

SUPREME COURT OF SEYCHELLES

Reportable
2022 SCSC ...
CS16/2021

In the matter between:

**THE ATTORNEY GENERAL OF SEYCHELLES
REPRESENTING THE COMMISSIONER GENERAL
OF THE SEYCHELLES REVENUE COMMISSION**
(rep. by Luthina Monthy)

Plaintiff

and

**MARTIN HOAREAU HAIRDRESSING
REPRESENTED BY MARTIN HOAREAU**
(in person/unrepresented)

Defendant

Neutral Citation: *The Attorney General v Hoareau* (CS16/2021) 2022 SCSC (7 July 2022).
Before: Dodin J.
Summary: Claim for outstanding business and income taxes – failure to register businesses – section 21(1) of Revenue Administration Act 2009 – Regulation 2(2) of Business Tax Act 1987.
Heard: 5 November, 2021
Delivered: 7 July 2022

ORDER

- i. The Defendant is declared to have been in contravention of the Revenue Administration Act 2009 and the Business Tax Act 1987 as amended.
- ii. Judgment is entered in favour of the Plaintiff in the sum of Seychelles Rupees One Million Five Thousand One Hundred and Twenty-Six and Thirty-Seven Cents (SCR1,005,126.37) which the Defendant is ordered to pay.
- iii. Each party shall bear its own costs.

JUDGMENT

DODIN J.

- [2] The Plaintiff is the Attorney General who is mandated to maintain this cause of action on behalf of the Commissioner General of the Seychelles Revenue Commission to recover the alleged unpaid revenue under subsection 21(1) of the Revenue Administration Act 2009.
- [3] The Defendant initially appeared and was also represented by learned counsel Leslie Boniface. The Court took judicial notice that the said learned counsel Boniface could not continue to represent the Defendant in view of certain matters in respect of his license which had to be resolved. On the 19th March 2021 and 14th July 2021, the Defendant was served with summons to appear before the Court on the 12th May 2021 and 21st July 2021 respectively but he failed to appear and no other counsel appeared to represent him. The case was set for hearing ex-parte on 5th November, 2021 with notice to the Defendant which notice was served on the Defendant on the 27th August 2021. On the 5th November, 2021, the hearing proceeded exparte. Final submission was scheduled for 3rd December 2021 and judgment was to be delivered on the 4th February 2022.
- [4] On the 2nd February, 2022 the Defendant entered a motion to set aside the exparte hearing. After considering arguments and objections, a ruling was delivered on the 3rd June, 2022 dismissing the motion to set aside the ex-parte hearing. The case therefore proceeds to judgment on the uncontroverted evidence of the witness for the Plaintiff, Maria Theresine who testified in support of the Plaintiff's claim as reflected in the Plaint.
- [5] Ms Theresine testified that as per the Seychelles Licensing Authority, Mr. Martin Hoareau is registered running the businesses of beautician, hairdresser, importer, retailer, accommodation, catering and entertainment. As per Regulation 2 (2) of the Business Tax Act 1987 the Defendant failed to register with the Seychelles Revenue Commission. A final reminder was issued to the Defendant on the 21st October 2009 informing him of his obligations and he was given 7 days to comply.

- [6] On the 10th July 2012 the Defendant registered the businesses for coffee shop and import and import/retailer, and 1st March 2010 for the business of hairdresser, importer, retailer, accommodation, catering and entertainment.
- [7] As part of the tax reform program the Plaintiff issued a letter on the 23rd April 2010 to the Defendant informing him of a change in Taxpayer Identification Number. On the 31st October 2011 the Defendants filed his Business Tax self-assessment Form Return for the year 2010. On the 6th January 2012 the Defendant was issued a self-assessment notification business tax return for the year 2010 detailing the revenue liability. The notice did not return to the Plaintiff as unserved.
- [8] On the 27th December 2012 the Plaintiff issued a letter to the Defendant requesting him to attend office within 14 days to see Mr. Albert and to bring along his payroll details for his employees for the period 1st March 2010 to 30th November 2012. Failing to comply with the first notice, the Plaintiff issued a reminder letter on the 28th January 2013 to the Defendant requesting him to attend office and to bring along his payroll details for his employees for the period 1st March 2010 to 30th November 2012. The Defendant was given 7 days to respond to the notice.
- [9] On the 13th February 2013 the Defendant was issued letter requesting to submit the salary details for all his employees for their respective period of employment for the period 1st June 2010 up to that date. Another reminder was issued out to the Defendant on the 5th March 2013. The Defendant was also sent a 2nd reminder for the request of information to submit the salary details of all employees for the respective period of employment for the period 1st June 2010 up to date.
- [10] On the 20th April 2015 the Defendant was issued a letter informing him of the income & non-monetary benefits tax audit of Martin Hoareau Hairdressing for the period July 2010 to October 2013 amounting to the sum of SR 300,446.46. He was also informed that the audit was at the stage of providing the Defendant with their findings and giving him the

