

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 585
CS 62/2018

In the matter between:

JESSELENT CECILE
(rep. by Wilby Lucas)

Plaintiff

and

VOLCILIA CECILE

1st Defendant

JOSIANE FLEURANGE JEAN BORN CECILE

2nd Defendant

JESSLEEN CECILE
(rep. by Alexandra Madeleine)

3rd Defendant

Neutral Citation: *Cecile v Cecile & Ors* (CS 62/2018) [2020] SCSC 585 (26 July 2023).

Before: Carolus J

Summary: Droit de superficie - Article 555 of the Civil Code of Seychelles Act

Heard: 4th May, 2nd July and 16th October 2019.

Delivered: 26 July 2023

ORDER

1. The plaintiff's claims insofar as they concern the cost for the building and interest and arrears on loan are dismissed.
2. The remedies sought by the plaintiff in regards to loss of revenue and damages are granted but in a lesser sum than prayed for. Accordingly the defendants shall pay the plaintiff the sum of SCR 110,000 for loss of revenue, and moral damages in the sum of SCR 20,000 amounting to a total sum of SCR 130,000 with interest at the legal rate from date of filing.
3. The parties shall bear their own costs.

JUDGMENT

CAROLUS J

Background

Ownership of LD221

[1] The plaintiff Jesselent Cecile, the 2nd and 3rd defendants, and Mr. Jessley Cecile who is not a party to this case are the children of the 1st defendant. It is not disputed that Mr. Jessley Cecile was the registered owner of land parcel LD 221 situated at Anse Reunion, La Digue from 27th January 1983, when he acquired the parcel from Gisele Regina Uzice, up to 24th March 1998, when he transferred the said parcel to the Seychelles Housing Development Corporation (“SHDC”) by a deed registered on 30th March 1998. The SHDC transferred LD 221 to the 1st Defendant by a transfer deed dated 20th March 1998 and registered on 12th August 1998, and the latter transferred it to the 2nd and 3rd defendants by transfer deed dated 4th July, 2015.

The Plaintiff

[2] The plaintiff claims that while LD221 was still in the ownership of Mr. Jessley Cecile, he granted her permission to build a shop on the property by a written agreement dated 26th June 1996, with special mention that the plaintiff acquired an automatic *droit de superficie*. The Plaintiff, relying on the said agreement, took a loan from SIDEC which she used to build a shop on LD221. While the shop was being built, Mr. Jessley Cecile transferred the land through SHDC to the 1st defendant who had full knowledge of the agreement between Mr. Jessley Cecile and the plaintiff and of the ongoing construction. The 1st defendant granted to the plaintiff a written permission dated 28th March 2003 to charge LD221 as security for a loan from the Development Bank of Seychelles (“DBS”) to complete construction of the shop, pursuant to which the plaintiff took a loan from the DBS in the sum of SCR45,000/-. The 1st defendant further, by letter dated 7th June 2004, addressed to the Director of the Seychelles Licensing Authority (“SLA”) gave her

authorisation for the Plaintiff to be granted a retail licence to operate “*the shop business*” on her premises. However the plaintiff could not operate the shop at all because she and the 1st defendant were not on good terms and the latter continuously obstructed the operation of the shop. Further, although clients have expressed interest to rent the shop on several occasions, it has not been possible to do so due to the physical interference and hostile behaviour of the defendants resulting in the shop remaining closed.

- [3] The plaintiff also avers that the deed effecting the transfer of LD221 from the 1st defendant to the 2nd and 3rd defendants makes no mention of the existence of the shop, but contains express provision that the house on that parcel belonging to the 2nd defendant is not the subject matter of the sale and remains the property of the 2nd defendant.
- [4] She further claims that at the beginning of 2017, the 2nd and 3rd defendants took over control of the shop and carried out maintenance work thereto in preparation for renting it out without consulting the plaintiff. By letter dated 5th May 2017 addressed to the Chief Executive Officer of the SLA, and copied to the attorney of the 2nd and 3rd defendants, the plaintiff as the owner of the shop, objected to the issuance of any license to any other person to operate the shop. Despite such objection the defendants have ignored the plaintiff’s right as the lawful owner of the shop and rented out the shop to one Mr. Sharo Juliano Valentin trading under the business name A.B. to Z Boutique and operating under a retail license issued by the SLA.
- [5] The plaintiff avers that because she could not operate and carry out her retail business, she could not repay her loan as a result of which the loan repayments fell into arrears with interest accruing on such arrears.
- [6] She claims that for the reasons stated in the plaint, she has suffered loss and damages in the total sum of SR.885,000.00 for which the defendants are liable. The loss and damages are particularised as follows:

<i>(a) Cost for the building base (sic) on evaluation</i>	<i>SR. 430.000.00</i>
<i>(b) Interest and arrears on loan</i>	<i>SR. 45,000.00</i>
<i>(c) Loss of revenue from June 2016 the date the</i>	

<i>Property was transferred to the 2nd and 3rd Defendants at SR,150000 per month to April 2018. (22 months)</i>	<i>SR.330,000.00</i>
<i>(d) Moral Damages</i>	<i>SR.80,000.00</i>

[7] The plaintiff therefore prays for judgment against the defendants jointly and severally in the sum of SR.885,000.00 plus interests and costs.

The Defence

[8] The defendants deny that Mr. Jessley Cecile granted a permission to build and a *droit de superficie* on LD 221 to the plaintiff. They aver that they had no knowledge of any such permission to build or *droit de superficie*; that there was no permission to build registered on LD221 either when the 1st Defendant purchased the property from SHDC or when she transferred it to the 2nd and 3rd defendants; and that any *droit de superficie*, if any, was terminated by the transfer of LD221 by Mr. Jessley Cecile to SHDC. They further aver that the defendants bought LD221 in good faith.

[9] They deny that the Plaintiff borrowed a loan from SIDEC claiming that they have no knowledge thereof. They also deny the Mr. Jessley Cecile transferred LD221 to the 1st defendant through SHDC and aver that LD221 was transferred by Mr. Jessley Cecile to SHDC by a deed of transfer dated 20th March 1998 for a sum of SR150,000 and on the same day the same parcel was transferred by SHDC to the 1st defendant for a sum of SR150,000. They admit that at the time of the transfer, the 1st defendant was aware that there was a shop on LD221 but aver that she was not aware of any agreement between Mr. Jessley Cecile and the plaintiff for a *droit de superficie*.

[10] The defendants deny that the 1st defendant gave permission to the plaintiff to charge LD221 as security for a loan with DBS. It is averred that the 1st defendant is illiterate and that at a certain point in time she was given a document to sign by Mr. Cecile who was accompanied by his girlfriend at the time Julia Monthy who works at the Bank of Baroda. When the 1st defendant queried the purpose of the document Mr. Cecile told her that it was “*just a joint*” about the shop which belonged to the plaintiff. It is averred that the 1st defendant signed the document believing that it was what Mr. Cecile represented it to be.

It is therefore averred that that any letter giving permission to charge LD221 or any charge, purporting to contain her signature must have been illegally obtained. The defendants also aver that they have no knowledge of SCR45,000 being used to complete the building and put the plaintiff to strict proof that she took a loan of that amount from DBS for that purpose. They point out that, assuming that the 1st defendant was the chargor in respect of any charge to secure a loan in that sum, such charge must have been registered and bear her signature.

