

# SUPREME COURT OF SEYCHELLES

## **Reportable**

[2020] SCSC 233

MC 28/2019

(Appeal from RB No. 9 of 2018)

**JEAN LUKE PAYET**  
(rep. by Serge Rouillion)

**Appellant**

versus

**MAISON DE VICTORIA (PTY) LIMITED**  
(rep. by Joel Camille)

**Respondent**

**Neutral Citation:** *Payet v Maison De Victoria (Pty) Limited* (MC 28/2019 [2020] SCSC 233  
(3 April 2020))

**Before:** Dodin J.

**Summary:** Appeal against the ex-parte judgment of the Rent Board given solely against the Appellant in respect of a lease agreement entered into between the Respondent and *Destination (Seychelles) a Tout Prix*.

**Heard:** 23 January, 7<sup>th</sup> February 2020.

**Delivered:** 3 April 2020

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## **ORDER**

On appeal from the Rent Board case RB 9 of 2018;

The appeal is allowed on grounds 1, 2, 3 and 5. The ex-parte judgment of the Rent Board is quashed. This judgment shall not, however, prevent the Respondent from filing appropriate proceedings within 21 days of the re-opening of the relevant forum (Courts, Boards or Tribunals) after the end of the medical emergency.

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## **JUDGMENT**

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**DODIN J.**

[1] The Appellant being dissatisfied with an ex-parte judgment of the Rent Board given personally against him appeals against the said judgment raising the following grounds of appeal:

1. *The Rent Board erred in law and fact in making findings on the Appellant personally as the only one responsible for the debt without taking into account that the lease was with a limited company.*
2. *The Rent Board erred in making judgment against the Appellant with whom there was no agreement rather than against the company.*
3. *The Rent Board erred in law in making a judgment personally against the Appellant without any evidence of fraud or bad faith against him.*
4. *The Rent Board erred in law generally in failing to make sure of the status of the parties and that the parties were all properly served before proceeding with the hearing purely against one individual.*
5. *That the Rent Board judgment is legally and procedurally defective and should be set aside and it would be fair, just and reasonable for the Rent Board judgment to be set aside on the basis of the above grounds of appeal.*

[2] Learned Counsel for the Appellant submitted that the Appellant lived on La Digue and was not on good terms with the other director of the company Maria Geta Elizabeth who attended to the daily affairs of the company and business. The Appellant was only served with the ex-parte judgment at La Digue on the 30<sup>th</sup> March 2019 despite mentions in the Rent Board that he had been served before the hearing.

[3] Learned counsel also noted that the Company was registered as “DESTINATION SEYCHELLES A TOUT PRIX (*Proprietary*) Limited” and a business name “DESTINATION SEYCHELLES A TOUT PRIX” was also registered in the names of the Appellant and Maria Geta Elizabeth. The Appellant never signed the Lease Agreement dated 15<sup>th</sup> July 2016 which was solely signed by Maria Geta Elizabeth and the representative of the Respondent. The name of the company that entered into the lease agreement does not exist. Hence, Maria Geta Elizabeth should be the person personally liable under the Lease Agreement and not the company, the business or the Appellant. Learned counsel therefore submitted that the judgment of the Rent Board against the Appellant is faulty in law and cannot stand. Learned counsel moved the Court to set aside the judgment with cost to the Appellant.

