SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC …….
CS 19/2018

In the matter between:

MARCEL SANTACHE **Plaintiff**
(rep. by Olivier Chang-Leng)

and

HOUSING FINANCE COMPANY LIMITED **Defendant**
(rep. by S. Rajasundaram)

Neutral Citation: *Santache v Housing Finance Company Limited* (CS 19/2018) [2023] SCSC …….. (12th June 2023).
Before: Pillay J
Summary:
Heard:
Delivered: 12th June 2023

ORDER

[1] The Defendant shall recalculate the amount outstanding for the Plaintiff from the base line of SCR 15, 383.27 and refund the amounts that were paid in excess together with interest. So I order.

[2] The Defendant shall pay the Plaintiff the sum of SCR 20, 000.00 as moral damages.

[3] Costs are awarded to the Plaintiff.

JUDGMENT

PILLAY J:

[4] The Plaintiff filed this matter seeking an order to the effect that:

(1) The Agreement between the Plaintiff and the Defendant is void for mistake;

(2) The Defendant is ordered to pay the Plaintiff the sum of SCR 80, 000;

(3) In the alternative to (b), that the Defendant is ordered to pay the Plaintiff a sum of SCR 64, 617.73;

(4) That the Defendant pay the Plaintiff a sum of SCR 1000 for every month from the date of filing until the date of judgment;

(5) That the Loan on the Immovable Property is extinguished and the Land Registrar is directed to act accordingly.

[5] The matter was listed for mention on 18th May 2018 with service on the Defendant. The Defendant failed to appear on the stated date resulting in judgment being entered against it, in line with the Practice Directions then in existence, which were in fact similar to section 128 of the Seychelles Code of Civil Procedure. The Defendant being dissatisfied with judgment being entered against it filed an appeal to the Court of Appeal which allowed the appeal and remitted the case back to this Court for hearing.

[6] The Defendant proceeded to file its Defence and admitted the following claims of the Plaintiff:

3. On the 1st April 1981, the Plaintiff signed a loan with the Seychelles Housing Development Corporation ("the Corporation"), wherein the Corporation would provide the Plaintiff with a loan in the amount of Seychelles Rupees Seventy-Five Thousand ("the Loan") (SR 75, 000) and which was inscribed on the 14th July 1981. The Loan was secured by a Charge encumbered against the Immovable Property.

6. The Defendant, on or about the year 2004, took over the loan portfolio of the Corporation, which included the Loan of the Plaintiff.

7. The Plaintiff avers that on or about the 13th February 2013, the Plaintiff signed a letter authorising his bank to remove a sum of Seychelles Rupees One Thousand (SR1, 000) from his bank account to be paid to the Defendant in relation to the Loan (the "Agreement"). The Defendant signed their acknowledgment of this Agreement.

[7] The Defendant however denied the rest of the Plaintiff's claims that:

4. …in or about the year, 1998, he had completely repaid the full amount due under the Loan, to the Corporation. However, on the 23rd of September 2002, the Plaintiff received a letter from the Ministry of Land Use and Habitat stating that he had an amount of Seychelles Rupees Fifteen Thousand Three Hundred and Eighty Three and Twenty Seven Cents (SR 15, 383.27) outstanding on the Loan (the "Outstanding Sum").

5. Further to paragraph 4 above, the Plaintiff avers that he did not repay the Outstanding Sum but instead tried to negotiate with officials and brought proof of his payments. The Plaintiff further avers that in the negotiations, the officials never returned his receipts of payment to him.

8. Further to paragraph 7 above, the Plaintiff further avers that he entered into this Agreement, despite his knowledge that he had fully paid the Loan, on the mistaken belief that the Defendant could still take actions against the Immovable Property, even if thirty-two years had elapsed since the Loan was signed meaning the Loan was no longer enforceable.

9. The Plaintiff avers that since the signing of the Agreement, he has tried to ask the Defendant to cancel the Agreement in view of the erroneous circumstances, being the fact that his Loan was no longer enforceable, but to date the Defendant has denied and/or failed to take any action, with the last such request dated the 30th of January 2018.

10. The Plaintiff avers that to date, he has paid the Defendant the sum of Seychelles Rupees Sixty-Thousand (SR60, 000) as per the Agreement.

11. As a result of the foregoing, the Plaintiff avers that he has suffered loss and damage as a result of the actions of the Defendant.

Particulars of Loss and Damage

(a)	*Illegal Payments*	*SR60, 000*
(b)	*Moral Damage*	*SR20, 000*
	Total	*SR 80, 000*

12. In the alternative to the above paragraphs 8, 9, and 11 of the Plaint, the Plaintiff avers that as he has already paid a sum of Seychelles Rupees Sixty Thousand to the Defendant, and that the Loan did not make any provisions for interest, the Defendant has mistakenly collected a sum of Forty-Four Thousand Six Hundred and Seventeen and Seventy-Three cents (SR 44, 617.73) in excess of what the Plaintiff allegedly owed the Defendant under the Loan, being payments paid in extra to the Outstanding Sum.

