

## 45 SUPREME COURT OF SEYCHELLES

---

### **Reportable**

[2021] SCSC ...

CS 45/2021

In the matter between:

**EDEN ISLAND VILLAGE  
MANAGEMENT ASSOCIATION**  
(rep. by Tamara Cristen)

**Plaintiff**

and

**UTOPIA INVESTMENTS LIMITED**  
(unrepresented)

**Defendant**

---

**Neutral Citation:** *Eden Island Village Management Association v Utopia Investments Limited*  
(CS 45/2021) [2021] SCSC ..... (02 March 2022).

**Before:** E. Carolus J

**Summary:** Claim for outstanding payments and interests for services provided to the  
defendant by the plaintiff.

**Delivered:** 02 March 2022

---

## JUDGMENT

---

**CAROLUS J**

### **Background & Pleadings**

[1] The plaintiff is an association registered on 1<sup>st</sup> August 2007, under the provisions of the Registration of Associations Act, Cap 201 (“the Association”) according to its Certificate of Registration (**Exhibit P1**). The rules of the association are set out in its constitution (“the Constitution”) **Exhibit P2**. The object of the association as stated in Sub-Clause 4.1 of its constitution is essentially for purposes of facilitating the development of the portion of Eden Island being developed for residential purposes. It is averred in the plaint that the constitution is binding on the association and its members.

- [2] The defendant is a company incorporated under the laws of Seychelles on 26<sup>th</sup> June 2007 with Company Registration No. 845645-1, as per Certificate of Official Search dated 4<sup>th</sup> March 2021 (**Exhibit P3**). The Certificate also shows its Registered Office as 1<sup>st</sup> Floor Allied Plaza, Francis Rachel Street, P.O. Box 1289, Victoria, Mahe, Seychelles; its Directors as Daron Walker and Carolyn Walker both of Johannesburg, South Africa; and its Secretary as ACM Consultants (Proprietary) Ltd with the same address as the Registered Office of the defendant company.
- [3] It is averred in the plaint that the defendant company herein represented by its director Mrs. Carolyn Walker is the registered owner of parcel V15998 known as Maison 33 (“the property”). It is also averred that by virtue of an agreement of sale entered into on 17<sup>th</sup> October 2006 for the purchase of the property, the defendant company became a member of the association and agreed to comply with the provisions of its constitution.
- [4] It is averred that it was an express condition of the transfer of the property that such transfer was subject to all the terms and conditions of the agreement of sale of 17<sup>th</sup> October 2006, more specifically that the defendant would automatically become a member of the association and would remain a member thereof and be subject to its constitution. The constitution provides for certain services to be provided by the association to its members, and the imposition of charges for the provision of such services which the members have to pay. The constitution further provides for the imposition of levies on the association’s members to meet its expenses, such levies to be paid on a monthly basis and becoming due on the first day of every month.
- [5] It is averred that the defendant has accepted and benefitted from the aforementioned services and also been charged levies as provided for in the constitution, for which the plaintiff has issued invoices to the defendant. Further that the defendant has not disputed the sums owed but has paid only part thereof, and has failed to settle the outstanding balance of USD95,049.18 which is due and payable, in breach of the laws of Seychelles and the constitution and in spite of a letter of demand sent to it by the plaintiff. Although the defendant paid the sum of USD1,400.00 to the plaintiff, in settlement of the outstanding balance, the debt has not been reduced as the defendant continues to benefit

from the services and the unpaid levies continue to accrue, for which further invoices have been issued by the plaintiff, but which remain unpaid by the defendant. Furthermore the defendant also owes the plaintiff interest on the sums unpaid at the rate of 1% monthly on debts older than 30 days, which has not been disputed. The interest being of a continuing nature, continues to accrue against the defendant until full settlement of the debt.

- [6] The plaintiff therefore prays the Court for Orders that the defendant pay the plaintiff the sum of USD95,049.18, with interest accruing at the rate of 1% per month on all outstanding sums from the date of the breach until such time as the debt is settled in full; that the defendant continues to pay the plaintiff all invoices which are not disputed in a timely manner and in accordance with the constitution; that the defendant pays the costs of this suit; and any orders that the Court may deem fit in the circumstances.
- [7] According to the return of service, on 2<sup>nd</sup> June 2021, the defendant was served with the plaint with summons at its registered office at the offices of ACM Consultants (Pty) Ltd, 1<sup>st</sup> Floor Allied Plaza, Francis Rachel Street, Mahe, to appear on 23<sup>rd</sup> June 2021, to answer to the plaint. According to **Exhibit P3**, ACM Consultants (Pty) Ltd is the Secretary of the Company. By a further notice served on ACM Consultants (Pty) Ltd on 10<sup>th</sup> of June 2021, the defendant was notified that the case would be mentioned on 14<sup>th</sup> July 2021 at 2.30 instead of 23<sup>rd</sup> June 2021.
- [8] On 14<sup>th</sup> July 2021, the defendant company was not represented in Court and the Court granted counsel for the plaintiff's motion for the matter to be heard ex-parte. The date for ex-parte hearing was fixed for 14<sup>th</sup> September 2021, and ACM Consultants (Pty) Ltd was served with a Notice of the ex-parte hearing date on 26<sup>th</sup> July 2021. On the date fixed for ex-parte hearing, the defendant was again unrepresented and the Court proceeded to hear the matter ex-parte. The sole witness for the plaintiff was Mr. Charles De Clarisse.