[11] It is also denied that the 1st defendant authorised the SLA to grant the plaintiff a retail licence to operate “*the shop business*” on her premises by letter dated 7th June 2004. The 1st defendant denies providing such document to the plaintiff, and avers that any such document purporting to contain her signature must have been illegally obtained.

[12] The defendants deny that the plaintiff could not operate the shop because the 1st defendant obstructed such operation. Although they admit that the 1st defendant does not have a good relationship with the plaintiff they aver that the plaintiff was living in the shop as a home from the time it was constructed in 1997, and that after she moved out she bought her first consignment of goods but the perishable ones spoilt because there was no electricity in the shop. They aver that the plaintiff never operated the building as a shop but rented it out at first to the SLA for a number of years and then to one Michel Ah-Time. They claim that there was no hindrance for the plaintiff to operate the shop.

[13] The defendants also deny interfering with or displaying any hostile behaviour towards any clients or interfering with the operation of the shop. They aver that the 1st defendant is now an 80 year old woman and could not be said to have interfered physically or behaved in a hostile manner with potential clients for the shop, and that although the 2nd defendant lives on LD221 she has also never physically interfered with or behaved in a hostile manner to anyone in relation to the shop. As for the 3rd defendant, she has been living permanently on Mahe since 1985 before the shop was built and could not have interfered with clients or the operation of the shop.

- [14] It is also denied that the shop has remained closed and it is repeated that the plaintiff rented it out to the SLA for about a year for a sum unknown, and then to Michel Ah-Time from 21st December 2008 to 21st September 2013 for a sum of SCR5,000 per month. It is therefore averred that the defendants did not interfere in any way with the clients.
- [15] It is further averred that the 1st defendant refused to allow anyone to use the shop when she received a *Commandement* dated 8th August 2014, for seizure of LD221 because of non-payment of a loan borrowed by Mr. Jessley Cecile which the 1st defendant had no knowledge of. The 1st defendant rented out the shop and used the proceeds thereof to repay the loan taken by Mr. Jessley Cecile.
- [16] The defendants aver that the deed transferring LD221 from the 1st defendant to the 2nd and 3rd defendants did not contain any clause offering protection to the permission to build and the *droit de superficie* granted to the plaintiff by Mr. Cecile, as such permission to build and *droit de superficie* was not registered. Further the issue never came up for discussion either by the plaintiff or Mr. Jessley Cecile who did not even save or protect the shop when he sold LD221 to SHDC.
- [17] The defendants admit that they took control of the shop and carried out maintenance works with a view to renting it out, without consulting the plaintiff. They aver that the plaintiff was not on speaking terms with the 1st defendant who had reasonable grounds to suspect that the plaintiff was involved in her property being charged without her permission through “*proper*” means, and because of the plaintiff and Mr. Cecile’s refusal to repay the loan which put her property in jeopardy.
- [18] The defendants deny any knowledge of any objections made by the plaintiff to the SLA for the issuance of a licence to any person to operate the shop, and aver that they never received any letter to that effect. They admit that the 1st defendant did rent out the shop to Sharo Valentin but aver that he is no longer occupying it. They reiterate that the 1st defendant upon receiving the *Commandement* for seizure of LD 221, rented out the shop to pay off the loan. Furthermore she had reason to believe that the plaintiff was involved in the transaction to charge her land.

[19] The defendants deny any knowledge of the plaintiff's inability to operate her shop and consequently, of being unable to pay back the loan resulting in arrears and interest thereon. They also deny being liable for any loss or damage that the plaintiff may have suffered and aver that it is the 1st defendant who has suffered the most as she is repaying a loan secured by a charge on her property LD221 which she never took. The defendants pray for dismissal of the plaint with costs.

THE EVIDENCE

The Plaintiff's case

Testimony of Mr. Fred Hoareau

[20] Mr. Fred Hoareau produced a Transfer of Land dated 4th July 2015, admitted as **Exhibit P1** and in terms of which Aimee Volsilia Cecile, in consideration of the sum of Seychelles Rupees Eight Hundred Thousand only, transferred jointly and in equal portion to Josianne Fleurange Jean (Born Cecile) and Jesleen Cecile, the land comprised in Title No: LD221. The transfer was registered on the 9th June 2016 and contains the following clause:

For the purpose of clarity I hereby acknowledge that the house situated on parcel LD221 in which Josianne Fleurange Jean is residing is the property of the Josianne Fleurange Jean and is not the subject matter of the sale. The said house was built on the basis of perpetual "droit de superficie" which I granted to the said Josianne Fleurange Jean.

[21] Mr. Hoareau confirmed that the only structure on LD221 that was protected and did not form part of the sale was the house belonging to Josianne Fleurange Jean.

[22] In cross-examination, Mr. Hoareau testified that according to the Certificate of Official Search for Title No: LD221 dated 5th May 2017 admitted as **Exhibit D1**, its current proprietors are Josianne Fleurange Jean (Born Cecile) and Jessleen Cecile, and there are no encumbrances registered against the said title.

[23] He also confirmed that Title No: LD221 had exchanged hands a few times before being transferred to its current proprietors, as follows: First it had been transferred by Giselle Regina Uzice to Jessley Francois Cecile in consideration of Rupees Fifty-Two Thousand

by a Transfer of Land dated 27th January 1983 and registered on 10th February 1983 admitted as **Exhibit D2**. Secondly it had been the subject of a Transfer of Land dated 24th March 1998 from Jessley Francois Cecile to the Seychelles Housing Development Corporation (“SHDC) in consideration of Rupees One Hundred and Fifty Thousand and registered on 30th March 1998, admitted as **Exhibit D4**. Thirdly, Title No. LD221 had been transferred from the SHDC to Aimee Volsilia Cecile by a Transfer of Land dated 20th March 1998 in consideration of Rupees One Hundred and Fifty Thousand and registered on 12th August 1998, admitted as **Exhibit D3**.

- [24] Mr. Hoareau also confirmed that Exhibit D4 (Transfer of LD221 from Jessley Francois Cecile to the SHDC), did not contain any condition similar to that contained in Exhibit P1 (Transfer of LD221 from SHDC to Aimee Volcilia Cecile) protecting any structures on the said title.

Testimony of Mr. Jessley Cecile

- [25] Mr. Jessley Cecile, residing at Anse Boileau Mahe confirmed that he purchased LD221 in 1983 from Giselle Regina Uzice when he was a Sergeant in the police force. When he purchased the property, there was a partially built house on it, and he took a loan from the SHDC to complete construction of the house, where he moved. His mother and siblings also moved to the house on LD221 because of issues between his mother and father. His mother is still occupying the same house.
- [26] At the time he transferred LD221 to SHDC he was living at Cascade with his wife and was unable to keep up with repayments of the loan from SHDC. Following threats by SHDC to repossess LD221, Mr. Cecile came to an arrangement with them whereby he would transfer the land to SHDC which would in turn transfer it to his mother upon payment of the outstanding balance of the loan he had borrowed. SHDC approved a loan of SR150,000 to his mother from which the amount that was still owed to it under the first loan was deducted, with the remainder of the new loan being used to complete construction of the house.