13. As a result of the above, the Plaintiff avers that he has suffered loss and damage as a result of the actions of the Defendant.

Particulars of Loss and Damage

(a)	*Extra Payments*	*(SR60, 000 – SR15, 383.27) = SR 44, 617.73*
(b)	*Moral Damage*	*SR 20, 000.00*
	Total	***SR 64, 617.73***

[8] The Defendant raised a plea in limine to the effect that "the Plaint simply a money claim amounting to namely SR 80, 000.00 and SR 64, 617.73 as being the reliefs claimed in the Plaint are way below the limit set by the Courts Act in that any amount of pecuniary jurisdiction up to SR 350, 000.00 rests with the Magistrates Court and are not within the jurisdiction of Supreme Court. The other reliefs do not have any cause of action."

[9] The Plaintiff's evidence is that he lives at Bel Ombre in a house which he built with a loan of SCR 75, 000. The only condition of the loan was that he makes repayments in the sum of SCR 660.00 per month. He testified that there were times when he would pay more than the original sum, SCR 2000.00 onwards as he was still fishing then. It was his evidence that he finished paying the loan in 1998. However when the company changed

names and he went to collect his documents in 2002 they told him he still had not finished paying his loan. He was told that he had been given a 40% discount and still had SCR 9, 000 to pay.

[10] He requested a meeting with the then President Rene who referred him to President Michel. He had a meeting with the President's secretary, one Andre Pool, and gave all his documents to Mr. Pool. Mr. Pool informed him that the President will take care of everything. He never got his receipts back and 15 years later he was informed by HFC that they were taking the house from him as he still had the loan outstanding.

[11] In order to keep the house he agreed to pay SCR 1000 per month but some months they would deduct the amount twice.

[12] Defence evidence led by Elvis Barreau who testified that he is the Debt Recovery Officer with the Defendant. He testified that he knows of the Seychelles Housing Development Corporation (SHDC) which is no longer in existence. When it was closed all the loans that were under the SHDC were transferred to the Defendant. A letter was issued to all the clients with active loans from SHDC.

[13] Mr. Barreau testified that he knows the Plaintiff. There was a dispute regarding his loan balance. There was an outstanding SCR 48, 480.45 transferred from SHDC to HFC in 2004. In 2006 the Plaintiff was given a 40% discount on his loan as a result of the Home Ownership Scheme. The witness explained that the Home Ownership Scheme was a scheme whereby the Government was giving out between the years 2002 to 2004. The scheme was re-introduced in 2005 to 2007.

[14] In 2015 the Plaintiff had an outstanding balance of SCR 62, 835.98. Following the 40% discount his balance went down to SCR 28, 125.81. It was his testimony that there was no overcharging or extra payment taken from the Plaintiff. The only over payment was SCR 128.25 which was done in 2019. The witness denied putting any pressure on the Plaintiff to sign the salary deduction.

[15] In cross examination the witness stated that the Plaintiff was the only person to have any complaints about his loan following the transfer from SHDC to HFC. He affirmed that

any client that wishes to take a loan from HFC would be charged interest as this is how the company makes its profits to keep running. It was his testimony that every client's account is covered under insurance automatically. There are no interest free loans given by SHDC or HFC.

[16] According to Mr. Barreau, the SCR 15, 383.27 that the Plaintiff was informed of was merely an offer to him which would have been confirmed on his enrolment on the HOS. If the Plaintiff had enrolled on the scheme he would have been entitled to the said discount.

[17] Learned counsel for the Defendant submitted that the points for determination by the Court is as follows:

> *1. Is the agreement between the Plaintiff and the Defendant void for mistake?*
>
> *2. Whether or not this defendant liable to pay the Plaintiff the sum claimed in SR 80, 000 or alternatively SR 64, 617.73?*
>
> *3. Is the Plaint maintainable before this Honourable Court on the issue of jurisdiction?*

[18] Learned counsel for the Plaintiff for his part submitted that the central issues are:

> *a. What were the terms of the Loan Agreement between the parties?*
>
> *b. When did the Plaintiff finish paying off his Loan with the Defendant?*
>
> *c. Can the standing order be void for mistake?*

[19] I have considered the substance of the rest of the Defence's submissions as well as the Plaintiff's submissions and do not propose to repeat them.

[20] The standard of proof is the civil standard on a balance of probabilities and as submitted by Learned counsel for the Defendant the burden lies on the Plaintiff to the Court "of the likelihood of the truth of his case by adducing a greater weight of evidence than his opponent."