### **Testimony of Mr. Charles De Clarisse**

- [9] Mr. Charles De Clarisse, the General Manager of the association is responsible for its management. He testified that the association looks after the interests of its members who are homeowners on Eden Island. The work of the association covers two components: the

units owned by the members and the common areas used by them comprising the four beaches, a park, a garden, and common facilities such as the club house and tennis court.

- [10] Mr. De Clarisse confirmed that the defendant Utopia Investments Limited owns property on Eden Island namely a unit known as Maison 33 referred to M33. He also confirmed that the defendant is a member of the association and stated that it automatically became a member when it signed an agreement of sale with Eden Island Development Company (Seychelles) Limited (“EIDC”).
- [11] He produced a bound bundle of documents entitled “SALES DOCUMENTATION MAISON” (**Exhibit P4**) which is stated to contain an “AGREEMENT OF SALE (MAISON)” and an “AGREEMENT OF LEASE (BERTH)” (cover, pg1). He stated that according to Exhibit P4 (page 5 Contract Schedule) the seller and purchaser of the property are EIDC and Daron Richard Walker as trustee for a company to be formed, respectively, and that the property purchased was described therein as Parcel Number 33, Phase Number P3 and Maison 4, for a sum of US\$ Six Hundred and Eighty Eight Thousand Dollars. He confirmed that the property purchased is the unit known as Maison 33 as shown by a subsequent deed of transfer as well as the sales agreement. He explained that the purchaser was stated in the sales agreement to be Daron Richard Ross Walker *as trustee for a company to be formed* because at the time of the purchase the company Utopia Investments Limited had not yet been formed. He stated that both the seller and the purchaser had signed the agreement of sale, the purchaser having done so on 31<sup>st</sup> August 2006, and the seller on 17<sup>th</sup> October 2006 (Signature Document for Agreement of Sale, pg7). He also stated that pursuant to Clause 10.2 of the Conditions of Sale (pg20) the purchaser automatically becomes a member of the association on the date of transfer of the property and remains a member thereof and is bound by its constitution for as long as such purchaser is the owner of the property.
- [12] Mr. De Clarisse also produced an “ADDENDUM TO AGREEMENT OF SALE (MAISON)” “ADDENDUM TO AGREEMENT OF LEASE (BERTH)” (**Exhibit P5**). The document identifies the purchaser as Daron Richard Ross Walker as trustee for a company to be formed and the property as Phase P3/ Parcel 33 (pg1). The addendum to the agreement of

sale is signed by the purchaser and the seller (pg4). Clause 2 of the addendum contains amendments to the Contract Schedule of the agreement of sale: the extent of the parcel, the floor area of the dwelling, the initial estimated monthly levy payable to the association as well as the anticipated completion date (pg2).

- [13] Mr. De Clarisse then produced a transfer of the land comprised in Title No. V15998 by EIDC (the transferor) to Utopia Investments Limited (the transferee) in consideration of United States Dollars 685.000.00 (**Exhibit P6**). The transfer is dated 30<sup>th</sup> August 2007 and signed by Ursula Elaine Brown for both the transferor and the transferee as authorised by powers of attorney granted by both of them respectively. It was registered at the Seychelles Land Registry on 31<sup>st</sup> August 2007 with the Presentation No. 11580, in Volume 11 Folio 108. The transfer is stated to be “*subject to all the terms and conditions incorporated in the Agreement of Sale dated 17<sup>th</sup> October 2006 (“the Agreement”) between the Transferor and the Transferee which will be registered simultaneously with the Transfer of this Title ...*” Mr. De Clarisse confirmed that the agreement of sale referred to in the transfer is Exhibit P4. The transfer also reproduces specific terms and conditions of the said Agreement of Sale by which the transferor is stated to be bound: Clause A2 of the transfer states:

*The Transferee shall automatically become and shall remain a member of the Association and shall be subject to its constitution until he ceases to be an owner as aforesaid and shall not deal with the parcel with any person who has not bound himself, to the satisfaction of the association to become a member thereof ...*

- [14] Mr. De Clarisse produced a document dated 31<sup>st</sup> August 2006 and signed by the purchaser stating that he “*hereby acknowledges and agrees that he has read the ANNEXURES contained herein and has familiarised himself with the content thereof*” (**Exhibit P7**). He explained that the document is a page from the sales agreement.
- [15] He produced a Certificate of Official Search in respect of Title V15998 dated 1<sup>st</sup> March 2021, showing Utopia Investments Limited as the proprietor of the said title (**Exhibit P8**).

