

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2019] SCSC 425  
CS 39/2017

**BEAUVALLON PROPERTIES LTD**  
*(represented by E Chetty)*

**Plaintiff**

V/S

**DENIS VERKHORUBOV**  
*(represented by Ms Louise)*

**Defendant**

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**Neutral Citation:** Beauvallon Properties Ltd v Denis Vekhorubov CS 39/2017 [2020] SCSC 425 (13 July 2020)  
**Before:** Govinden J  
**Summary:** Delictual liability; damages ordered as compensation for faute committed during the course of employment  
**Heard:** 26th July 2019  
**Delivered:** 13<sup>th</sup> July 2020

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**ORDER**

The Defendant is ordered to pay to the Plaintiff the sum of United States Dollar (USD) 92,455,69 with legal interest from the date of the judgment. The Counter Claim is dismissed.

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**JUDGMENT**

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**GOVINDEN, J**

**The Pleadings**

[1] In its Pleint the Plaintiff has averred that it is a company incorporated in the Republic of Seychelles and that the Defendant was in its employ as a Financial Director since the 19<sup>th</sup> of October 2017 and as General Manager of the Coral Strand Hotel, herein after also

referred to as “the hotel”, since the 18<sup>th</sup> of October 2009 and that he resigned in March 2017. The Plaintiff further avers that as per his contract of employment the Defendant, amongst other responsibilities, had complete autonomy to act as an operational manager and that he was to act in its best interest. It is averred that the Defendant also served as the secretary of the Plaintiff and that as such he was privy to all of the Plaintiff’s business details.

- [2] According to the Plaintiff in September 2016 the Plaintiff’s internal control unit carried out an inventory of the assets of the Coral Strand Hotel and that as a result of this exercise it found that substantial amount of the hotel assets were missing. This led the Plaintiff to establish a “commission” to investigate and audit the hotel’s assets and financial accounts in each of the years from 2011 to 2016. According to the Plaintiff the Defendant resigned his position on the 31<sup>st</sup> of March 2017 before the completion of the audit.
- [3] The Plaintiff avers that the result of the audit exercise revealed that, firstly, the management under the Defendant had written off assets in the amount of Seychelles Rupees (SCR) 6,069 477.71 in 2016, in contravention of the internal accounting rules of the organization and that this was done “for the non discovery of the property” and secondly, that in each of the years between 2011 and 2016, the profit of the hotel was over estimated and that its financial statements and the particulars thereof were not disclosed to its auditors.
- [4] It is further averred that external auditors subsequently engaged by the Plaintiff confirmed the findings of the internal auditors.
- [5] It is the Plaintiff’s case that the Defendant used these misrepresentations in order to benefit from inflated bonuses between the years 2011 to 2016. The bonuses being tagged to the profit of the hotel. According to the Plaintiff the bonuses would not have been paid had the true figures been made known. It is averred that the total sum earned and unjustly received through the inflated bonuses by the Defendant amounted to United States Dollars (USD) 92,455.69.

- [6] The Plaintiff avers that this amounts to a blatant breach of the obligations of the Defendant as its employee and general manager as a result it is averred that the Defendant is liable to pay damages in the sum of United States Dollars ( USD) 92 455. 69.
- [7] The Defendant has countered the Plaintiff and has filed a Statement of Defence and a Counterclaim. In his defence he avers that he was forced to resign from his employment with the Plaintiff. He avers that though he was given autonomy of decisions in his professional functions, the autonomy was limited as various duties were delegated to other individuals and the owners of hotel in Moscow. The Defendant denies any knowledge of the inventory which was carried out by the Plaintiff and denies that any of the assets of hotel were found missing following the inventory by the internal auditors and the “commission”. He avers that these were but a ploy used by the Plaintiff to force his resignation.
- [8] The Defendant further avers that he never wrote off any of the hotel’s assets, that this was done by the then Director of Finance, and that, at any rate, he could not have misrepresented the hotel’s financial performance as he was not involved in the financial assessment of the company as this was done by the Financial Controller who received orders from the owners of the Plaintiff. It is his defence that the same Financial Controller was the person who produced the financial reports and not him. At any rate, he contended that the persons engaged by the Plaintiff to carry out the audits were under instructions to frame him through fallacious claims. As to his bonuses, he avers that they were rightly paid as they were approved by the Board of Directors of the Plaintiff and that the total sum came to United States Dollars (USD) 32,000.00 only. He avers that therefore, he does not owe any damages to the Plaintiff.
- [9] In his Counterclaim the Defendant avers that the suit against him is fallacious and malicious and amounts to harassment and intimidation and instituted only as a ploy to coerce him to quit his employment and return to Russia without enforcing his rights. It is his averment that the malicious acts of the Defendant has led him to be the subject of baseless police investigations, suits and threats of evictions from his house. The Counter

Claimant as a result avers that this has caused him a loss of enjoyment of life and moral distress. Consequently, he claims the sum of USD 50,000 from the Plaintiff for acts which he says constituted a *faute* and for dismissal the Plaintiff with costs. The Plaintiff denies the Counter Claim.

