he came to know of the existence of the plaintiff's bank account at the end of December/ beginning of January, and that the plaintiff did not ask him to transfer money to his account.
- [64] The second defendant, an Italian national, met the plaintiff in the course of the plaintiff's first visit to Seychelles. The plaintiff and his family came to Seychelles twice on holidays and moved to Seychelles in July 2014. She did not speak to the plaintiff and his wife, in the course of their holidays in Seychelles, about Seycake and Biscuits Ltd. She did not discuss any business activity with the plaintiff and his wife when they visited Seychelles at the end of November 2013.
- [65] The shareholders of Seycake and Biscuits Ltd were Jerina Subana and herself. Jerina Subana transferred her shares to the plaintiff and the first defendant. After that, the first defendant became a director of Seycake and Biscuits Ltd in September 2014.

- [66] She did not offer to sell to the plaintiff thirty-five per cent of the issued share capital of Seycake and Biscuits Ltd at the end of November 2013. Later in the proceedings, she states that the plaintiff bought thirty-five per cent of the issued share capital of the company.
- [67] She did not arrange employment for the plaintiff with Seycake and Biscuits Ltd. She did not help the plaintiff to obtain a gainful occupation permit, and that she did not arrange for the plaintiff to be paid 25,000 rupees by Seycake and Biscuits Ltd. Later in the proceedings, she admits that the plaintiff was employed by Seycake and Biscuits Ltd in October 2014, and received a salary from it.
- [68] She did not arrange to provide accommodation to the plaintiff and his family when they came to Seychelles.
- [69] The second defendant knew that the plaintiff transferred money to the bank account of the first defendant. She states that the money was for the personal use of the plaintiff and denies that it was for the purpose of assisting Seycake and Biscuits Ltd with the financing of importation of stock to Seychelles.
- [70] Regarding a document - "*Subject: Request for opening bank account*" - made on the 17 November 2014, the second defendant states that she neither made the document nor signed it.
- [71] The second defendant denies the plaintiff's claim for Euros 85,976 and 200,000 rupees for moral damage.
- [72] When cross-examined, the second defendant was adamant that she did not sign the document - "*Subject: Request for opening bank account*". However, that document was admitted in evidence after her Counsel consented to it being admitted. Exhibit P14 states

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*"SEYCAKE and BISCUITS LTD
GROSVENOR HOUSE
POINTE LARUE – MAHE*

SEYCHELLES

MOBIL 002482733062

e-mail seycakebiscuits@gmail.com

THE MAURITIUS COMMERCIAL BANK
(SEYCHELLES)

[...]

Subject: Request for opening bank account

The Company SEYCAKE AND BISCUITS declares;

*Sir Roberto Rocchi is our employee as "international marketing manager
" of which monthly salary is 25,000*

Sir Roberto Rocchi is currently living at La Gogue

*Sir Roberto Rocchi is asking ouverture of a personal bank account in
euro in the name of Reberto Rocchi and Sabrina Cicognani, so that they
can receive bank transfers from Italy.*

DIRECTOR

Thank and regards

FELICITA PIROZZOLLO

[...]"

- [73] The second defendant testifies that the first defendant made the agreement with the plaintiff concerning the purchase of shares in Seycake and Biscuits Ltd after the plaintiff had come to Seychelles. She states that she organised for the plaintiff to be employed by Seycake and Biscuits Ltd when he came to Seychelles to make an application for his gainful occupation permit. With respect to the salary of 25,000 rupees, she states that it was agreed when the plaintiff came to Seychelles.

[74] She testifies that the first defendant returned the money to the plaintiff, and that she was present on some of the occasions, when the first defendant returned the money to the plaintiff. She adds that the first defendant informed her when he returned money to the plaintiff, and that the first defendant gave cash to the plaintiff because the plaintiff did not have a bank account. Regarding whether or not the plaintiff had a bank account, she states that she was unaware. Further, she states that she did not expect the plaintiff to ask for any money after the whole amount was returned to him. The second defendant clarifies that she and the first defendant withdrew money from the bank to give to the plaintiff, if they did not have the sum of money claimed by the plaintiff at their house.

The Analysis

[75] Based on the pleadings, the evidence on record and the submissions offered on behalf of these parties; this court considers the following issues —

- whether or not there was an oral agreement between the plaintiff and the first and second defendants, and if so, whether or not the first and second defendants acted in breach of the oral agreement.