[16] Mr. De Clarisse testified that the association provides services to its members in regards to their properties as well as for the common areas. These include facilitating the provision of utility services such as water, electricity and sewage, maintenance services for the gardens and landscaping and for the buildings, as well as security services for the premises. Some but not all services are provided for under Clause 14 of the constitution. The members for their part have to pay their utility bills and, under clause 17 of the constitution, a monthly levy to the association. This levy covers the operating expenses of the association including utilities for its building and office, as well as the costs of services provided to its members. The association raises invoices for its members on a monthly basis for the levy for which payment is due on the 1<sup>st</sup> day of each month in advance. The levy does not cover costs of individual services provided by the association to its members such as costs of fixing a broken club car, replacing broken light bulbs or fixing a plumbing issue, which are additional costs separate from the levy but which the members also have to pay for and for which they are invoiced. Members are also sent financial statements.

[17] The Statements of Accounts of Utopia Investments Ltd Daron Walker (**Exhibit P9**) show the transactions between the company and the association and the amount due by the company to the association. The statements are for the years 2014 to 2021, and each statement contains details of invoiced amounts for each month of those years which became due on the date of each invoice, as well as any payments made. The statements also contain details of interest on unpaid amounts not paid on their due dates. It is stated in the invoices that *“Interest at 1% per month will be charged on all overdue accounts (30 days)”*. Mr. De Clarisse stated that the constitution also empowers the association to impose such interest. Unpaid sums outstanding for each month are brought forward to the following month. The statements are as follows:

- (a) Statement dated 31/12/2014 containing details of transactions from 01/01/2014 to 31/12/2014. The amount due is \$13,945.94.
- (b) Statement dated 31/12/2015 containing details of transactions from 01/01/2015 to 31/12/2015. The amount due is \$36,604.83.

- (c) Statement dated 31/12/2016 containing details of transactions from 01/01/2016 to 31/12/2016. The amount due is \$46,041.74.
- (d) Statement dated 31/12/2017 containing details of transactions from 01/01/2017 to 31/12/2017. The amount due is \$59,064.08.
- (e) Statement dated 06/09/2018 containing details of transactions from 01/01/2018 to 01/09/2018. The amount due is \$74,245.14.
- (f) Statement dated 31/12/2019 containing details of transactions from 01/01/2019 to 31/12/2019. The amount due is \$82,535.54.
- (g) Statement dated 31/12/2020 containing details of transactions from 01/01/2020 to 26/01/2021. The amount due is incorrectly stated as \$93,629.45 because the statement, although dated 31/12/2020, included transactions carried out in 2021 which is also included in the statement dated 07/09/21 referred to at (h) below. It is to be noted that according to the statement dated 31/12/2020 the correct balance as at 31/12/2020 was \$91,301.63, which is also the balance brought forward in the statement dated 07/09/21 referred to at (h) below.
- (h) Statement dated 07/09/21 containing details of transactions from 01/01/2021 to 01/09/2021. The amount due is incorrectly stated to be \$112,644.20. This is because the present case was filed on 24<sup>th</sup> May 2021, and therefore expenses incurred after that date (i.e. 31/05/21 to 01/09/21) cannot be considered by the Court. The correct balance as at 24/05/2021 was \$104,523.54.

[18] Mr. De Clarisse testified that as at 2021, the outstanding balance due from the defendant company to the association was therefore \$112,644.20. He stated that the defendant did make some payments of the invoiced sums and produced a bundle of invoices issued to Utopia Investments Ltd Daron Walker, Maison 33 (**Exhibit P10**) which he states were paid in full. According to him the association entered into an agreement with the defendant for him to pay at least US\$2000.00 per month to prevent his debt from increasing further. In addition the defendant also made other payments whenever he could. The fully paid invoices are for the years 2015 (excluding the month of August),

2016, 2017, 2018 (excluding the months of June, July, September, October, November and December), 2019 (for the months September, November and December only) and 2020 (for the months January, May, August and October only).

