

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CS54 /2020

In the matter between

SIMON BISTOQUET
(rep. by *Frank Elizabeth*)

Plaintiff

and

GENESIS ENTEPRISE COMPANY LIMITED
(rep. by *Nichol Gabriel*)

Defendant

Neutral Citation	<i>Simon Bistoquet v Genesis Enterprise Company Limited CS54/2020</i> [2022] SCSC delivered on 07 July 2022
Summary	Breach of Contract
Before:	Vidot J
Heard:	03 rd December 2021
Delivered:	07 July 2022

JUDGMENT

VIDOT J

[1] The Plaintiff sues for breach of contact. The Plaintiff avers that he was the owner of land parcel PR2574 situate at Anse La Blague, Praslin (the “property”) on which stood a guesthouse known as Villa Anse La Blague. The Defendant was at all material times a company duly registered and doing business in Seychelles.

[2] On 28th November 2018, the parties entered into a Promise of Sale Agreement (Exhibit P1) where by the Plaintiff agreed to sell and the Defendant to buy the property for the sum of SR6,000,000.00. However, the next day, 29 November 2018, the parties signed an addendum (Exhibit P2) to that Promise of Sale. One of the terms of that addendum was

that the sale price was revised to SR8,000,000.00. A further amendment provided that the part payment of SR6,000,000.00 was to be made within a week from the execution of the Promise of Sale. The balance of SR2,000,000.00 was to be paid over a period of two years in monthly instalment of SR40,000.00 for the first eleven months with the first payment becoming due and payable by 15th December 2018 and subsequent instalment of SR40,000.00 on the 15th day of each succeeding month. On the 12th month of the first year of the payment plan, the Defendant was to pay to the Plaintiff the sum of SR560,000.00. For the second year, payment was to be made in accordance with the payment plan method described for the first year.

- [3] The Plaintiff alleges that in breach of the agreement, the Defendant has failed, refused and neglected to make the instalment payments as agreed or at all and that the Defendant owes the Plaintiff the sum of SR880,000.00
- [4] The Plaintiff claims the sum of SR980, 000.00 representing the sum owed and SR100,000.00 for moral damage and he claims these with interest and cost.

The Defence

- [5] In his Defence the Defendant admits to all averments in respect of the agreement save that he denies that he has defaulted in making payment as per the terms of the agreement and the addendum. The Defendant denies ever failing, refusing and neglecting to make payment and claims that it owes the Plaintiff nothing.

The Evidence

- [6] It must be noted that though served with summons the Defendant never appeared before Court After their lawyer, Mr. Gabriel withdrew from the case, a notice to appear was served but still they failed to put up appearance. Therefore, the case proceeded ex-parte.
- [7] Mr. Simon Bistoquet gave evidence supporting the plaint. He states that he was the former owner of the property and it was sold to the Defendant. He produced the Promise of Sale and the addendum in support of his case. He explained that the parties signed the Promise of Sale which was amended a day later by the addendum. The consideration was

as quoted in paragraph 2 above. The two documents were signed before Shelton Jolicoeur, Notary. The Plaintiff confirms that the Defendant has defaulted on payment as agreed and to date there is an amount of SR880,000.00 due and owing. He sent requests for payment to the Defendant such as Exhibit P3 which is a letter of demand. After the letter was sent the Defendant made two payments of SR30,000.00 each. That will amount to SR60,000.00. He further testified that on top of the SR880,000.00 he is also claiming SR40,000.00 each month until the consideration is fully paid. He alleges that the default by the Defendant has affected him as he was purchasing a plot of land from Mr. Gerard Maurel and he had paid a deposit, so he had to cancel that purchase. He was also going to purchase a boat and he had to cancel that as well and he had a project that he needed to take a larger loan than what was expected. He is now struggling financially and he ended up being a taxi driver. He claims to have been affected physically and morally. He has lost the possibility of being involved in businesses. His family has been affected

Findings

[8] I consider, that in the absence of any evidence to the contrary that the documents produced as exhibits are genuine and valid. I find that there was a Promise of Sale and an addendum to that Promise of Sale signed by the parties. On the uncontroverted evidence of the Plaintiff, I find that the Defendant has defaulted in payment and as per agreement as a result thereof the Plaintiff has suffered loss and damage. I take note that since filing the case, the Defendant made a further payment of SR60,000,00. That means that the sum still due and owing is SR820, 000.00. For moral damage, I award the Plaintiff the sum of SR50,000.00

Determination

[9] Therefore, I enter judgment for the Plaintiff against the Defendant in the sum of SR870,000.00 with interests and costs.

Signed, dated and delivered at Ile du Port on 07 July 2022

M. Vidot, J