### **The evidence**

[10] The Plaintiff called Vadim Zaslouov, one of its directors. He testified that he was appointed by the shareholders in order to act in favour of the company and that he performs his duties according to law and that he does not get involved in the management of the hotel. It is his case that he knows the Defendant who was appointed as the General Manager of the Coral Strand in 2008. According to him, the Defendant general duties were to provide the profit of the hotel and watch over the hotel property. He testified that the Defendant worked on an independent basis and all procedures were at his disposal, with him presenting accounts for audit and to the directors. He went on to state that the Defendant resigned in March 2017 and that he did this before the Plaintiff ran some internal investigation of his activities in the hotel regarding his management especially regarding 2016 when big losses started to appear. Mr Zaslouov testified that according to the contract of employment of the Defendant, of which he produced a copy, the Defendant was entitled to a fixed salary and bonus which depended on the financial performance of the hotel. He went on to state that the hotel went through major renovation from 2009 to 2011 and it was the Defendant who supervised all the refurbishments and renovation, and that includes the purchased and writing offs and that he was also the tax agent and secretary of the Board of the Plaintiff. He further stated that following the disappearance of the assets the company set up an investigation team and following its investigation the team found many items bought for the hotel renovation missing, such as plexiglass. According to the witness, the Defendant by fidgeting with the expenditures of the hotel he could increased its annual budget and that all in all a value of around 6.6 million rupees worth of assets was written off by the Defendant. He stated that the investigation concluded that the terms of the Defendant terminal benefits would not

be favourable to him because his performance was not as expected and as a result he resigned. According to the witness the total bonus received by the Defendant over the period of 2012 to 2016 was United States Dollar (USD) 92,000 and that if the losses of the hotel were properly reflected he would not have received the bonuses.

[11] According to the witness, the management thereafter engaged the services of a firm of accountants. The latter issued a report following their audit exercise which concluded that in the year 2016 an aggregate amount of 6 million rupees was written off, whilst the assets were purchased in 2015. The Audit Report, which was produced as exhibit P2, concluded poor accounting practices resulted in the overstatement of the operating profits and the asset value, consequently the full financial accounts presented to the shareholders and the Board of the Plaintiff contained fundamental errors. According to the Report, it was the Defendant's responsibility to reflect the proper accounting and financial situation of the hotel and he had the responsibility to establish the pricing process, the quality and quantity of the purchase and writing off of goods, and that as a result of poor accounting practice, there were overstatements of operating profits and assets' values, and that, consequently, the financial account presented to shareholders and the board contained fundamental errors.

[12] Under cross-examination the witness testified that the Defendant acted in an independent capacity, without any instructions from the higher management or owners of the hotel and that though the shareholders could have given him directions, this was not done in this case. The witness denied the content of an affidavit put to him during the course of cross-examination. The affidavit was later adduced as part of Defendant's case. It is sworn by Pradheepan Perumal, a former Financial Controller of the hotel. The witness denies having attempted to force the deponent of this affidavit to sign a document stating that the Defendant wrote off assets in the sum of Seychelles Rupees (SCR) 6, 069,477.71. He also adamantly maintained that the Savoy hotel and the Coral Strand were owned by one and the same owners and that no reports were made to the police on the Defendants misrepresentation as according to him it did not consist of a criminal case.