- [19] Mr. De Clarisse produced a second bundle of invoices (**Exhibit P11**) of which he states only the first one dated 01/06/2018 has been partly paid with the remainder being unpaid. He explained that the payments made were not sufficient to cover these invoices.
- [20] Finally Mr. De Clarisse produced a letter of demand from Attorney-at-Law Tamara Christen addressed to the directors Utopia Investments Limited (**Exhibit P12**), informing them that they have a balance of United States Dollars Ninety-Five Thousand and Forty-Nine and Cents Eighteen (US\$95,049.18) outstanding as at 15<sup>th</sup> March 2021, owing to the association and that this outstanding amount increases on a monthly basis and accrues interest at the rate of 1% on any balance that is outstanding for a period of more than 30 days. She further informed them that unless the outstanding balance was settled within 14 days of receipt of the letter, debt recovery proceedings would be initiated against them or in the alternative bankruptcy proceedings, if they did not have the funds to do so. The letter also served as a notice that they would still continue to receive invoices for services rendered and continue accruing interest on all outstanding balances notwithstanding the initiation of legal action and further that any legal fees incurred by the association would also be charged to their account as per the association's constitution.
- [21] Mr. De Clarisse stated that as at the date of the letter the balance outstanding has increased because since 2021, the payments made pursuant to the agreement to pay US\$2000.00 monthly have stopped, and one of the directors has passed away. He does not recall when the last payment was made. He states that the association is however still rendering services to the defendant.
- [22] He states that the defendant has never contested any of the invoices issued. They did however request a waiver of the interest on the invoiced sums from the Board which was rejected.



## Analysis

[23] The plaintiff in this case claims the sum of US\$95,049.18 which it claims is owed to it by the defendant company for services rendered by it to the defendant company, for which the defendant company is liable by virtue of being one of its members pursuant to the terms and conditions of an Agreement for Sale of Title V15998 and the building thereon known as Maison 33 (Exhibit P4) and the document of transfer of the said Title (Exhibit P6).

[24] Exhibit P4 was entered into by the EIDC and Daron Richard Ross Walker as trustee for a company to be formed, for the former to sell and the company to purchase Title V15998 (a subdivision of Title No. V12515 registered in the name of EIDC) and Maison 33 thereon. The terms of Exhibit P4 show that at the time of signature of Exhibit P4 in 2006 the development had not yet been completed the anticipated date of completion being April 2007 which was amended to September 2007 by Exhibit P5 - the addendum to the Agreement of Sale. The defendant company was incorporated on 26<sup>th</sup> June 2007 one of its directors being Daron Walker as shown by Exhibit P3 (Certificate of Official Search), and Title V15998 transferred to it on 30<sup>th</sup> August 2007.

[25] The conditions of sale of the property as stated at Sub-Clause 10.2 of Exhibit P4 are as follows:

*10.2 It is an express condition of this AGREEMENT that the PURCHASER shall –*

*10.2.1 on the DATE OF TRANSFER automatically become a member of the ASSOCIATION;*

*10.2.2 for as long as the PURCHASER is the OWNER of the PARCEL, remain a member of the ASSOCIATION, and be bound by, conform and comply with, the CONSTITUTION;*

[26] Exhibit P6 - the transfer of Title V15998 further provides that:

*The transfer is subject to all the terms and conditions incorporated in the Agreement of Sale dated 17<sup>th</sup> October 2006 (“the Agreement”) between the*

*Transferor and the Transferee which will be registered simultaneously with the Transfer of this Title, and more specifically to the following conditions imposed by the Transferor and to be registered as a Restrictive Agreement in the Encumbrance Section of the abovementioned Title, and which shall be binding on the Transferee's successors in title:*

A. 1. [...]

2. *The Transferee shall automatically become and shall remain a member of the Association and shall be subject to its constitution until he ceases to be an owner as aforesaid and shall not deal with the parcel with any person who has not bound himself, to the satisfaction of the association to become a member thereof;*

[27] In regards to membership of the association, clause 7 of the Constitution of the Association – Exhibit P2 – further provides:

7.1 *The ASSOCIATION shall have as its MEMBERS –*

7.1.1 [...]

7.1.2 *every freehold title owner of a SINGLE RESIDENTIAL PARCEL upon registration of transfer of the relevant PARCEL into its name ...*

[28] Clause 9.1.1 of the constitution imposes upon every member an obligation to comply with “*the provisions of this CONSTITUTION and all rules and/or regulations made in terms of this CONSTITUTION*”.

[29] Pursuant to the abovementioned provisions of the Agreement of Sale (Exhibit P4), the transfer (Exhibit P6) and the constitution (Exhibit P2), it is clear that the defendant company became a member of the association upon the property being transferred to it on 30<sup>th</sup> August 2007 according to Exhibit P4 and P6 or at least upon registration on the transfer on 31<sup>st</sup> August 2007 according to the constitution - Exhibit P2. As a member of the association the defendant became bound by the provisions of the constitution.