[21] In terms of the plea in limine Learned counsel for the Defendant did not address the issue nor referenced any laws setting the jurisdiction of the Magistrates Court in his submissions nor during the hearing. Learned counsel for the Plaintiff referenced section 5 of the Courts Act to support his argument that the Defendant's plea is erroneous. Counsel submitted that the Plaint seeks to extinguish a charge registered against immovable property which is not a matter within the powers of the Magistrates' Court per section 38 of the Courts Act.

[22] Section 5 of the Courts Act, Cap 52 provides that:

> *The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.*

[23] Indeed as submitted by Learned counsel for the Plaintiff, in accordance with section 5 above the Supreme Court has full original jurisdiction to hear and determine "all suits, actions, causes, and matters under all laws…"

[24] Section 24 of the Courts Act amended by Act 28 of 2010, defines "Limit of Jurisdiction" as being:

> *(i) in respect of the court held by the Senior Magistrate SR350, 000; and*
>
> *(ii) in respect of a court held by a Magistrate SR250, 000;*

[25] On 23rd November 2010 Chief Justice FMS Egonda-Ntende made the following Practice Direction No.1 of 2010

1. *In accordance with Section 3 of the Courts (Amendment) Act, Act 28 of 2010, I hereby direct that all cases (involving contract and delict), where the value of the claim is not more than R350,000.00 that were filed in the Supreme Court prior to or after the coming into force of the said Act, in respect of which no substantive hearing has taken place or evidence has been recorded be transferred to the Magistrates' Court at Victoria or Praslin depending on where the cause of action arose, for hearing and determination.*

2. *This directive takes immediate effect.*

[26] As was made clear by the above direction it followed from the amendment to the Courts Act earlier that year. The amendment simply was to the "Limit of Jurisdiction' of the Magistrates Court. It does not exclude the Supreme Court from hearing cases involving matters below SCR 350,000 so much as it grants the Magistrates Court extended jurisdiction. The idea behind the change was to simply reduce the work load from the Supreme Court.

[27] In terms of the nature of the Plaintiff's case section 38 under Part III of the Courts Act provides as follows:

> …
> *(6) The court has no jurisdiction in any suit concerning divorce, guardianship, interdiction, appointment of a curator, adoption, civil status, successions, wills, bankruptcy or insolvency, or concerning rights or interests arising out of the ownership r usufruct of immovable property or servitude thereon except in a suit under subsection (2) or (3) of this section.*

[28] In the case of ***Piram & Anor v Piram [1976] SLR 202*** Sauzier J held that the Magistrates' Court had no jurisdiction to entertain the suit by virtue of section 44 (6) of the Act because the suit concerned rights arising out of the ownership of the immovable property.

[29] Section 44 (1) and (6) of the Courts Act then read as follows:

(1) The court has and shall exercise jurisdiction to decide any civil suit, except, as hereinafter provided, in which the amount claimed or the value of the subject matter does not exceed ten thousand rupees, exclusive of interest and costs.

…

(6) The court has no jurisdiction in any suit….concerning rights or interest arising out of the ownership or usufruct of immovable property or servitude thereon except a suit under subsection (2) or (3) of this section.

[30] The exceptions in (2) and (3) then as now is in relation to possessory actions which is not the case in the particular matter.

[31] The Plaintiffs in the case of ***Piram*** had claimed damages from the defendant for entering on the first Plaintiff's land without permission and causing certain earthworks to be done and endangering the second plaintiff's house and causing damage to the foundations. Sauzier J found that the Plaintiffs' claim of damages from the defendant for "wrongful interference with their right as owners of the land and house… concern[ed] rights arising out of the ownership of immovable property and [the] Magistrates' Court has no jurisdiction in this case,"

[32] Suffice to say that the above speaks for itself. With that said the plea in limine fails.

[33] Now to the merits.

[34] The issues to consider are:

1. *What were the terms of the Loan Agreement between the parties?*
2. *Is the standing order void for mistake?*
3. *Is the defendant liable to pay the Plaintiff the sum claimed in SR 80, 000 or alternatively SR 64, 617.73?*
4. *Is the Defendant liable for moral damages?*

[35] The Defendant admits that the parties entered into a loan agreement on the 1st April 1981, wherein the Corporation would provide the Plaintiff with a loan in the amount of Seychelles Rupees Seventy-Five Thousand (SR 75, 000) and which was inscribed on the 14th July 1981.

[36] However the Defendant's position is that the Plaintiff failed to prove that he paid the Defendant over and above what was due. Learned counsel relied on the cases of ***Banane v Banane (SCA 29 of 2018) [2020] SCCA 40 (18 December 2020)*** as well as the case of ***March Marguerite (2017) SCSC***, ***Zatte v Joubert (1993) SLR 132***, ***Elfrida Vel v Selwyn Knowles Civil Appeal No. 41 and 44 of 1988*** for the argument that the burden of proof lies with he who asserts the existence of certain facts. Indeed it is trite that he who asserts must prove.