- [13] Learned Counsel for the Plaintiff closed his case after having led the evidence of this witness.
- [14] The Defendant testified in support of his case. It is his evidence that he did work as the Financial Director of the Hotel during the dates averred in the Plaint. According to him there IS a joint ownership and management of the Savoy Hotel and the Coral Strand Hotel. He further stated that if he had to sign any documents to do with the financial position of the hotel he had to do it within the operational monthly budget limit and that cheques issued had to be countersigned by a director of the Plaintiff. As regards the practice of writing off assets, according to him, the practice was capped by the Plaintiff's head office and properly supervised. He went on to explain that the plexiglass was properly accounted for as the invoices were properly raised for its purchase and the old ones properly written off. As to the accounting practice, it is his view that their external auditors never raised the issue of poor accounting practices with him or the Plaintiff. It is his further evidence that he never wrote off assets in the sum being claimed from him and that at all material times the writing off of the assets were done subject to the direction of the Director of Finance at the Plaintiff's head office. He testified in support of his claim and said that he was a victim and that both himself and his wife were being persecuted by the Plaintiff and its agents in a bid to force him to resign. It is his case that the averments in the Plaint consist of pure fabrication and that the harassment and intimidation continued even after his resignation, with the Plaintiff causing officers of the immigration to harass him and the Plaintiffs' agents issuing death threats and the threats of criminal prosecution in an attempt to get him to withdraw a case that he had filed with the employment department regarding his unlawful dismissal.
- [15] The next witness called by the Defendant was Mr Bernard Georges, an Attorney at Law and Notary. Mr Georges' evidence consisted of the production of the affidavit of Mr 'Pradheepan Perumal, a former Financial Director of the Hotel.
- [16] The affidavit was produced and marked as exhibit D3. This deponent avers that he was employed as Chief Accountant and promoted to Financial Controller of the hotel on the 21<sup>st</sup> of August 2013 and that worked in that capacity until 30<sup>th</sup> of May 2015 and rejoined

on the 15<sup>th</sup> of November 2015, until 5<sup>th</sup> May 2017. He avers further that Mr. Nikita Kosyakov, the Chief Security and one Mr Sergei Lubimov of Savoy hotel conducted a meeting with him close to the end of March 2017 during the course of which they tried to force him to sign a framed document which stated that Seychelles Rupees (SCR) 6,069,477.71 worth of assets of the hotel were written off by the following his order, which is not correct as it was taken into accounts from the stocks to be considered as operational expenses as a result of an order by the Director Finance of Savoy Resort and Spa Mrs. Julia Kuznetsova.

[17] According to the deponent, the document stated that he was part of the investigating committee which he was not aware of. He insisted that the asset the value of which he has stated are still in the Hotel operation which is considered as operational expenses due to the fact that it has been issued to the respective department to carry out the Hotel operation.

[18] He deponed further that he had considered this issue closed as all the assets had been previously shown to Mr Lubimov at the time of the investigation. As a result of all these he stated that he decided that he better become a witness to such unprofessional and improper behaviour of the Coral Strand Hotel owners' representative. Mr. Georges being simply a formal witness was not cross examined on the content of the affidavit.

### **Submissions**

[19] According to the submissions of Leaned Counsel for the Plaintiff, the Plaintiff has presented evidence before the court that shows that the Defendant placed himself in an advantageous position in order to gain benefits not due to him. He went on to submit that the Defendant was unduly paid multiple bonuses as from the year 2011 in excess of United States Dollars (USD) 92,000 and that these high bonuses resulted from the Defendant misrepresenting the financial state of the hotel and that this is shown in the massive losses shown in the year prior to his resignation. According to counsel evidence shows that the Defendant wrote off assets so as to gain advantageous outcomes for himself and that this happened when the Defendant was exercising full an independent authority vis a vis the assets.

- [20] As regards the credibility of witnesses, he submitted that the Defendant was inconsistent, and devoid of truth whilst the evidence of its witnesses remains un-contradicted. It is counsel's submission that evidence shows that the Defendant overpaid himself in the sum of United States Dollars (USD) 92, 455.69 as bonuses and that he is liable for the loss of the Plaintiff's properties in the sum of Seychelles Rupees (SCR) 6,0694.77 and he further asked the court to dismiss the counterclaim of United Dollars (USD) 50,000 on the ground of it being frivolous and vexatious.
- [21] On the other hand, Learned Counsel for the Defendant submitted, that it would have been impossible for the Defendant to have illegally written off the company's assets and took the bonuses as the General Manager of the hotel. According to her this was so as the Defendant had no autonomy even as a General Manager as she submitted that according to evidence the writing off was done by the owners of the hotel with the approval of the upper management and that the movements of assets were monitored.
- [22] It is her further submissions that the Defendant was forced to resign by the representatives of the Plaintiff and that this was done through various forms of intimidation on him and his wife.
- [23] Regarding the issue of the written off assets it is the contention of the Defendant that the external auditors of the Plaintiff never raised this issue in their audit report. He is further of the view that the Report produced as evidence before the court was fabricated and consist of a ploy to force his resignation. At any rate it is his further submission that the maker of the report was not called and therefore its weight remains untested and its content becomes unreliable. According to counsel, taken as a whole, the case of the Plaintiff is untrue and indicative of a lack of credibility, hence his Counterclaim.