- [27] Before he transferred LD221 to SHDC he had given permission to the plaintiff, to build a shop on LD221 but he does not recall when he granted her such permission.
- [28] He stated that at the time of the transfer of LD221 to SHDC the only structures thereon were the house and the shop which he believes had already been completed. He stated that his mother was aware of the arrangements between him and the plaintiff regarding the shop, that at the time of the transfer there were no disputes or quarrels between them and that he does not know what has happened now. He stated that he is not lying and that he respects his mother but does not like what has happened.
- [29] In cross-examination, Mr. Cecile first confirmed that when he purchased LD221 in 1983, his whole family with the exception of his father moved there. However he then stated that both he and his eldest sister Jessleen (3rd defendant) resided on Mahe but used to visit their mother on La Digue.
- [30] He confirmed that when he sold the property to SHDC, his family was still living in the house on LD221. He denied selling his family along with the property reiterating that SHDC had been about to repossess LD221 as he had been unable to repay the loan he had borrowed from SHDC in full. He therefore made arrangements for his mother to be granted another loan from them from which the amount that he still owed was deducted. However it is unclear from his testimony who repaid the loan granted to his mother and therefore the balance of what he owed to SHDC. First he denied that it was his mother who had repaid the loan claiming that it had been paid by he and his siblings, but then admitted that he did not know. He then stated he recalls being given SR300 on two or three occasions by his mother and being told to go and pay SHDC. There is also no indication as to how much of the first loan he had repaid.
- [31] Mr. Cecile admitted that when he transferred LD221 to SHDC, he did not inform the latter that he had granted permission to his sister to build a shop thereon and that the shop belonged to her, stating that this did not concern anyone because the property was his and he did not have to discuss it with anybody or inform SHDC. When it was put to him that it was his duty and obligation to inform SHDC because he was giving up his rights in the

property, he stated that he never gave up his rights. He explained that by transferring the property he did not intend to give up his rights thereon, but only did so because nobody wanted to pay off the loan he had taken, and it was the only way for his mother and siblings to be able to stay in the house. He maintained that he never sold his rights.

[32] Mr. Cecile admitted that the permission he granted his sister to build a shop on LD221 was not reduced in writing before a notary and registered because he trusted his family. It was put to him that as there was no writing or registered document witnessing such permission, any such permission would be invalid. He replied that the transfer of LD221 was done in good faith. When it was further put to him that when his mother purchased LD221 from SHDC, there was no such permission registered against and encumbering the property, he stated that he regrets the way that he transferred the property. It was further put to him that when on 20th March 1998 he gave up his right in LD221 he no longer had any interest in the property, he stated that he transferred LD221 to his mother in good faith because there was no place for the family to stay but that he never transferred the property of Jesselent's shop.

[33] Mr. Cecile was cross-examined regarding a charge on LD221, and stated that after LD221 was transferred by SHDC to his mother, he first borrowed a loan from the Bank of Baroda ("BOB") and charged LD221 as security for that loan. This is evidenced by a charge on LD221 dated 6th June 2010 between the BOB (the Bank) and Aimee Volsilia Cecile (the Chargor) and Jessley Cecile (the Borrower) and admitted as **Exhibit D5**. The charge is signed by Volcilia Cecile, Jessley Cecile, Dr. M. S. Phogat the Chief Executive of BOB and is attested to by Attorney-at-Law Kieran B. Shah. Mr. Cecile could not recall if Mr Shah went to La Digue to attest his mother's signature or if his mother came to Mahe to sign the charge in the notary's presence, but stated that both he and the plaintiff were present when she signed the charge. He thinks that the representative of the bank was also present.

[34] He stated that after clearing that first loan he applied for a loan from the Seychelles Credit Union ("SCU") for which LD221 was charged with his mother's authorisation.

Both he and his mother signed the charge as security for the loan with the SCU without any opposition from anyone.

- [35] Mr. Cecile also admitted knowing that his mother does not know how to read but gave no answer as to whether this was disclosed to the bank representative and notary attesting Exhibit D5. He stated that he informed his mother that the purpose of the loan was for him to purchase a boat and that she signed the charge of her own free will with full knowledge of the purpose of the loan. He stated that although she does not know how to read or write she can sign and understood what she was signing.
- [36] On further cross-examination Mr. Cecile stated that Julia Monthy was present with him and his mother on La Digue for the signature of Exhibit D5 but Julia Monthy was not present when the charge in favour of the SCU was signed. He could not remember whether his mother came to Mahe to sign the charge in favour of SCU, or whether it was signed on La Digue and stated that he does not recall whether there was a notary present but thinks that his aunt Monique Ernesta was present. He further stated that his mother signed the document of her own free will without anyone forcing her.
- [37] He maintained that the signing of one charge took place on La Digue and the other on Mahe somewhere in Victoria although he does not recall exactly where.
- [38] He stated that his sister Jesselent helped him to repay the loan by making monthly repayments to the bank from money she obtained from renting the shop but that when she was prevented from operating the shop by the defendants, she could no longer continue to do so whereupon the SCU issued the *Commandement* dated 8th August 2014, admitted as **Exhibit D6**. The *Commandement* gave Notice that “*by a charge document ... dated 5th October 2010 and registered on 13th June 2011 as a first line charge by the Seychelles Credit Union, the Seychelles Credit Union granted Mr. Gessley Francois Cecile of Petit Paris, a loan in the sum of Rupees Five Hundred and Eight Thousand (Sr. 508,000/-) with interest at 13.5 % per annum on the reducing balance*”. According to the *Commandement* as at the date thereof, Mr. Gessley Cecile was indebted to the Seychelles Credit Union in the sum of Rupees Four Hundred and Ninety Thousand One

Hundred and Seventy Four and cents Twenty-Four (SCR490,174.24) with interest due in the sum of Rupees one Hundred and Forty Thousand Nine Hundred and Seventy Seven and cents Thirty-Seven (SCR1410,977.37) totalling Rupees Six Hundred and Thirty-One Thousand One Hundred and Fifty One and cents Sixty One (SCR631,151.61), with interest thereon at the rate of 13.5 % per month accruing monthly, such sums being due and demandable from Volcilia Cecile together with the sum of Rupees Ten Thousand (SCR10,000.00) for costs. Volcilia Cecile was further put on notice that in default of payment of such sums LD221 would be seized and sold in satisfaction of the debt owed to the SCU by Mr. Cecile. Mr. Cecile admitted that his mother risked being evicted from or losing her property because he and the plaintiff had defaulted on the loan repayments but maintained that it was because the defendants had prevented the plaintiff from operating her shop.

[39] It was put to him that the only reason that his mother's property was not seized by the bank was because the 2nd and 3rd defendants had been repaying the loan. He replied that he had not asked anyone to interfere with his loan and that the bank ought to have brought him to Court because it was he who had defaulted on the loan repayments and who owed the bank. He further stated that his mother should not have interfered and that he had never given anyone any permission to seize his sister's shop.

[40] In re-examination Mr. Cecile clarified that at the time he gave permission to the plaintiff to build the shop on LD221, he did not find it necessary to have a notarial document drawn up for that purpose and registered. He maintained that he did nonetheless give her such permission.

Mr. Yannick Lucas

[41] Mr. Yannick Lucas, a legal officer employed by the Seychelles Licensing Authority ("SLA") was summoned to give evidence on the SLA'S behalf and to produce any documents relating to a licence granted to Jesselent Nibourette to operate a retail shop under the name ANL Boutique. He stated that the SLA had been unable to find any record of such documents because these were old records and would not have been kept.

However he confirmed that Mr. Willy Confait the former CEO of the SLA had written a letter to Jesselent Nibourette informing her that she had to obtain her mother's permission for her to be granted a licence to operate a shop on her mother's property.