[37] The Plaintiff's position is that the Defendant claimed he had an outstanding amount on his loan 15 years after he had paid off the loan. He further claimed that after he signed for the standing order the Defendant was removing money twice on his account some months. With regard to the standing order instructions, it is noted that in October 2013 the sum of SCR 1000 was debited twice on the Plaintiff's account, one on 18th October and the second sum on 31st October. The said sums are reflected in the HFC statement DE2. On 1st July 2014 the sum of SCR 1000 was deducted and then another of SCR 1000 was deducted on 31st July 2014. However the statement shows that between 31st May 2014 to 1st July 2014 no amounts were deducted therefore it stands to reason that the deduction on 1st July 2014 is for the month of June 2014. Similarly this occurred in August 2014. On 1st December 2014 the instruction failed. And was then went through successfully on 13th December 2014 with another failure on 31st December 2014 which then succeeded on 17th January 2015. The pattern of deductions of two instalments in one month seems to stem from failure of the payment to go through as a result of lack of funds on the account as opposed to the Plaintiff's suggestion that the Defendant was just deducting the payments twice in a month for no reason.

[38] The Plaintiff's evidence is that "there were no conditions really [to the loan], the condition was that [he] pays the sum of SCR 660 in the receipt book." It was his evidence that sometimes he even paid SCR 2000. According to him he finished paying the loan in 1998. However the Plaintiff could provide no proof that he had indeed cleared the loan in 1998. If indeed there was no interest on the loan as he claimed, or that he was paying SCR 660 monthly and sometimes even SCR 2000, I find it hard to believe that he completed payment in 1998. With monthly payments of SCR 660, repayment should

have been completed ideally within 9 ½ years, or even earlier if he was making some payments of SCR 2000 on some occasions, which would have been around 1991 or earlier.

[39] On the evidence it is more likely than not that by the time the Defendant took over the loan from SHDC the Plaintiff was in arrears with his loan. I therefore accept and find that at the time that the standing order was signed the Plaintiff was in arrears. With that said it cannot be said that the standing order was signed by mistake. The question though is how much did the Plaintiff owe when the Defendant took over the loan in August 2004?

[40] The Defendant's exhibit PE9 shows that in 2004 when the Defendant took over the loan from SHDC the Plaintiff still had SCR 48, 480.45 outstanding on the loan. Repayment only started in March 2013.

[41] However strangely on 23rd September 2002, see PE3, the Plaintiff was informed by letter that he had an outstanding amount of SCR 15, 383.27 with the SHDC and he qualified for the Home Ownership Scheme which if wished to participate he would get a discount of 40% reducing the outstanding amount to SCR 9, 229.96. I fail to understand how it is that in September 2002 the Plaintiff had an outstanding loan of SCR 15, 383.27 yet in 2004 the balance taken over by the Defendant from SHDC was SCR 48, 480.45. Bearing in mind that the interest then at 6% was SCR 250 on average monthly.

[42] When questioned by counsel for the Plaintiff Mr. Barreau could not explain the discrepancy. He agreed that on 23rd September 2002 the Plaintiff owed SCR 15, 383.27. His answer as to why when the loan balance was transferred to the Defendant was SCR 48, 480.45 was that the document dated 23rd September 2002 reflects the benefit that the Plaintiff would have received if he had registered for the scheme. He went on to accept that had the Plaintiff registered for the scheme his loan amount would have been SCR 9, 229.96 a 50% reduction from the loan amount outstanding which he agreed the Plaintiff owed in 2002 being SCR 15, 383.27.

[43] Though I accept that the Plaintiff having failed to clear the loan was in arrears with interest accumulating, I find that there being no reasonable explanation for the Plaintiff's

balance to be a sum of SCR 48, 084.45 from a sum of SCR 15, 383.27 the Defendant was in error for requesting payments from a base line of SCR 48, 084.45. The Defendant is therefore liable to refund the extra payments charged to the Plaintiff.

[44] It is noted that according to exhibit D1 the loan was cleared in September 2019. The official search certificate dated 15th October 2021 shows no encumbrance registered against the property it stands to reason therefore that the fifth (5) prayer of the Plaintiff is now not in issue.

[45] As regards the claim for moral damages I accept the evidence of the Plaintiff that the whole experience has been a real trauma to him. I find that the sum of SCR 20, 000.00 is reasonable in the circumstances.

[46] In the circumstances the Defendant shall recalculate the amount outstanding for the Plaintiff from the base line of SCR 15, 383.27 and refund the amounts that were paid in excess together with interest. So I order.

[47] The Defendant shall pay the Plaintiff the sum of SCR 20, 000.00 as moral damages.

[48] Judgement is entered accordingly.

[49] Costs are awarded to the Plaintiff.

Signed, dated and delivered at Ile du Port on ……

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Pillay J