- [4] Learned counsel for the Respondent submitted that “DESTINATION (SEYCHELLES) A TOUT PRIX existed not as a company but as a business name or a firm or partnership in the joint names of the Appellant and Maria Geta Elizabeth. Hence as per article 1863 of the Civil Code of Seychelles Act both partners are liable to pay the rent due.
- [5] Learned counsel further submitted that the Rent Board had satisfied itself that both partners had been served but defaulted appearances before proceeding with the hearing ex-parte. Learned counsel moved the Court to dismiss the appeal accordingly.
- [6] I have studied the Rent Board file and the documents and records brought before this Court and I make the following observations:
- i. The Company was registered as “DESTINATION SEYCHELLES A TOUT PRIX (*Proprietary*) Limited” on the 14<sup>th</sup> day of April 2015 under the Companies Act 1972. The members and directors are Jean Luke Payet and Maria Geta Elizabeth owning 50 percent shares each. There is no managing director of the company.
  - ii. The business name “DESTINATION SEYCHELLES A TOUT PRIX” was registered in the names of the Jean Luke Payet and Maria Geta Elizabeth on the 12<sup>th</sup> day of March 2012 under section 14 of the Registration of Business Names Act 1972.
  - iii. The parties to the said Lease Agreement are stated as “*DESTINATION (SEYCHELLES) A TOUT PRIX a company registered in Seychelles represented by Jean-Luke Bertrand PAYET and Maria Geta ELIZABETH (hereinafter referred to as “The Lessee”) of the other part.*”
  - iv. The only signatories to the Lease Agreement are one undecipherable signature for M Geers for the Lessor and Maria Geta Elizabeth for the Lessee.
  - v. The case before the Rent Board *RB09/2018* as captioned in the judgment is *Maison de Victoria v/s Jean Luke Payet.*

vi. There is no record of service of summons on or appearance of Maria Geta Elizabeth or record that she was made a party to the proceedings.

[7] The law and precedents do not provide much jurisprudence on incidents where a company or business name is wrongly written in a contract. Some English authorities do nevertheless give some insight and possible guidance on how the matter could be resolved.

[8] In Chartbook v Persimmon Homes [2009] 1 AC 1101, it was held that mistakes in contracts should be dealt with by applying the ordinary principles of construction, Lord Hoffman stated:

*“Two conditions must be satisfied: first, there must be a clear mistake on the face of the instrument; secondly, it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, the correction is made as a matter of construction.”*

*“All that is required is that it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant.”*

[9] The Technology and Construction Court of the High Court of England and Wales in Liberty Mercian Limited v Cuddy Civil Engineering Limited and Cuddy Demolition and Dismantling Limited [2013] EWHC 2688 (TCC) also considered the use of an incorrect name for a party to a contract. The Court considered the issue in terms of mistake or misnomer. Whilst the Court was not entirely against rectification it was left no doubt that Courts should be cautious to rectify mistakes after the signing of the contract.

[10] In Derek Hodd Limited v Climate Change Capital Limited [2013] EWHC 1665 (Ch), the claimant sued the defendant and moved the Court to rectify an error whereby it drafted a contract for use with a dormant group company, when in fact the contract should have been with the defendant, but it had mistakenly used the wrong company name from the Companies House website. The defendant argued that no contract had been concluded due to the mistake in identifying it as the contracting party. The Court was of the view that it would not confine itself to only reading the

document without considering its background or context. It held that the parties had intended the contracting party to be the defendant not the dormant group company.

[11] In the previous case of *Dumford Trading Ag v Oao Atlantrybflot* [2005] EWCA Civ 24 it must be noted that the Court was of the view that it was not permissible to take into account the factual background in determining whether a mistake as to the identity of the contracting party had been made where there were two possible entities and it was not possible to determine from the contract that it must have been intended to refer to one entity rather than the other.

[12] The Companies Act 1972 has the following provisions in section 34:

34. (1) *The directors of a company shall have power to do all acts on its behalf which are necessary for or incidental to the promotion and carrying on of its business as stated in its memorandum, or the achievement of the purposes there stated, and all persons dealing with the company, whether shareholders or not, may act accordingly.*

(2) *Each director of a proprietary company and each managing director of any other company shall have power to do the acts mentioned in subsection (1) without the concurrence of any other director.*

(3) *Without prejudice to the generality of the foregoing, the directors of a company, each director of a proprietary company and each managing director of any other company shall, subject to any contrary provisions of the memorandum or articles, have power to do the acts specified in the Third Schedule to this Ordinance on behalf of the company.*

Paragraph 3 of the 3<sup>rd</sup> Schedule which refers to the implied powers of a director of a proprietary company gives power to a director:

*“3. To acquire, take on lease, hire or licence, hold, dispose of, lease, licence, let on hire and turn to account any assets of the company.”*

It is therefore not in dispute that a director of a proprietary company can bind the company and its members.