[42] In cross-examination Mr. Lucas confirmed that a search of the Register of Licences kept at the Registry of the SLA going as far back as the point in time for which the SLA keeps records, revealed no records of any license applied for by or granted to Jesselent Cecile or that an application for such a license had been refused. No search had been conducted for records relating to Jesselent Nibourette.

Ms Jesselent Cecile

[43] The plaintiff Ms Jesselent Cecile resides at La Passe, La Digue. The 1st defendant is her mother and the 2nd and 3rd defendants are her sisters. Cecile is her maiden name and her surname had been changed twice by marriage – first to Nibourette and then to Telemaque - but at present she uses the surname Cecile.

[44] While she was living on Mahe and employed in the Police Force she asked her brother Jessley Cecile for permission to build a shop on his land LD221 on La Digue. The document granting such permission was prepared by attorney-at-law Mr. Shah whom they went to see at his chambers at State House Avenue. The document was not produced.

[45] She took a loan of SCR50,000.00 from what she believes is the CCA (Concessionary Credit Agency) with which she started construction of the shop. She travelled to La Digue from time to time to see how the construction was proceeding and at times noticed some materials were missing. She claims that the defendants had taken and used the materials and never returned them, despite saying that they would do so.

[46] She then took another loan of SCR40,000.00 from Barclays Bank for construction of the shop, out of which she gave SCR10,000.00 to the defendants at their request. The gratuity payments that she received every two years while in the Police Force also went towards financing the construction, which was done bit by bit, as she also had to provide for her

children at the same time. When roofing of the house was to start the 1st defendant took masonite, doors, locks, paint and bricks from her materials.

[47] The plaintiff does not remember when construction started but recalls that it was completed in 1996 when she also obtained her license to operate the shop. By that time she was no longer in employment and had moved to La Digue to start her business. Because she was short of money she applied for another loan from DBS to purchase a chiller and deep-freezer for the shop and the 1st defendant gave her permission to charge LD221 to secure the loan. The plaintiff produced as **Exhibit P2** a “GRANT OF PERMISSION TO CHARGE PROPERTY” dated 28th March 2003 in terms of which Mrs. Jean Cecile, the grantor, being the proprietor of Title LD221, granted her permission “to execute a charge against the property to secure a loan of R38,000 obtained from the Development Bank of Seychelles”. The document is purportedly signed by Volcilia Cecile (aka Mrs. Jean Cecile) and also bears the signature and stamp of Attorney-at-Law Lucie A. Pool who attests that the document was “Signed by Mrs. Jean Cecile who is known to me in my presence”. According to the plaintiff the 1st defendant is aware of **Exhibit P2** because she went to Miss Pool’s chambers to sign the document there. The plaintiff states that she was present when the document was signed, that the 1st defendant then gave it to her and that she took it to the bank where she was informed that the defendants had called to tell them not to give her the loan. Nonetheless the loan was approved and money disbursed to the plaintiff. The plaintiff testified that afterwards she received a letter from her mother apologising for what she had done.

[48] The plaintiff testified that before starting to operate the shop, she registered her business under the name A & L Boutique. She produced as **Exhibit P3** a Certificate of Registration dated 6th November 2002 certifying that A & L Boutique had been registered under the Registration of Business Names Act by Jeslent Nibourette with Business Name No. 621343-5.

[49] She also applied to the SLA for a retail and off liquor licence for her to operate the shop but was informed that before the application could be considered she had to obtain the

permission of her mother. She produced **Exhibit P4** – a letter dated 15th April 2003 addressed to her from Mr. Willy Confait Director of the SLA - which reads as follows:

I refer to your application for retail and off liquor licences at the premises at La Passe, La Digue.

... before your application can be considered the written permission is required from the owner of the property, Mrs. Aimee Cecile for the use of the premises as such.

Mrs. Cecile has objected to your application for the above-mentioned licences in view that as the lawful owner of the premises you have not obtained her permission.

In view that Mrs, Cecile is your mother, I suggest that you contact her and obtain the necessary approval and forward it to me.

[50] Thereafter she obtained the permission of her mother. She produced **Exhibit P5** – a letter dated 7th June 2004 addressed to the Director of the SLA from Volcilia Cecile in which it was stated that the said Volcilia Cecile and her daughter had been reconciled, their differences resolved and the family reunited; and that consequently she was giving her daughter absolute permission to operate the shop business on her premises at Anse Reunion, La Digue. She also apologised for “*the inconveniences*” and stated that she was looking forward to “*give her my full co-operation*”. The letter is witnessed by a Licensing Inspector who also signed the letter on 26th June 2004. After permission was granted by her mother, the license was granted and she put in the equipment so that she could operate the shop, but the defendants prevented her from doing so. They took her key and did not allow her to enter the shop which resulted in the goods which she had put in the shop being spoilt.

[51] She informed the SLA of what had happened and they advised her to rent out the shop to them as an office first, and told her that after a while they would allow her to enter into possession thereof. She rented the premises to them for a monthly sum of SCR3000.00 for less than a year. After that, since the plaintiff was not working and did not have enough money to start the business anew, she rented the premises to one Mr. Ah-Time for a period of two years for a monthly rent of SCR5,000.00. After Mr. Ah-Time vacated the premises, the plaintiff’s daughter wanted to run the shop but the defendants prevented

her from doing so, saying that the shop was on their land. The 1st and 2nd defendants took the key from the plaintiff's brother who had been painting the shop before the plaintiff's daughter moved in. The defendants even told the SLA not to grant the plaintiff's daughter a license. The plaintiff could not go the shop because she had received letters from the defendants' lawyer informing her that she could not enter the defendants' property.

[52] After Mr. Ah-Time vacated the shop the plaintiff did not obtain any revenue from it. She was therefore unable to continue the loan repayments to DBS for the outstanding amount and was advised to pay only a monthly sum of SCR200.00 to cover the interest on the loan. Her brother also gave her SCR28,000.00 towards the loan repayment. The plaintiff produced **Exhibit P6** – a statement of account dated 9th March 2010 showing an amount of SCR8,299.00 outstanding on a loan of SCR38,000 taken by Mrs. Jesselent Telemaque to set up a retail business at Anse Reunion. She stated that whenever she was in arrears with her loan repayments the bank sent her reminders. She produced as **Exhibit P7** a Final Reminder dated 14th September 2012 from DBS informing her that her loan account was showing arrears of SCR4,275.00 with the last payment having been made on 6th June 2012, and that failure to clear the arrears by 28th September 2012 would result in legal action being taken against her. The plaintiff stated that the first loan she had taken from the CCA had been repaid in full and that the arrears of SCR4,275.00 referred to in Exhibit P7 did not relate to that first loan.

[53] The plaintiff testified that when her mother gave her permission to operate the shop, the land was registered in her mother's name. She only became aware that her mother had transferred the property to the 2nd and 3rd defendant when she commenced court proceedings and saw the documents. The plaintiff confirmed that the 2nd and 3rd defendants were aware that the shop belonged to her when they purchased the property.

[54] She stated that she has been prevented from having access to her shop since around 2010 when Mr. Ah-Time left. Since then the defendants rent it out themselves. Before they took possession of the shop they did some maintenance work which the plaintiff was not involved in.