**Issues for determination.**

- [24] In this case, the fact that the Defendant was the employee of the Plaintiff and carrying out the different functions averred in the Plaint is not being contested. The Defendant, however, contest that the various positions that he occupied gave him the power and opportunities to carry out the various acts consisting of the alleged *faute* as averred in the



Plaint. Having no such powers and denying the *faute* the Defendant alleges malicious litigation on the part of the Plaintiff. I therefore find, on the facts and pleadings before me that the following issues are left for determination; that is, whether the Defendant committed a *faute* during the course of his employment with the Plaintiff by making a fraudulent writing off of the assets of the hotel and by overstating and inflating the profits in order to incur a personal benefit and if these allegations be not proven; whether the Plaintiff committed a *faute* bringing an unfounded and fallacious suit against the Defendant

### **Analysis and determination**

[25] In most of cases of damages arising out of an employment relationship brought before this court, a person would make a claim against an employer for an act done by its employee during the course of or out of the employment that had led to damages being caused to the claimant. These are cases of vicarious liability instituted under article 1384(3) of the Civil Code. In these cases, both the employer and the employee would be sued in solidum, with the latter being sued in his or her personal capacity.

[26] However, the case before the court is not one of those cases, rather it presents itself as an exception, with the employer suing one of its own ex-employee for damages caused to the former during the course of their contractual relationship and the case being founded on a *faute* under article 1382 of the Civil Code.

[27] Our regime of delictual responsibility is founded upon article 1382(1) and (2) of the Civil Code, which are worded as follows;

1382(1) “ *Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it*”

1382 (2) “ *Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused . It may be the result of a positive act or omission.*”

- [28] The three necessary elements when making a claim of delict are fault, injury and the causal link between the damage and the injury (*Emmanuel vs Joubert (1996) SCA 49*).
- [29] On the other hand, the special law that governs employment relationships in Seychelles is the Employment Act. It caters for issues such as conditions of employment; terminal benefits; grievance procedures, etc. None of which arises out of the facts of this case. Importantly, the provisions of the Act also does not appear to prevent either parties in an employment relationship to seek damages that arose out of a past employment relationship, before this court. Hence, I find that the action has properly been instituted and that the Supreme Court is competent to hear the suit.
- [30] An employee is liable to compensate the employer for damage suffered by reason of the employee's neglect to fulfil his or her duties pursuant to his or her contract of employment or the provisions of the Employment Act, and causes damage to the employer in the course of his or her employment. he prerequisite for establishing liability is that the employee has caused the damage by committing a faute as defined in article 1382(2).
- [31] The employer may suffer damage where the employee has failed to comply with the employer's directions or neglects an assignment assigned to him or her that has caused loss to the employee, has caused damage to or loss of the employer's property or has breached his or her contractual duty of confidentiality; the scenarios are many. The only consistent requirement being that the claim fulfils the conditionality of article 1382 of the Civil Code. This liability would be also reciprocally upon the employer if the damage is caused by the employer.
- [32] The greater the responsibilities of an employee in terms of his or her management power and overall supervision powers, the greater will his or her liability given that any loss and damage caused by a faute or negligence would be incrementally greater depending on the level of responsibilities. This is so as there would be potentially greater loss as a result of a faute committed by the higher management.

[33] As a result an employee employed in the capacity of a Financial Manager or a General Manager of an organization would have wide ranging and onerous responsibilities as compared to, for example, a lower level worker. In the case of the Defendant his contractual responsibilities are borne out in his contract of employment exhibited as exhibit P1. The Defendant was employed as a General Manager of the hotel. He was also employed as a Financial Director and he also acted as the tax advisor and secretary to the Board of the Plaintiff, these facts are not in dispute in this case. The duties and responsibilities of the Defendant are listed in the second schedule of P1.

[34] I have carefully and thoroughly considered both the facts and the law applicable in this case. I have also addressed my mind to the issue of credibility of the witnesses and their impact that they have on the facts of the case. I have given particular attention to the fact that two written documents of important evidential value were admitted in evidence without their makers being available in court for cross examination by the opposing party, namely exhibit P1 and exhibit D3 and the particular effect that this have on the evidential weight to be given to those documents.