[76] This court considers that the plaintiff gave evidence on the issues in a clear and concise manner, that cross-examination did not discredit him, and that his evidence contained no material inconsistencies or contradictions. This court has set its assessment of the impression made by the oral evidence of the plaintiff against the conclusions to be drawn from the documentary evidence ushered in evidence by the plaintiff and the first and second defendants. Pausing there this court is at a loss to understand why the plaintiff would have wanted to fabricate the version to which he testified.

[77] This court observes that the first and second defendants tried their utmost to maintain the position put forth by them in their pleadings. This court is not satisfied with their credibility. This finding is sufficient to make this court exercise a degree of caution with respect to the evidence of the first and second defendants.

- [78] As this court indicated earlier, the first and second defendants deny the plaintiff's claims. It is noteworthy that the first and second defendants admitted that the plaintiff transferred Euros 85,000 into the first defendant's Euro bank account.
- [79] Much documentary evidence was ushered in by the first and second defendants to establish that the funds transferred to the account of the first defendant was for the personal use of the plaintiff and not to assist Seycake and Biscuits Ltd with the financing of importation of stock to Seychelles. Incredibly, the first defendant suggested that he did not know why the plaintiff transferred money to his Euro bank account. Further, the first and second defendants testify weakly, vaguely and unimpressively that the first defendant refunded the plaintiff the entire sum of Euros 86,000 transferred to his account by the plaintiff. This court observed above that the first defendant relies on his *ipse dixit* for proof of due refund. This court does not accept the evidence of the first and second defendants on these issues.
- [80] The evidence fits in neatly with the plaintiff's assertion, on a balance of probabilities, that the agreement was constituted partly by the oral offer of the first and second defendants to the plaintiff in November 2013, that the plaintiff should invest in Seycake and Biscuits Ltd with them by buying thirty-five per cent of the issued share capital of the company, which offer the plaintiff accepted orally, and partly by the transfer of the money by the plaintiff to the account of the first defendant at MCB (Seychelles) in Seychelles to assist Seycake and Biscuits Ltd with the financing of importation of stock to Seychelles.
- [81] It is undisputed that the plaintiff transferred to the account of the first defendant with the MCB (Seychelles) in Seychelles a total sum of Euros 85,964¹¹. The documentary evidence establishes that the plaintiff transferred the fund for the business as agreed by the plaintiff and the first and second defendants, and that the plaintiff was involved in the affairs of Seycake and Biscuits Ltd. In that regard, it is very telling that the plaintiff bought thirty-five shares in Seycake and Biscuits Ltd, and that on the 18 December 2013, the plaintiff transferred the first sum of Euros 1,488 to the account of the first defendant.

¹¹ See exhibits P11, P12 A and 12 B

[82] Also, in an e-mail dated the 28 December 2013, from the first defendant to the plaintiff, the former informed the plaintiff that he has begun to *"keep purchase records and [he] would like to send them to the [plaintiff] so that [he] can be aware of the expenses [he] [is] undertaking"*. That e-mail went on to state: *"[the expenses] are not great amounts but [he] still [was] carrying out purchases but if [he] send the lists alone maybe [the plaintiff] will not understand clearly as [they] should clarify all aspects without leaving anything out. At any rate next time, [he] shall send [him] the purchases lists for November and December expenditure/purchases list and Christmas cakes to make [the plaintiff] aware of the purchases/expenses that [he] [was] carrying out. In that e-mail the first defendant also informed the plaintiff that he was making only small purchases, and that at "any rate, next week [he] shall send to [the plaintiff] [...] the expenditure/purchase list for the month of November and December"*.

[83] It is also particularly telling that in an e-mail, dated the 23 January 2014, exhibit P10, the first defendant informed the plaintiff that he wanted to show him the first packet of biscuit packaged and wanted the plaintiff's views concerning it. That e-mail also tells the plaintiff that the first defendant wanted to start selling the packets of biscuits, and that, if everything goes well, the first defendant would increase the range of products. It is noteworthy that on the 3 January 2014, the plaintiff transferred the sum of Euros 1,488 to the account of the first defendant, and that more money transfers were made after that.

[84] It is also implausible that the plaintiff would have made a life-changing decision to move to Seychelles had the first and second defendants not made such offers to him. The evidence of the first and second defendants is to the effect that they arranged for the plaintiff to be employed by Seycake and Biscuits Ltd, that they arranged for the plaintiff's gainful employment permit, and that the plaintiff was to receive an initial salary of 25,000 rupees from Seycake and Biscuits Ltd.