- [55] As to how she came to be helping to repay her brother Jessley's loan with the SCU, the plaintiff explained that her mother had asked her to accompany her to Mahe saying that she would explain why later. Upon arriving to Mahe, they went to the Bank of Baroda and together with Jessley, met with the bank manager and one Julia. The bank manager spoke in English and Julia translated. After everything was finalised and all the papers signed, Jessley was asked how he was going to repay the loan. Since the boat that he was purchasing with the loan required repairs and would not start operating immediately, and as Jessley was not working at the time, the plaintiff offered to start repaying the loan for him. She agreed to make monthly repayments of SCR5000 and Jessley was to repay a monthly sum of SCR3000. The plaintiff's mother told her not to inform her sisters of what had happened.
- [56] The plaintiff repaid the loan for over three years from the money she received from Mr. Ah-Time which she transferred directly to the bank without using any of it. She repaid the loan without receiving anything in return as she is used to helping out. After Mr. Ah-Time stopped renting the shop, she no longer had any money to help repay the loan as the defendants had taken the key to the shop.
- [57] The plaintiff claims that she could not talk to her mother and sisters about returning the shop back into her possession or paying her for its use, as her mother was not on speaking terms with her and Jessley and did not allow them to come to her place. When she met them in the street, she turned them away.
- [58] The plaintiff testified that she commissioned Mrs Bastille to make an evaluation of the shop which was valued at SCR430,000 in the year 2000, which she is claiming from the defendants although the value of the shop is more than that. It is to be noted that no valuation report was produced to this Court. She is also claiming the loss she has sustained on what she could have received from her investment. She stated that the last person who asked to rent the shop after Mr. Ah-Time had moved out in 2010 was prepared to pay a monthly rent of SCR10,000.00, and it is on that basis that she is claiming SCR 330,000 as loss of revenue from that time up till now. The plaintiff further claims she has suffered moral damages as she has lost everything. At times she had

nothing to give her six children, and sometimes even had to send them to school without anything. She states that she is asking that the defendants either return her shop to her or pay her compensation for her losses.

[59] In cross examination the plaintiff confirmed that in 1983 when Jessley purchased LD221 she had been in the police force. She stated that she was in the police force for fifteen years until her child (aged 17 at the time of the hearing) was born, and agreed with counsel that she would therefore have been in the police force even prior to 1983.

[60] She did not recall the date on which Jessley gave her permission to build the shop on his property which gave rise to a *droit de superficie*, but recalls going to Mr. Shah's chambers at State House Avenue to sign the document giving her such permission. She no longer had the document as she had given it to Mr. Lucas who may have lost it when moving offices.

[61] The plaintiff first claimed that she did not recall having the document registered, but in further cross-examination stated that she had. As for the Land Registrar's representative's testimony that no *droit de superficie* or encumbrances were registered against the property, she stated that there were documents showing she owned the shop but admitted that she did not have such documents and reiterated that she gave them to Mr. Lucas who may have lost them. It was put to her that such document never existed because Jessley never gave her any permission to build on the property. She maintained that he did give her permission, that there was a registered document and that she also had licensing documents.

[62] It was put to her that if at all Jessley gave her permission to build a shop on the property at the time that he owned it, that permission would have terminated when he sold the property to SHDC because the land including everything on it became the property of SHDC. Consequently when her mother purchased the property from SHDC the land and the shop on it became her property. The plaintiff admitted that Jessley transferred the land to SHDC without protecting her interest therein, but stated that the defendants knew that the shop was on the land and should have made enquiries about it. Furthermore she

claimed that when SHDC transferred LD221 to their mother, she and her four other brothers contributed to make the payments to SHDC. However she has no receipts to prove that as they gave their mother the money to make the payments. The plaintiff denied that she has a grudge against her mother because the latter transferred the property to her two sisters and that she is therefore being untruthful and fabricating her evidence before the Court.

[63] It was also put to the plaintiff that given that when she served in the Police Force she was never based on La Digue but mostly on Mahe and Praslin, she could not have contributed to the purchase of the property. She maintained that she has always made contributions to the family's expenses even when she was not residing on La Digue as the defendants did not work. It was further put to her that she could not have been paying a loan for her mother as she had testified that she could barely feed her six children. She explained that this was when she could not operate her shop and was not working, but that when she was working she had the money. The only time she has not worked was when she left the Police Force to return to La Digue.

[64] The plaintiff confirmed her evidence in chief that she only started construction of the shop after obtaining the *droit de superficie* from her brother and that the shop was completed in 1996 when she also got her licence to operate it. However she conceded that if the written agreement giving her permission to build the shop on LD221 was executed on 26th June 1996, as stated in the plaint, the shop could not have been completed and the licence obtained in 1996.

[65] It was put to the plaintiff that if as stated in Exhibit P3 – the certificate of registration of business name dated 6th November 2002 - the business was only registered in 2002, she could not have obtained any permission or licence from the SLA prior to 2002. She stated that regardless of that she did later get the licence. It was further put to her that she would not have completed construction of the shop prior to 2002 and obtained a licence to operate the shop because she had not yet set up her business, and she replied that the SLA visited her premises before issuing her with a licence.

- [66] She then explained that she had obtained a licence to operate her shop before her mother gave her permission to do so in 2004 (by letter to the SLA - Exhibit P5), but does not remember the date the licence was issued. She explained that having been granted the licence (before receiving her mother's permission) she had stocked up the shop to start operating the business herself but was prevented from doing so by the defendants. She denied that the SLA objected to her operating the shop because there was no electricity connection to the shop and no septic tank.
- [67] Given that she could not operate her shop herself, she entered into an agreement with the SLA for them to use the premises for a short time so as to facilitate her regaining possession of the shop after the SLA vacated the premises. She does not remember when the SLA started renting the shop from her but recalls that they only did so for about a year at a monthly rent of SCR3,000. She claims that there was a written lease agreement between the SLA but she does not know where it is.
- [68] When the SLA moved out, all the goods she had purchased to sell in the shop were spoilt. Since she was not working at the time and therefore did not have any money to purchase a new consignment of goods to sell she rented it to Mr. Ah-Time. The plaintiff could not remember the exact date when Mr Ah-Time started renting the shop but stated that it was just after SLA moved out. She first said the he rented the premises for two or three years for a sum of SCR5,000.00 but then stated that it was for a period of 5 years. She explained the discrepancy by stating that she originally rented it out to him for two years which was extended to five years for her to obtain money to repay the loan which Jessley had borrowed from the SCU.
- [69] On the issue of loan repayments, it was put to the plaintiff that she claimed to have been unable to repay only SCR 1,191.00 per month for her own loan but nevertheless she had been able to repay SCR5000 per month for her brother's loan with Bank of Baroda. She stated that the two loans were not being repaid at the same time. Confronted with her testimony that she had not been earning an income since she stopped renting to Mr. Ah-Time in 2010, she stated that she paid the sum of SCR5000 whilst Mr. Ah-Time was

renting the shop between 2010 to 2012. In 2012 she was also working at Patatran Village with Gerard Lablache as a chambermaid and earning approximately SCR5,000.

[70] She agreed with counsel for the defendants that her lease agreement with Mr. Ah-Time started on 21st September 2008 for a period of two years and was extended in 2010 for another three years ending in September 2013. She disagreed that her previous evidence was therefore incorrect and explained that Jessley only took and she agreed to pay his loan, after the expiry of the initial two years of the lease to Mr Ah-Time i.e. 2010. She thought that he might have taken the loan about five years ago i.e. 2014 when she was employed at Le Relax.