[35] The allegations in respect of the alleged faute of the Defendant has led me to scrutinize the content of Exhibit P1. I consider the findings arising out of the Report in the light of the testimony of the Defendant and the rest of the totality of the evidence on record.

[36] The findings of the auditors against the Defendant consist mostly of the following, which this court quotes directly from the Report;

11.2

*The following details the chronology of our investigation and represents the facts and findings following our investigation;*

- 1. We verified that purchases of assets worth 680, 580.27 SCR as listed in the table above was made by the company as per the annexed purchase orders attached.*

2. *The assets were recorded in the stores system and output of the same submitted to accounts department for booking as inventory ( Annex 6)*
3. *The assets were all recorded through an interface into the accounting system as inventory under user name MELIMPT. (Annex 6)*
4. *When the assets were issued for use, consumption the accounting records were not amended to move the items for inventory into expenses or assets.*
5. *We conducted an inventory and identified the assets as having been in use or decommissioned and lying in the maintenance department. None of these assets were still in the stores.*
6. *An inspection of the fixed assets ledger revealed an unusually large write off assets to the tune of 6,058,954.02 SCR; this includes SCR 680,580.22 that is the subject of this Report(An annex of the write off ledger for 2016 is attached).*
7. *An interview with the Financial Controller and examination of company's records and e-mails correspondence revealed that:*
  - (a) *The company has established s write off procedure in place (Assets write off form attached), sample write off request sheet attached.*
  - (b) *Write off are approved by the General Manager ( Email attached)*
  - (c) *Write off are recorded by the Financial Controller.*

[37] In the auditors opinion,

*"1. Poor accounting practices were practice with regards to inventory stores and non current assets listed in the table above.*

2. *As a result of the poor accounting practices this resulted in overstatement of operating profits and assets values.*
3. *Consequently therefore, financial accounting presented to the shareholders and the board contained fundamental errors”.*

[38] In their concluding opinion the auditors at paragraph 1.3 concluded as follows;

*“We have concluded that misrepresentations were made to shareholders by those charges with the responsibility of preparing and overseeing the preparations of financial statements in relation to the following areas of accounting / transactions.*

- (a) *Equipments – Depreciation of acquired equipments was omitted in the books for the year 2015 and 2016 thereby resulting in an overstatement of company’s profits.*
- (b) *Inventory issued for consumption / use in the departments were not expressed to the P and L as it should be, this had an effect of overstating the profits.*
- (c) *Write Off- A lump sum write off of assets was conducted in the year 2016 without following the provisions of basic accounting standards and procedure thereby introducing a large expense in the year 2016 that skewed financial performance.”*

[39] The Defendant vehemently denies these findings and his evidence, taken as a whole is that the Plaintiff had commenced a smear campaign against him and that the Report was but a ploy used by the Plaintiff in an attempt to create fabricated evidence which would have compelled his resignation.

[40] I have also scrutinized the Defendant Contract of Employment and in the second schedule it clearly and unambiguously set out the professional activities of the Defendant. His job description, *inter alia*, consist of the following;

*“1.Perform management of the Hotel in purpose of maximum gain and services provisions at 5 star Hotel level.*

*6. To provide guidelines for workers of the staff and operational services of the hotel in order to ensure preservation and maintenance of the premises and equipments in good working conditions in accordance with the operation rules and norms uninterrupted equipment operation, outdoor improvements, compliance with sanitary and fire regulations.*

*10. To ensure maintenance and timely delivery of reports on economic – financial activity of the Hotel to the persons indicated in paragraph 4.2 (iii) ‘control all the due tax payment by the operation of the Hotel activities according to the legislations of Seychelles.’”*

[41] These are very onerous obligations indeed. To my mind, they have been framed in the larges possible manner, with the language being broad enough so as to grant to the Defendant liberty of action and independence of powers so as to allow him the necessary capacity to carry out his duties as a General Manager.

[42] On the other hand, Mr Boris Zaslavov, a director of the Plaintiff, testified that the Defendant at the material time managed the hotel on a daily basis as a General Manager. He was first appointed in 2008 and resigned in 2017. He was of the view that the Defendants duties was to increase the profit of the company and that he did this in an independent manner. He further stated that he presented the accounts for audit and for the directors’ consideration. The witness refers to the fact that the Defendant as General Manager had the overall responsibility of purchasing all items needed by the hotel in order to carry out a major renovation around the year. In that regard, he is of the opinion that the Defendant wrote off assets in the aggregate amount of 6 million Seychelles Rupees. According to him this was to prevent the depreciation of the assets which would have had an impact on the overall profit of the company and in that regards he manipulated the profit so as for him to receive an enhanced bonus.