opportunity to respond to the Plaintiff's proposed adjustments and to any new tax payable. On the 12th May 2015 the Defendant was issued a letter informing him of the audit conclusion proposed for the outcome and Non-Monetary Benefits Tax respective of the hairdressing business that the audit for the period of July 2010 to October 2013 in respect of the income and non-monetary benefits tax. It was noted that no additional information had been provided by the Defendant up to date. Hence the audit result will remain as stated in that proposal letter. A second reminder for Request of Information was issued out to the Defendant on the 8th June 2015 the along with a statement of unpaid revenue dated 8th June 2015.

- [11] The Defendant provided the Plaintiff with 3 post-dated cheques; cheques numbers B000228, B000234 and B000233 to which he received receipt number 31001 worth SR50,000. The cheques were dishonoured upon presentation to the bank. Later in 2016 he made payments of SR50,000 as stipulated by receipt no 14225, 16664, 21389, and 25825 to offset the dishonoured cheques.
- [12] On the 3rd February 2016 a letter of final notice was sent out to the Defendant. On the 7th June 2016 the Defendant was issued a letter of notification of tax audit to inform that Martin Hoareau Hairdressing had been selected by Seychelles Revenue Commission for a Business Tax and Income tax & Non-Monetary benefit tax audit for the period of 2011-2015. On the 23rd December 2016 a letter was issued to the Defendant informing him that the audit of income tax for the period November 2013 to July 2016 was near completion. He was also informed that the audit was at the stage was at the stage of providing the Defendant with their findings and giving him the opportunity to respond to the Plaintiff proposed adjustments and to pay any new tax payable.
- [13] On the 27th December 2016 the Defendant was issued a letter informing him that a default assessment in his business tax return for the year 2011 to 2015 had been raised. On the 23rd January 2017 the Defendant was issued letter consisting of his default assessment notification for business tax return for the year 2011, 2012, 2013, 2014 and 2015. On the 24th January 2017 the Defendant was issued a letter of account summary. On the 26th

January 2017 default assessment was raised for the year ended 31st December 2011-2015. On the 22nd March 2017 a statement of unpaid revenue was sent out to the Defendant. On the 15th June 2018 a statement of unpaid revenue was issued to the Defendant. On the 5th July 2018 letter of final notice was sent out to the Defendant.

- [14] On the 17th July 2018 the Defendant was issued a notice to attend and give evidence of which he attended a meeting on 01st August 2018 to try to mediate and settle the debt. The Plaintiff on the 12th December 2018 issued out a Notice of Intention to prosecute. He was given 14 days for negotiation of payment.
- [15] The outstanding taxes calculated to be owed by the Defendant amounted to the total sum of SCR 1,005,126. 37. A detailed table produced to the Court is attached as ANNEX 1.
- [16] Despite several reminders sent by the Plaintiff to the Defendant, the Defendant has failed and neglected to pay and settle the tax liabilities now claimed by the Plaintiff.
- [17] The Plaintiff now claims the said sum of SCR 1,005,126.37 and further prays the Court to:
- i. declare that the Defendant has acted in contravention to the Revenue Administration Act 2009;
 - ii. order that the said amount of SR 1,005,126.37 be paid to the Plaintiff by the Defendant;
 - iii. make such other order and grant further relief as the court deems fit and proper in this case; and
 - iv. award costs to the Plaintiff.