[71] The plaintiff finally conceded that in 2010 she was unable to repay SCR 1,191.00 for her own loan but was repaying her brother's loan of SCR5000. She explained that this was because the money was paid directly into her brother's loan account and not to her. She denied that she could not repay the loan due to her own bad decision as a debtor and not because the defendants had prevented her from operating her shop, hence the reason why she was being evasive. She stated that she does not really recall the dates but remembers what happened and the prejudice she had suffered.

[72] As for the signing of the charge by Volcilia, the plaintiff stated that when she accompanied her mother to the Bank of Baroda, she was seated next to her at the bank and saw her signing the documents. It was brought to her attention that Jessley had testified that the document which she had said was signed at the Bank of Baroda on Mahe was actually signed on La Digue. She replied that Jessley had said that certain documents were signed on La Digue but he did not specify if it was the document relating to the Bank of Baroda or a document relating to another bank. She was reminded that Jessley had taken two loans and she again explained that there was one document which was signed on La Digue at her mother's place which Jessley had left with and which her mother had asked her not to talk about to anyone. It was put to her that this was a very serious matter because her mother does not know how to read and write although she can sign; that she was a witness to a transaction where it was not stated that her mother cannot read and write; and that she was therefore a party to an illegal transaction. The

Plaintiff stated that her mother understood what she was signing and that she had told the plaintiff so.

[73] In regards to the financing of the construction of the shop, it was pointed out to the plaintiff that the three loans that she claims to have borrowed to build the shop – of SCR50,000 from the CCA, SCR40,000 from Barclays Bank and SCR38,000 from DBS - amount to a total of only SCR128,000. She stated that she had also built the shop with her earnings and two-yearly gratuity payments of SCR25,000 from when she was in the Police Force until she left in 2002 or 2003. She also stated that she and her husband had pooled their earnings which they invested in the shop. They invested more than SCR400,000 because the defendants took everything from her and she had to buy some of the items again. It was put to her that she could not have earned that amount of money to invest into the shop during the time she worked in the Police Force up to 2003 when she left, solely with her earnings and gratuity. She insisted that she obtained the money from her work with the police and stated that if she had not put in that amount of money construction of the shop would never have been completed. She also claimed that she had proof that she borrowed and repaid the loan of SCR40,000 with Barclays bank but was unable to provide the same.

[74] As for her claim of interest and arrears on the loans she had borrowed, it was put to the plaintiff that having admitted on the record that she could not repay such loans due to her choice to repay Jessley's loan and not because of the acts of the defendants, she could not claim such interest and arrears from the defendants. She disagreed and stated that she had also been working during the approximately two years when she was making the monthly loan repayments of SCR5000 to settle Jessley's loan.

[75] The plaintiff agreed that she rented out the shop to SLA for a period of 1 year between September 2007 and September 2008 and that right after that, she entered into a lease agreement with Mr Ah-time which started in 2008 up to 2013. It was put to her that it was therefore not correct for her to say that from 2010 onwards she has been deprived of the opportunity for her to rent or reap a benefit from the shop. She stated that it was correct because at first the defendants prevented her from operating her business, but

when she could finally do so after Mr. Ah-Time had left, she was no longer in a position to run the business: she no longer had any money, all her goods were finished and the only thing she could do was rent out the shop to recuperate some money. It was put to her that from 2007 up till September 2013 she reaped a benefit by renting out the shop and collected a monthly rent of SCR3000 from SLA and SCR5000 from Mr Ah-time. She denied receiving any such benefits, and when it was put to her that this was because she had repaid Jessley's loan for 2 years she replied that the money was hers to do as she wished. It was further put to her that it was therefore not the defendants who prevented her from benefitting from the shop but that it was her own choice. She explained that from the start they did not allow her to operate the business and even when her daughter tried to take over the shop after Mr. Ah-Time left they did not allow it. According to the plaintiff, her daughter was prepared to pay SCR5000 for the shop but the defendants did not allow them to enter or paint the shop. This is why they left and instead got premises at the Pension Fund. They never entered into any subsequent contracts for renting the shop after that.

[76] The plaintiff denied any knowledge of the SCU loan to Jessley which gave rise to the *Commandment* to foreclose on her mother's property, claiming that she was only aware that her mother had charged the property as security for the loan borrowed from the BOB. When it was put to her that Jessley had testified that he had transferred the loan from the BOB to the SCU, she explained that Jessley used the money obtained from the SCU to repay the loan from the BOB. Her agreement with Jessley to pay off his loan with BOB continued in respect of the loan with the SCU. She stated that she stopped repaying the SCR5000 just after Mr. Ah-time vacated the shop in 2013, when the defendants took the key to the shop. Her attention was drawn to the fact that in 2014, after she stopped repaying the loan the SCU issued a *Commandement* (Exhibit D6) for the seizure of her mother's property.

[77] She stated that she was working at Le Relax at the time, and that she had finished paying her own loan more than five years ago at around the time that Jessley took the loan from BOB. She had repaid her loan in a lump sum and does not have any outstanding loans

despite Exhibits P7 and P6 showing outstanding loans in 2012 and 2010 respectively. It was put to her that she could not then claim interest and arrears on a loan that she did not owe to the bank anymore, and especially as she was sufficiently stable economically to refund someone else's loan. She stated that she suffered from not being able to repay her loan and the bank even wrote to her in Exhibit P7 regarding the arrears and therefore she should be able to claim such interest and arrears. Furthermore, Jessley only took the loan from BOB quite recently whereas she and her family have been suffering way before that.

[78] Plaintiff was further cross-examined on the documents her mother allegedly signed. Regarding her testimony that her mother granted her permission to operate the shop by the letter to the SLA (Exhibit P5), and that her mother also went with her to an attorney-at-law and asked for her forgiveness, she could not really remember when this happened but denied lying about it, stating that she has the documents to prove it. She then stated that she was not present when her mother signed Exhibit P5 and her mother gave her the letter after it was signed. It was put to her that her mother did not sign that document freely and voluntarily and that the plaintiff had been behind the production of that document. She insisted that her mother had signed it and that she had not been present.

[79] In regards to Exhibit P2 dated 28th of March 2003 granting her permission to charge LD221, the plaintiff stated that she and Geerah, Jessley's late wife were present when her mother signed the document before Ms Lucy Pool. It was put to her that her mother never accompanied her to Ms Pool's office to sign the document and further that her mother does not know how to read and write. She stated that although the document is written in English Ms Pool spoke to her mother in Creole and the document was signed by her mother.

[80] The plaintiff denied that her mother's signature on all the documents purporting to emanate from her mother that were produced and which she claims that her mother voluntarily signed, were obtained illegally.