[13] In respect of the business/ partnership there are the following relevant provisions in the Civil Code of Seychelles Act:

**“Article 1858**

*If it is agreed that one of the managers shall not act without the other, one cannot, without a new agreement, act in the absence of the other even if that other is in fact unable to concur to the acts of management.*

**Article 1859**

*In the absence of special terms relating to management, the following rules shall apply:*

*1<sup>st</sup> The partners are deemed to have granted one another the power to manage. What is done by one is valid, even in respect of the shares of his other partners, although their consent has not been obtained; provided that such other partners, or one of them, shall retain the power to oppose an act before its completion.*

....

**“Article 1862**

*In non-commercial partnerships, the partners shall not be jointly and severally liable for the partnership debts and one of the parties cannot bind the other unless they have empowered him to do so.*

**Article 1863**

*The partners shall be bound towards the creditors with whom they have concluded a contract, each one for an equal sum and share, even if the share of one of them is smaller; unless the contract has specifically limited the liability of the latter to the extent of his share.*

**Article 1864**

*The proviso that the obligation has been contracted on behalf of the partnership shall only bind the contracting partner and not the others unless they have given him powers to enter into such a contract, or unless the partnership has benefited from it.”*

It is likely that if the party entered into the lease agreement as a business/partnership the apportionment of liability would be a contentious issue. However, since there is no indication or evidence of the terms of the business/partnership and again the issue was not raised before the Rent Board, this Court would not make a determination on this at this stage.

- [14] Considering this case it is obvious that the party to the contract “*DESTINATION (SEYCHELLES) A TOUT PRIX a company*” was not the correct name of the company or business name jointly owned by the Appellant and Maria Geta Elizabeth. However since both the company and the business name have Jean Luke Payet and Maria Great Elizabeth as the only directors, members and owners respectively, although it is not possible to determine with certainty which of the two entities entered into the contract there would not have been prejudice caused by rectifying the name of the contracting party. On the face of it, it appears that this was a genuine mistake of having the business entering into the agreement but mistakenly citing it as a company or having the company entering into the contract but not citing its full, legal and registered name. However no application was ever made before the Rent Board or any Court for rectification of the name of the contracting party and that matter was never considered.
- [15] It is obvious however that such rectification was not applied for because the case before the Rent Board was against the Appellant only and not against the company or the business. Secondly, it is also obvious that the only persons who could explain what occurred which resulted in the contracting party being in the name of “*DESTINATION (SEYCHELLES) A TOUT PRIX a company*” were Mrs Mary Geers and Maria Geta Elizabeth.
- [16] In my opinion, one error can be explained and rectified. However when there are series of errors in the contract compounded by pleadings deliberately crafted against the sleeping director whilst diligently avoiding implicating the director who managed the day to day running of the business and the company the notion of collusion, impropriety or even fraud by the litigants become obvious. In addition to the wrong name having been entered as a party to the contract, the Rent Board should in fact immediately have picked up the fact that although the contract stated “*DESTINATION (SEYCHELLES) A TOUT PRIX a company*” such a name cannot be a company as it lacked the obligatory Limited or Proprietary Limited. Further the contract stated that the party was represented by the Appellant and Maria Geta Elizabeth but the Appellant never signed the agreement. The only person who signed for *DESTINATION (SEYCHELLES) A TOUT PRIX a company* was Maria Geta Elizabeth and she had not been made a party to the proceedings.

[17] I therefore find that without first determining who the party to the agreement was, and without finding and declaring the Appellant personally responsible for the rent arrears the Rent Board erred in entering judgment solely against the Appellant in his personal capacity. Grounds 1, 2 and 3 of the appeal are therefore allowed. There is no record or evidence on file in respect of ground 4 other than what the Rent Board stated in its judgment and its proceedings. In any event, in view of the above findings, a pronouncement on ground 4 is not necessary. I also uphold ground 5 of appeal in so far as the judgment is defective and that it is fair, just and reasonable to quash the same. However the judgment is quashed with conditions that the Respondent shall not be prescribed from filing appropriate proceedings in respect of the same claim within 21 days of the resumption of regular court, boards and tribunals sittings at the end of this medical emergency.

[18] I therefore allow the appeal and quash the Rent Board's judgment.

[19] Each party shall bear its own costs.

Signed, dated and delivered at Ile du Port on 3 April 2020.

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Dodin J.