[85] For the reasons stated above, this court finds that there was an agreement between the plaintiff and the first and second defendants. Given this finding, this court determines whether or not the first and second defendants acted in breach of that agreement.

[86] As mentioned above, the first and second defendants rely on their mere *ipse dixit* for proof of due refund of the totality of the fund transferred, by the plaintiff, to the Euro bank account of the first defendant. In that regard, this court is convinced that, in breach of the agreement, the first and second defendants have appropriated for themselves the totality of the money and have refused and continue to refuse to refund the money, less the sum of 3500 rupees paid for the thirty-five shares of the company transferred to the plaintiff, to the plaintiff. Further, in light of the evidence and having formed the view that the plaintiff is generally to be regarded as a credible witness, this court also finds that, in breach of the agreement, the first and second defendants have also failed to cause Seycake and Biscuits Ltd to pay any salary at all to the plaintiff.

[87] The plaintiff claims the sum of 205,000/- rupees for moral damage. The plaintiff testifies that the first defendant persistently refused to return the money owed in spite of his requests and that he had to pay his expenses out of his pocket. The plaintiff testifies that, as a result of the defendants persistent failure to return to his the money owed, he suffered great prejudice. The evidence of the plaintiff as to the prejudice which was caused to him as a result of the first and second defendants acting in breach of the agreement appears to be credible and this court is prepared to act thereon. This court considers that an award of 100,000/- rupees is reasonable in that connection.

Miscellaneous: Articles 1341 and 1348 of the Civil Code of Seychelles

[88] As mentioned above, this court found that the first defendant had failed to establish that Article 1348 of the Civil Code of Seychelles applies in the present case, as an exception for the admissibility of oral evidence.

[89] In the course of the *voire dire* the first defendant sought at length to elicit evidence to establish a relationship built on trust and mutual friendship between the parties, and claimed that he was as such "*dans l'impossibilité morale*" to produce any written proof in support of the refund of the totality of the money transferred to his bank account by the

plaintiff. In support of his position, the first defendant produced, among other things photographs of the plaintiff and his family on their arrival in Seychelles, in June 2014, wearing t-shirts bearing words of appreciation for the first defendant and his family written at the front thereof and of the two families at a get together at a later date. Further, in support of his position, the first defendant stated that the plaintiff inquired about the possibility of using the first defendant's bank account in Seychelles, to receive insurance compensation payment which was due to him.

[90] The plaintiff on the other hand admitted that there was mutual trust between the parties which lasted until he returned to Seychelles, in June 2014. He was adamant that he kept a strictly business-like relationship so far as his investment was concerned. He testified that he transferred money to the account of the first defendant to be used for the business, and that he received no money from the first defendant.

[91] In *Cuinfrini, supra*, the Appellate Court held that, "*moral impossibility may arise from a special relationship between the parties which resulted from family ties, parentage, ties of affection or ties based on trust*". In *Vidot v Padayachy 1990 SLR 279* the Supreme Court stated that, "[w]hat constitutes impossibility is not defined by law, and the court is allowed complete freedom in deciding in each case, having regard to all the circumstances, including the relation between the parties, whether or not it was possible for a party alleging a certain transaction to obtain written proof thereof".

[92] This court found that the evidence of the first defendant that he returned the totality of the money to the plaintiff is not true. This court is not satisfied with the credibility of the first defendant. In that regard, this court rejected the evidence of the first defendant that it has not been possible for him to obtain written proof due to moral impossibility. This court accepted the evidence of the plaintiff that he never received any money from the first defendant.

The Decision

[93] This court's judgment is in the following terms —

- (a) the first and second defendants shall jointly and/or severally pay the plaintiff the sum of Euros 85,964 (less the sums of 3,500 rupees and Euros 800) with interest at the legal rate of four per cent from the date of filing of the plaint until the date of payment of the entire sum of Euros 85,964 (less the sums of 3,500 rupees and Euros 800)
- (b) the first and second defendants shall jointly and/or severally pay the plaintiff the sum of 100,000 rupees with interest at the rate of four per cent thereon, from the date of judgment until payment of the entire sum of 100,000 rupees
- (c) with costs.

Signed, dated and delivered at Ile du Port on 10 February 2020

Robinson sitting as a Judge of the Supreme Court