- [81] It was further put to the plaintiff that Jessleen and Josianne had to take a loan to repay Jessley's loan which she and Jessley had failed to repay, so as to prevent their mother's property from being foreclosed. She blamed the defendants for the loan not being repaid because they seized the key to the shop which is still in their possession. As to the defendants having to repay Jessley's loan which the plaintiff had agreed to repay, to prevent themselves from losing LD221 and their houses thereon, the plaintiff stated that the defendants have nothing to do with the venture for which Jessley had borrowed the loan, that they were not the guarantors of the loan and there was no need for them to repay the loan. She stated that they are repaying the loan because they know what they have done.
- [82] The plaintiff agreed that Jessleen had left La Digue since 1980, but stated that she is always coming back and creating problems up until today, hence the reason why she is being held jointly liable with the other defendants for the incidents that occurred although she was not residing on La Digue at the time of their occurrence.
- [83] As for the valuation of the shop carried out by Cecile Bastille in 2003, the plaintiff states that at the time she was living at La Passe and did not accompany Ms Bastille because the defendants did not want her to come on the property. It was put to her that Ms Bastille never went onto the property either and therefore the value she had given to the property could not actually be the value of the property. She replied that she would not know as she was not present but that Ms Bastille was supposed to come on that day.
- [84] Finally it was put to the plaintiff that the 1st, 2nd and 3rd Defendants are not liable to pay compensation to the plaintiff for the loss and damages claimed. She replied that they would have to pay her for what they have done.
- [85] In re-examination the plaintiff stated that she submitted all documents to the planning authority for construction of the shop and obtained planning permission for the same. She agreed with counsel that if planning permission was granted there must have been consent from the owner of the property who at the time was Jessley.

- [86] The plaintiff also stated that the SCR128,000 that she obtained by way of loans would not suffice to build the shop, and several times she had to use money from her savings.
- [87] She further confirmed that she rented the shop to Mr Ah-time from 2008 to 2013 and stated that she was dispossessed of the shop from the time Mr Ah-time vacated it up until now.

The Defendants' case

Testimony of Jessleen Cecile

- [88] The 3rd defendant Jessleen Cecile is the 3rd child and eldest daughter of the 1st defendant Volcilia Cecile, and resides at Petit Paris. Her testimony is as follows:
- [89] In 1979, the family was having problems with their father, and Jessley who is the eldest sibling asked her to help him buy LD221 from one Mrs. Uzice. Their arrangement was that she would pay for the land and he would take a loan to build the house which at the time was only a frame. He did not tell her the price of the land or the house, but told her that he was going to take a loan of SCR75,000 from SHDC to re-build the house.
- [90] She started making payments of SCR500 directly to Jessley for the land in October 1979, as the Seychelles Savings Bank had not yet opened a branch on La Digue where they were living at the time. There was nothing in writing regarding the payments. In 1980 she started attending the Teacher Training College on Mahe and started paying the money directly into the Seychelles Savings Bank until 1983. She does not know the amount she paid altogether but states that she paid SCR500 from October 1979 to December 1982.
- [91] Jessleen returned to La Digue in 1983 where she lived for three years before returning to Mahe in 1986, where she is still living.
- [92] When Jessley found out that she had completed the loan repayments for the land, he had the land transferred from Mrs. Uzice in his name. The land transfer document - Exhibit D2 - is dated 27th January 1983, and the consideration for LD221 is SCR52,000. She only

found out about the transfer of LD221 from Mrs Uzice to Jessley later when the SHDC informed Volcilia Cecile of the same.

- [93] Jessley had taken a loan of SCR75,000 from SHDC to build the house on LD221 but he never built the house and did not finish repaying the loan. The house was built by Jesleen, her two other brothers and her mother Volcilia Cecile. Subsequently Jessley transferred LD221 with the completed house thereon to SHDC, to settle his debt to them. Exhibit D4 is the transfer deed dated 24th March 1998 and registered on 30th March 1998 by which he transferred LD221 to SHDC for a sum of SCR150,000. SHDC in turn transferred the land to Volcilia Cecile for the same sum by transfer dated 20th March 1998 and registered on 12th August 1998 (Exhibit D3) because she and her children were encountering problems where they were staying. When the property was transferred to Volcilia Cecile, she had to continue repaying SHDC despite Jessleen having already paid for the land from her salary and Volcilia and her younger son having borne the cost of building the house, but it is unclear from her testimony how much of the consideration of SCR150,000 she had to pay.
- [94] Although she was not living on La Digue at the time, she understands that at the time that Jessley still had title to LD221, he gave Jesselent permission to build a shop thereon. However there were no registered documents giving Jesselent a *droit de superficie* on the land. Jesselent built the shop while the property was still registered in Jessley's name. The shop was almost completed by the time the property was transferred to Volcilia Cecile.
- [95] After returning to Mahe in 1986, Jesleen rarely went to La Digue except sometimes during the August and December holidays. As for the allegations that she did acts which hindered Jesselent in completing construction of her shop, and after it was completed prevented her from operating it or renting it out, she said that she rarely went to La Digue and did not have any contact with Jesselent after the shop was completed. The only thing she did, at her mother's request, was to get a lawyer to write to Jesselent and to the police on La Digue to stop her from coming on the property as her mother claimed that Jesselent

argued with and even threatened her. She has never taken any steps to prevent her from renting out the premises and does not even know whether she did so or not.

- [96] Her only involvement was after she was served with a *Commandement* (**Exhibit D6**) from the SCU for seizure of her mother's property LD221 for non-repayment of a loan of SCR508,000 borrowed by Jessley. She enquired from her mother whether she had taken a loan from the SCU but she replied in the negative although she recalled signing a document brought by one Julia Monthy accompanied by Jessley and Jesselent.
- [97] In order for her mother's house not to be seized Jessleen took SCR25,000 from her savings, managed to obtain SCR5000 from social security, and together with her younger sister Josianne took a loan of SCR250,000 from the Small Business Financing Agency ("SBFA") to repay the loan taken by Jessley from the SCU, which they repaid in full with interest in 2014. The SCU also took SCR200,000 from Jessley's account that he held with them to repay the interest on the loan that he had taken, as Jessleen did not have sufficient money to cover the same. **Exhibit D8** is a letter dated 6th April 2015 from the Seychelles Credit Union addressed to Aimee Volcilia Cecile certifying that "*Mr Gessley Francois Cecile has fulfilled all his obligations with the Seychelles Credit Union through full settlement of his outstanding loan*" and authorising "*the discharge of the 1st line charge registered against parcel LD221 in the sum of SR508,000/- ...*"
- [98] Jessleen had to charge her property namely Title No. S2217 as security for the loan from SBFA. **Exhibit D7** is a charge dated 19th December 2014 in terms of which Yalna Jesleen Cecile (the chargor) charged her interest in title S2217 to secure the payment to SBFA of the sum of SCR250,000 for a loan of a like amount advanced or to be advanced to Josianne Fleurange Jean (the borrower) with interest. At the time of the hearing she and Josianne still had more than SCR100,000 to pay back for the loan they took from SBFA.
- [99] Jessleen admitted that after the *Commandment* was issued and she and Josianne had taken the loan from SBFA to repay Jessley's loan from the SCU, they took control of the shop and denied Jesselent enjoyment of her property. She explained that Jesselent was supposed to repay Jessley's loan from money obtained by renting out the shop, but that

she had not done so. Hence they took over the shop to rent it out to obtain money to repay their loan to SBFA. They rented the shop to Mr. Sharo Valentin for a year and used the rent money to repay the loan from SBFA. After that it remained unoccupied until 2019, when it was again rented out and the money used to repay the loan. The defendants are all pensioners and have no other way to repay the loan.

[100] Jessleen denies preventing Jesselent from obtaining the relevant license to operate her shop, and states that she did not get a license because the premises had no septic tank and there was no electricity connection. She further denies that Jesselent could not operate her shop and consequently could not repay her loan from DBS because of the acts of the defendants and confirms that Jesselent rented out the shop to the SLA in 2008 for about a year for SCR3000, and for four years from 2009 to 2013 to Mr. Michel Ah-time. The *Commandement* was served on Jessleen in 2014.