[30] The constitution also provides for obligations of both the members and the association. In regards to Services and Maintenance under Clause 14 the association has the obligation to facilitate the provision or provide certain services such as water, electrical and sewerage systems (Clause 14.1); refuse removal (Clause 14.2); security services (Clause 14.3); and garden services (Clause 14.4). Clause 15 deals with common areas. Clause 16 which deals with Waterways and Mooring Areas provides at Sub-Clause 16.1 that *“The ASSOCIATION shall be solely responsible for the maintenance, repair and upkeep of the WATERWAYS and the MOORING AREAS as well as for payment of rates and taxes (if any) and all other charges attaching thereto ... if applicable”*. Sub-Clause 16.3 further provides that *“Subject to the provisions of the relevant BERTH LEASES and any harbour rules, the WATERWAYS and the MOORING AREAS shall at all times be maintained by the ASSOCIATION and the cost of maintenance for each BERTH and administrative charges connected therewith shall be imposed on the MEMBER who has the use rights in respect of such BERTH in terms of the relevant BERTH LEASE.*

[31] Clause 17 of the constitution provides for levies to be imposed by the association on its members for expenses incurred by the association for the abovementioned purposes. It also provides for interest on unpaid levies. In that regard it provides:

*17.1 The MEMBERS shall be jointly liable for all expenditure incurred by the ASSOCIATION in the furtherance of its objects in terms of this CONSTITUTION. To this end, the BOARD may, from time to time, impose LEVIES upon the MEMBERS for purposes of meeting all expenses which the ASSOCIATION has incurred, or which the BOARD reasonably anticipates the ASSOCIATION will incur, in the fulfilment of its functions including the upkeep of the COMMON AREAS, the provision of security services (if applicable) and the management and administration of the DEVELOPMENT, and generally in the furtherance of its objects.*

[...]

*17.4 Every such LEVY shall be payable in advance in monthly instalments due on the first day of each and every month ...*

[...]

17.7 *Arrear LEVIES shall bear interest on the daily balance at the maximum rate permitted from time to time by the laws of the Seychelles ...*

17.8 *Any amount due by a MEMBER by way of LEVY and/or interest thereon shall be a debt due by such MEMBER to the ASSOCIATION ...*

[32] As a member of the association, in accordance with the above provisions, the defendant became liable for the levies imposed by the association, as well as for other expenses incurred by the association for services rendered to it. It also became liable for interest on any outstanding sums payable on the levies. The association drew up monthly invoices for the levies payable by the defendant to it. Other sums owing to it for other expenses not covered under the levies were also invoiced. It is stated in each invoice that “*Interest @ 1.0% per month will be charged on all overdue accounts (30 days)*”.

[33] I note that in the bundle of unpaid invoices (Exhibit P11) there is one invoice dated 13/01/2021 for the sum 3450.00 for “*Deposit – Debt recovery process M33 in relation to VMA Levy accounts*” and another dated 24/05/2021 for the sum of US\$4,197.50 for “*Legal fees legal services – Debt Recovery*”. It is clear from Mr. De Clarisse’s testimony that legal expenses related to debt recovery arising from failure to pay the levies do not constitute levies. Levies are imposed for services rendered to the home owners for general upkeep and maintenance of the premises and common areas including services provided under Clauses 14, 15 and 16 of the constitution. It also covers the operating costs of the association including its utilities and building. Charges for legal services on the other hand are dealt with under Sub-Clause 29.2 as follows:

29.2 *... if any MEMBER fails to make payment on the due date of LEVIES or other amounts payable by such MEMBER, the BOARD may give notice to such MEMBER requiring him to remedy such breach within 5 business days, and should he fail to timeously remedy his breach, the BOARD may, on behalf of the ASSOCIATION, institute legal proceedings against such MEMBER without further notice, and such MEMBER will be liable for and shall pay all legal costs on the scale as between attorney and own client*

*together with collection commission and any other expenses incurred by the ASSOCIATION in obtaining recovery of the amounts due to it.*

[34] In her letter of demand (Exhibit P12) the plaintiff's attorney also puts the defendant on notice that *"As per the Eden Island Management Association's Constitution any legal fees incurred by my Client will also be charged to your account"*.

[35] It is my view that although the defendant is liable to pay the legal costs of recovery of unpaid levies pursuant to Clause 29.2. of the constitution, and if it does not pay such legal costs, become liable to pay interest thereon, the plaintiff cannot claim interest under Sub-Clause 17.7 which only applies to outstanding levies. It is that provision which empowers the association to charge *"Interest @ 1.0% per month ... on all overdue accounts (30 days)"* on outstanding levies as stated in the invoices.