[18] Since the Defendant failed to file or present any defence nor appeared to challenge the evidence adduced by the Plaintiff, all the evidence stand uncontroverted and I accept the facts adduced by the Plaintiff as true and correct.

[19] Section 21 of the Revenue Commission Act provides as follows:

“21. (1) Any unpaid revenue may be sued for and recovered in any court of competent jurisdiction by the Revenue Commissioner or by the Attorney-General suing on behalf of the Government.

(2) In an action for recovery of revenue, a copy of the notice of assessment shall be received by the court as evidence that the revenue is due and payable, and the court shall not entertain any plea that the revenue assessed is not recoverable because it has not been properly assessed or that the assessment under which the revenue is payable is the subject of objection and appeal.”

I find that the Plaintiff has complied by the procedures to initiate and maintain legal proceedings for the recovery of the outstanding tax debt and that the Defendant has failed to raise any defence, procedural or otherwise in respect of the claim.

[20] Regulation 2(2) of the Business Tax Act 1987 as amended provides as follows:

“For the purpose of assisting the Commissioner in the making of an assessment under sub-regulation (1), a business which commences on or after the 1st January, 1988 shall, within 14 days after the date on which the business commences, furnish the Commissioner with a statement containing the following particulars-

(a) the name of the business;

(b) the date the business commenced;

(c) the name and address of the owner of the business and where the owner is a partnership, the name and address of each of the partners in the partnership;

(d) the nature of the activities of the business;

(e) an estimate of the net income the business is expected to derive in the first tax year of its operation, and

(f) such other information as may be prescribed or as the Commissioner may require.”

According to the evidence of Ms Theresine, information obtained from the Seychelles Licensing Authority and produced to Court in support of the Plaintiff’s claim, Mr. Martin Hoareau was registered running the businesses of beautician, hairdresser, importer, retailer, accommodation, catering and entertainment. As per Regulation 2 (2) of the Business Tax Act 1987 above, the Defendant failed to register with the Seychelles Revenue Commission. The Defendant was given 7 days to comply on the 21st October 2009. This grace period expired on the 28th October, 2009. The Defendant did not register until 1st March 2010 for the businesses of hairdresser, importer, retailer, accommodation, catering and entertainment and until the 10th July 2012 for the businesses for coffee shop, import and import/retailer. The Plaintiff therefore rightly calculated the arrears of taxes for the businesses as from 2011.

[21] Having considered the evidence which stands uncontroverted, I therefore enter judgment in favour of the Plaintiff in the following terms:

- i. I hereby declare that the Defendant was in contravention of the Revenue Administration Act 2009 and the Business Tax Act 1987 as amended.
- ii. I award the Plaintiff the sum of Seychelles Rupees One Million Five Thousand One Hundred and Twenty-Six and Thirty-Seven Cents (SCR1,005,126.37) which the Defendant is ordered to pay.
- iii. I make no order for cost.

Signed, dated and delivered at Ile du Port on 7 July 2022.

C G Dodin

Judge

ANNEX 1.

The outstanding taxes owed by the Defendant to the Plaintiff as submitted by the Plaintiff referred to in paragraph 14 above:

Tax Type	Years	Tax Payable	Amount paid	Outstanding Balance
Business Tax Primary Tax	2011	69,793.39		148,918.82
	2012	11,311.71		
	2013	50,770.57		
	2015	17,043.15		
Business Tax Penalties	2011	96,403.00		132,084.06
	2012	14,603.00		
	2013	5,077.06		
	2015	16,001.00		
Income Tax Primary	2010-2013	227,669.47	50000	650,723.49
	2013-2016	254,147.79		
Income Tax Penalty	2010-2013	72,776.93		
	2013-2016	146,129.30		
Yearly Assessment Late Lodgement	2011	24,300.00		73,400.00
	2012	20,100.00		
	2013	14,800.00		
	2014	9,700.00		
	2015	4,500.00		

TOTAL				1,005,126.37
-------	--	--	--	--------------