- [43] After having thoroughly examined his evidence, I find that the evidence of Mr.Zaslanov to be corroborated by the content of Exhibit P1. I am of the view that the Defendant, as the General Manager, acted independently and without oversight from the upper management in matters having to do with the writing off of assets of the hotel and that any persons involved in the process was subordinate rather than superior to him. I find that having this power he did use his position to fraudulently write off the assets belonging to the hotel in the sum of Seychelles Rupees (SCR) 669,477.71. As a direct result of this he incurred a benefit as his annual bonuses were pegged to and dependent on the profit of the company.
- [44] I have given due consideration to both versions of facts as tested under cross-examinations. Having done so, I find that the Plaintiff had no motive to threaten the Defendant in the way that he is claiming. No evidence has been placed before the court to show the motives and reasons why the Plaintiff and/or its agents would have harass and intimidate a long time senior employee such the Defendant.
- [45] On the other hand, this employee took the decision to quit and resign from his job at the start of the investigation against him. If he were really innocent, as he claimed, I am of the view that he should have waited the course and maintained his innocence and let the Plaintiff take any disciplinary actions that it wished, whilst he sought legal recourse. His premature resignation does not bode well with the stance that he is taking in this case.
- [46] Accordingly, the Plaintiff has managed to prove on a balance of probabilities, by adducing the aforementioned evidence, that the Defendant used his independence and wide ranging powers as the General Manager of the hotel to write off his employer's properties in the amount of Seychelles Rupees (SCR) 669, 477.71,in violation of the internal accounting rules of the Plaintiff. This led to the overestimation of the profit of the hotel for the said year and the Defendant being paid an inflated amount of bonuses.
- [47] With regard to the Counterclaim, I find that the Defendant has made averments of harassment and intimidation against the Plaintiff. However, beside his own testimony, he has not managed to produce any independent evidence to corroborate his version of facts, which would have rendered his version more probable. As a result, I am in doubt as to the

veracity of these claims. The only evidence adduced in support of these allegations consist of the averments found in the affidavit, exhibit D3. I note, however, that the affidavit was sworn by Mr Perumal on the 6<sup>th</sup> of May 2017, that is only one day after he resigned from the employment of the Plaintiff.

[48] I note further that Mr Perumal's evidence remains a testimony that has not been the subject matter of the test of cross-examination and therefore its evidential weight remains untested. I also see certain contradictions in the affidavit evidence of this person, especially with regard to the facts regarding the writing off of assets. In paragraph (3) of his affidavit he avers as follows,

*“ In addition to the same, the document stated that I was part of the investigating committee, which I am not aware of . The assets stated above amounting to the sum of 6, 069.477.71 SCR are still in the hotel operation which is considered as operational expenses due to the fact that it has been issued to the respective departments and still operational”.*

[49] However, in paragraph (5) of the same affidavit the deponent avers as follows,

*“I recall that the issue has been closed due to the fact that all ...assets has been shown to Mr Rubalov which was part of the hotel operation at the time of inventory nonetheless I have had many other officials come to ask the same question for which I clearly answered that Mr Denis Verkhorubov had nothing to do with the accounting entries as it as an order by the Director of Finance of Savoy Resort and SPA Ms Julia Kuznetsova which was confirmed by e-mail to have the operational equipments written off in accounts”.*

[50] Hence, in the same breath, it appears that the deponent averred that the assets are still in operation and not written off and that they have been written off in accounts. As a result this leaves this court with doubts as to where the truth lies. This has an adverse effect on the credibility of his evidence.



[51] As a result, having taken into consideration all the relevant circumstances, including the entirety of the evidence, I disbelieve the version of facts presented by the Defendant and I find the version of the Plaintiff more credible and plausible. On a balance of probabilities I am also of the view that contrary to the Counterclaim, the Plaintiff did not harass or otherwise intimidate the Defendant, this was but a fabrication of the Defendant, done in an attempt to absolve him of his misdeeds.

**Final determination**

[52] As a result, therefore, in my final determination, I find that the Plaintiff has proven its case on a balance of probabilities and I enter judgment in its favour. I order the Defendant to pay to the Plaintiff the sum of United States Dollar (USD) 92,455,69 with legal interest from the date of this judgment. I also dismiss the Counter Claim.

Signed, dated and delivered at Il du Port, Mahé on 13<sup>th</sup> July 2020

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Govinden J