[36] There being no provision of the association's constitution empowering it to charge interest on legal costs, Article 1153 of the Civil Code of Seychelles Act ("Civil Code") applies to such interest. It provides that:

*Article 1153*

*With regard to the obligations which merely involve the payment of a certain sum, the damages arising from delayed performance shall only amount to the payment of interest fixed by law or by commercial practice; however, if the parties have their own rate of interest, that agreement shall be binding.*

*These damages shall be recoverable without any proof of loss by the creditor. They are due from the day of the demand, except in cases in which they become due by operation of the law.*

*However, the creditor who sustains special damage caused by a debtor in bad faith and not merely by reason of delay, may obtain damages in addition to those for delayed performance.*

[37] In terms of this provision the rate of interest if not determined in an agreement between the parties, shall be as fixed by law or commercial practice. The addition to an invoice that *"Interest @ 1.0% per month will be charged on all overdue accounts (30 days)"* which counsel has been at pains to point out was not contested by the defendant, cannot

impose an obligation on the defendant to pay interest at that rate, in the absence of an agreement between the parties. Hence the rate of interest on the legal costs must be determined by law or by commercial practice.

- [38] In Vijay Construction Pty Ltd & Anor v Aluminium And Steel Works Ltd SCA2/02 [2003] (11<sup>th</sup> April 2003) the Court, in defining the term “commercial practice” in Article 1153, relied on the case of Seychelles National Commodity Co. Ltd v Faure (1981) SLR 160 to state:

*As to what is commercial practice the decision of Sauzier, Ag CJ in Seychelles National Commodity Co. Ltd v Faure (1981) SLR 160 161-162 is apt. It is the rate of commercial interest that is charged in normal commercial practice in such transaction as was involved in the case. The burden is on the party who claims interest at a commercial rate to aver and prove commercial practice. Where there is [no] proof of commercial practice, rather than refuse to award any interest, the court will award interest fixed by law.*

- [39] In that case, the Court found and determined as follows-

*... although in the relief the plaintiff, Aluminium, claimed interest at commercial rate, there are no averments of commercial practice nor, consequently, proof of such practice. In the circumstances award of commercial interest at 14% per annum made by the trial judge was erroneous. He should have awarded interest fixed by section 3 of the Interest Act at 4%.*

- [40] Relying on the two abovementioned cases, the plaintiff in the present case having made no averments of commercial practice in the plaint or brought proof of the same, I hold that interest on the legal costs should be calculated at the legal rate of “four per centum per annum” as per section 3 of the Interest Act. I further hold that such interest on legal costs starts running from the date of filing of the plaint that is, 24<sup>th</sup> May 2021. Vide Eden Island Development Company (Sey) Ltd v Hibberd (CC38/2014) [2016]SCSC 823 (26 October 2016) in that regard.

- [41] The amount of the unpaid invoices, the interest due on outstanding sums as well as payments made by the defendant in settlement thereof are set out in Exhibit P9 - the Statements of Accounts of the defendant for the years 2014 to 2021- according to which

the outstanding sum as at 1<sup>st</sup> September 2021 was US\$112,644.20. It is to be noted that the letter of demand Exhibit P12 is dated 23 March 2021 and that the present suit was filed on 24<sup>th</sup> May 2021. Claims cannot be made for any sums accruing after commencement of proceedings and the Court will therefore disregard any sums becoming due after that date and only take into account sums which become due on or prior to 24<sup>th</sup> May 2021 on which date the outstanding balance according to the statement of Account dated 07/09/2021 stood at US\$104,523.54.

- [42] Mr. De Clarisse has testified that the defendant has partly settled the sums owing to the association. This is shown by various sums credited on the Statements of Account. Exhibit P10 is a bundle of invoices which he states have been settled in full. Exhibit 11 on the other hand is a bundle of invoices which Mr. De Clarisse claims only the first dated 01/06/2018 has been partly settled with a sum of US\$1,535.14 remaining outstanding. According to him the remaining invoices have not been paid. Interest on invoiced amounts outstanding for more than 30 days is calculated at the rate of 1% per month. These invoices (excluding invoices raised after 24<sup>th</sup> May 2021 and invoices for legal costs) and the interest thereon are as follows:

INVOICE DATE	INVOICE AMOUNT US\$	INTEREST CALCULATED @ 1% PER MONTH
01/06/2018	1,535.14	1% of 1,535.14 from 01/07/2018 to 24/05/2021(34 months and 24 days) = <b>533.83</b>
01/07/2018	2,287.57	1% of 2,287.57 from 01/08/2018 to 24/05/2021(33 months and 24 days) = <b>772.75</b>
01/08/2018	1,898.68	1% of 1,898.68 from 01/09/2018 to 24/05/2021 (32 months and 24 days) = <b>622.38</b>
01/09/2018	1,979.07	1% of 1,979.07 from 01/10/2018 to 24/05/2021 (31 months and 24 days) = <b>628.81</b>
01/10/2018	1,717.37	1% of 1,717.37 from 01/11/2018 to 24/05/2021 (30 months and 24 days) = <b>528.50</b>
01/11/2018	1,964.04	1% of 1,964.04 from 01/12/2018 to 24/05/2021 (29

		months and 24 days) = <b>584.78</b>
01/12/2018	1,972.97	1% of 1,972.97 from 01/01/2019 to 24/05/2021 (28 months and 24 days) = <b>567.71</b>
04/12/2018	358.00	1% of 358.00 from 05/01/2019 to 24/05/2021 (28 months and 20 days) = <b>102.55</b>
29/12/2018	14.76	1% of 14.76 from 30/01/2019 to 24/05/2021 (27 months and 25 days) = <b>0.12</b>
01/01/2019	1,588.75	1% of 1,588.75 from 01/02/2019 to 24/05/2021 (27 months and 24 days) = <b>441.33</b>
28/01/2019	13.33	1% of 13.33 from 29/02/2019 to 24/05/2021 (26 months and 27 days) = <b>3.49</b>
01/02/2019	1,717.04	1% of 1,717.04 from 01/03/2019 to 24/05/2021 (26 months and 24 days) = <b>459.71</b>
01/03/2019	1,979.00	1% of 1,979.00 from 01/04/2019 to 24/05/2021 (25 months and 24 days) = <b>510.07</b>
01/04/2019	1,920.61	1% of 1,920.61 from 01/05/2019 to 24/05/2021 (24 months and 24 days) = <b>475.91</b>
05/04/2019	1,016.41	1% of 1,016.41 from 06/05/2019 to 24/05/2021 (24 months and 19 days) = <b>250.07</b>
01/05/2019	2,052.65	1% of 2,052.65 from 01/06/2019 to 24/05/2021 (23 months and 24 days) = <b>488.08</b>
21/05/2019	857.88	1% of 857.88 from 22/06/2019 to 24/05/2021 (23 months and 3 days)= <b>198.17</b>
01/06/2019	2,157.72	1% of 2,157.72 from 01/07/2019 to 24/05/2021 (22 months and 24 days) = <b>491.47</b>
01/07/2019	1,911.41	1% of 1,911.41 from 01/08/2019 to 24/05/2021 (21 months and 24 days) = <b>416.10</b>
01/08/2019	1,585.10	1% of 1,585.10 from 01/09/2019 to 24/05/2021 (20 months and 24 days) = <b>329.27</b>
01/09/2019	1,951.15	1% of 1,951.15 from 01/10/2019 to 24/05/2021 (19 months and 24 days) = <b>385.82</b>
01/10/2019	1,964.62	1% of 1,964.62 from 01/11/2019 to 24/05/2021 (18



		months and 24 days) = <b>368.91</b>
01/11/2019	1,955.70	1% of 1,955.70 from 01/12/2019 to 24/05/2021 (17 months and 24 days) = <b>347.61</b>
01/12/2019	1,607.00	1% of 1,607.00 from 01/01/2020 to 24/05/2021 (16 months and 24 days) = <b>269.56</b>
01/01/20	2,117.48	1% of 2,117.48 from 01/02/2020 to 24/05/2021 (15 months and 24 days) = <b>333.94</b>
01/02/2020	2,440.27	1% of 2,440.27 from 01/03/2020 to 24/05/2021 (14 months and 24 days) = <b>360.49</b>
01/03/2020	1,924.62	1% of 1,924.62 from 01/04/2020 to 24/05/2021 (13 months and 24 days) = <b>265.15</b>
01/04/2020	2,295.33	1% of 2,295.33 from 01/05/2020 to 24/05/2021 (12 months and 24 days) = <b>293.17</b>
16/04/2020	966.97	1% of 966.97 from 17/05/2020 to 24/05/2021 (12 months and 8 days) = <b>118.54</b>
01/05/2020	1,856.19	1% of 1,856.19 from 01/06/2020 to 24/05/2021 (11 months and 24 days) = <b>218.53</b>
01/06/2020	1,651.47	1% of 1, 651.47 from 01/07/2020 to 24/05/2021 (10 months and 24 days) = <b>177.88</b>
01/07/2020	1,628.00	1% of 1,628.00 from 01/08/2020 to 24/05/2021 (9 months and 24 days) = <b>159.12</b>
01/08/2020	1,858.16	1% of 1,858.16 from 01/09/2020 to 24/05/2021 (8 months and 24 days) = <b>163.11</b>
01/09/2020	1,592.32	1% of 1,592.32 from 01/10/2020 to 24/05/2021 (7 months and 24 days) = <b>123.87</b>
01/10/2020	1,566.59	1% of 1,566.59 from 01/11/2020 to 24/05/2021 (6 months and 24 days) = <b>106.15</b>
01/11/2020	1,725.55	1% of 1,725.55 from 01/12/2020 to 24/05/2021 (5 months and 24 days) = <b>99.66</b>
01/12/2020	1,208.59	1% of 1,208.59 from 01/01/2021 to 24/05/2021 (4 months and 24 days) = <b>57.72</b>
01/01/2021	1,299.91	1% of 1,299.91 from 01/02/2021 to 24/05/2021 (3

		months and 24 days) = <b>49.06</b>
26/01/2021	15.41	1% of 15.41 from 27/02/2021 to 24/05/2021 (2 months and 28 days) = <b>0.44</b>
01/02/2021	1,447.56	1% of 1,447.56 from 01/03/2021 to 24/05/2021 (2 months and 24 days) = <b>40.17</b>
01/03/2021	1,347.53	1% of 1,347.53 from 01/04/2021 to 24/05/2021 (1 months and 24 days) = <b>23.92</b>
01/05/2021	1,540.99	No interest due because interest is charged on invoiced amounts outstanding for more than 30 days. 30 days after the date of the invoice falls on 01/06/2021 which is after the date of filing of the plaint.
20/05/2021	1,132.54	No interest due because interest is charged on invoiced amounts outstanding for more than 30 days. 30 days after the date of the invoice falls on 21/06/2021 which is after the date of filing of the plaint.
<b>TOTAL</b>	<b>67,661.45</b>	<b>12,364.31</b>

[43] It is to be noted that of the invoices in Exhibit P11 which are claimed to be unpaid, those dated 01/10/2018, 01/11/2018, 01/12/2018, 04/12/2018, 13/12/2018 and 29/12/2018 do not appear on the Statement of Account for the year 2018. I note in that regard that the Statement of Account for the year 2018 is dated 06/09/2018 and that the entries on that statement end on 01/09/2018 with a balance of \$74,245.14. There are no entries for the period after that up to the end of 2018, but I note that the balance brought forward in the Statement of Account for the following year namely 2019 is \$69,641.83. I can only surmise that previous outstanding sums were settled during the period for which no Statement of Account has been produced (from 02/09/2019 to 31/12/2019) so that the total outstanding amount was brought down to \$69,641.83 at the end of 2018, despite other invoices (those dated 01/10/2018, 01/11/2018, 01/12/2018, 04/12/2018, 13/12/2018 and 29/12/2018) having been raised and having remained unpaid.

[44] The outstanding sum claimed in terms of the plaint is **US\$95,049.18**. Exhibit 11 comprises the bundle of unpaid invoices. Those invoices raised on or before 24<sup>th</sup> May

2021, (date of filing of the plaint) with the exception of the two invoices for legal charges amount in total to **US\$67,661.45**. Interest on those invoices should be calculated at the rate of 1% per month on amounts outstanding for more than 30 days, up to the date of filing of the plaint amounting to **US\$12,364.31**. The two invoices for legal charges amount to **US\$7,647.50** (4,197.50 +3,450.00). As explained previously interest is calculated on that amount at the legal rate of 4% per annum from the date of filing of the plaint. I therefore find that the plaintiff has proved its claim only for the sum of **US\$ 87,673.26** .

[45] The plaintiff further seeks an Order that the defendant *continues* to pay the plaintiff all invoices which are not disputed, in a timely manner and in accordance with the constitution. I take this to mean that the plaintiff seeks an Order in regards to invoices raised after the filing of this case. In my view the Court cannot make such an Order which would be tantamount to asking the defendant to pay sums to be incurred in the future and of which no proof has been brought. I therefore decline to make such order.

### **Decision**

[46] Accordingly, I enter judgment in favour of the plaintiff, and Order the defendant to pay the plaintiff :

- (a) The sum of **US\$80,025.76** being unpaid levies (**US\$67,661.45**) and interest thereon (**US\$12,364.31**) up to the date of filing of the plaint.
- (b) The sum of **US\$7,647.50** being legal costs incurred by the association for debt recovery.
- (c) Interest at the rate of 1% on the sum of principal sum of **US\$67,661.45** (unpaid levies) for each month that the debt remains unpaid from the date of filing of the plaint i.e. 24 May 2021 until full settlement thereof.
- (d) Interest at the legal rate of 4% per annum on the sum of **US\$7,647.50** (legal costs) from the date of filing of the plaint i.e. 24 May 2021 until full settlement thereof.
- (e) The costs of this suit.

Signed, dated and delivered at Ile du Port on 02 March 2022.

---

E. Carolus J