[101] Jessleen says she is not liable for any loss and damages as claimed by the plaintiff as she has not been back to live on La Digue since she moved to Mahe and does not know what goes on there. She states that Jesselent is angry with her because she helped her mother to regain possession of her property after the *Commandement* was issued.

[102] As for stealing building materials and items in the shop so that Jesselent had to take an additional loan to make the shop suitable for renting, Jessleen reiterated that she was not on La Digue at the time. Furthermore when the shop was completed Jesselent was on good terms with their mother.

[103] In cross-examination it was put to Jessleen that she did not raise in her statement of defence and it was not put to Jessley in cross-examination, that she had made any payment towards the purchase of LD221. She stated that Jessley had admitted that he owed her SCR18,000 but that he owed her more than that.

[104] As for the sum of SCR800,000 stated to be the consideration for the transfer of LD221 in Exhibit P1, she admitted that they did not pay that money to their mother, but that it was the sum that they repaid for the loan taken by Jessley from the Seychelles Credit Union.

[105] She explained that LD221 was transferred to her and Josianne because after they had repaid his loan, Jessley asked their mother to transfer the property back to him for SCR150,000. When Jessley transferred the property to SHDC and SHDC transferred it to Volcilia Cecile there was only Volcilia Cecile's house and the shop on the land, but now there is also Josianne's house. The property was transferred to them to protect their mother in case Jessley tricked her in transferring it back to him. She admitted that while Josianne's right in the property was protected by giving her a *droit de superficie*, no usufructuary interest had been granted to Volcilia Cecile but stated that the latter would have the right to stay on the property until her death. Jessleen also admitted that the property was transferred to them so that after their mother passed away, Jessley would have no rights over the property as he had already taken away enough from them.

[106] As to the justification for involving Jesselent in the matter, given that it was Jessley who had taken the loan and not repaid it which led to the *Commandement* being issued, she stated that Jesselent had accompanied Jessley and Julia Monthy to see their mother and misled her in signing the document charging LD221 as security for the loan taken by Jessley, on the pretext that she was only signing a document giving Jesselent the shop. They did not explain to her what was being done. She stated that Julia Monthy had confirmed this to her. Jessleen denied that it was Volcilia herself who had asked Jesselent to accompany her to Mahe, stating that Volcilia was not on good terms with Jesselent, and again stated that Julia Monthy had told her this.

[107] As to why the defendants took over Jesselent's shop to repay the loan taken by Jessley instead of recovering the same from Jessley, Jessleen stated that it was Jesselent who agreed to repay Jessley's loan by renting the shop. It was put to her that there was no agreement to that effect but that Jesselent only did so to help out her brother. She replied that Jessley took the loan and should have repaid it himself, but failed to do so which resulted in the bank attempting to seize their mother's property for non- repayment.

[108] Jessleen further stated that she did not approach Jesselent to discuss the matter with her because Jesselent and Jessley were not happy that their mother had given Josianne a part of the land to build her house, and had acted maliciously for their mother and Josianne to

lose their homes. She stated that this is obvious from Jessley's statement in Court that he had not asked them to repay his loan. However if they had not done so the property would have been seized and sold. Jessleen further stated that the defendants are the ones suffering because they are the ones repaying a loan which they never borrowed.

[109] In re-examination Jessleen confirmed that when Jessley testified that he owed her a certain sum of money that money was what she had paid for the purchase of LD221.

[110] She further confirmed that after she and Josianne had repaid the loan taken by Jessley which led to the *Commandement* being issued, Jessley asked Volcilia to transfer the property back to him.

[111] She explained that the consideration of SCR800,000 for the transfer of LD221 from Volcilia Cecile to herself Jessleen and Josianne by way of Exhibit P1 represents the money they loaned from the SBFA together with their personal contributions as well as the SCR200,000 which was taken from Jessley's account, which was used to repay the SCU for the debt owed to it by Jessley, which included the principal sum of SCR508,000 as well as interest.

[112] She further stated that the reason that no usufructuary interest was granted to their mother when LD221 was transferred to her and Josianne, was to prevent Jessley from pestering their mother to transfer the same to him.

[113] As for it being unfair to exclude Jesselent from being given a share of the property on the basis that Jessleen and Josianne had repaid Jessley's loan, she stated that Jesselent was involved in getting Volcilia to sign the document to charge LD221 before Mrs. Monthy. Further Mrs Monthy had said that Jesselent was responsible for repaying Jessley's loan with rent from the shop, which Jesselent also stated in Court, but which she failed to honour.

Testimony of Josianne Fleurange Jean nee Cecile

[114] Josianne Fleurange Jean née Cecile was born in 1972 and is the youngest daughter of Volcilia Cecile. She has always lived and continues to live on La Digue and currently has

a house on LD221. She was not involved in the purchase of LD221 by Jessley from Gisele Uzice in 1983 as she was still a child at the time. She also has no personal knowledge of the subsequent sale of the property to SHDC and its purchase by Volcilia Cecile in 1998.

[115] She was still young when Jesselent started building the shop and has no recollection of the same but remembers the property being rented out first to the Seychelles Licensing Authority and after that to Mr. Michel Ah-time. She denies that after the shop was built, Jesselent could not rent it out because the defendants caused problems and prevented her from doing so. She also stated that her mother never took or stole building materials which Jesselent purchased to build the shop as a result of which she had to take a loan and start building her shop from scratch. The only thing which prevented Jesselent from renting out her shop was because she could not obtain a license as the shop did not have any electricity or a septic tank.

[116] Josianne only got involved in the matter before the Court in 2014, when LD221 was about to be seized by the SCU because Jessley had taken a loan from that institution and failed to repay it. Since she had already started building her house on the property she had to help repay the loan, otherwise she stood to lose her house. She and Jessleen borrowed a loan of SCR250,000 from the SBFA for that purpose. She confirmed that Exhibit D7 is the document signed by herself and Jessleen with the SBFA to charge Title No S2217 as security for the loan which was used to pay off Jesselent's loan with the SCU. Upon paying the SCU with the money obtained from the loan from SBFA together with some other contributions, proceedings to seize LD221 ceased, and SCU confirmed in Exhibit D8 that the principal sum of SCR 508,000 outstanding to it had fully repaid. To date Josianne and Jessleen are still repaying the loan to SBFA.

[117] Subsequently on 4th July 2015, Volcilia Cecile transferred LD221 to Josianne and Jessleen for a consideration of SCR800,000 which is equivalent to what they had to repay to the SCU in terms of the principal sum borrowed by Jessley and the interest. The Seychelles Credit Union also took around SCR150,000 to SCR200,000 from Jessley's own bank account. LD221 is now registered in Josianne and Jessleen's names.

- [118] In 2016, after Josianne and Jessleen had repaid Jessley's loan to the SCU, the shop built by Jesselent was rented out to a man whose name she does not recall, for one year. The money obtained therefrom was used to repay the loan to SBFA.
- [119] Josianne denies that the defendants are responsible for the damages that Jesselent claims to have suffered. She states that Jesselent had previously been renting out her shop but did not know of how to make good use of her money and used it to repay her brother's loan. She says that Jessley and Jesselent enjoyed the rental money from Jesselent's shop and now the defendants find themselves repaying their loan.
- [120] She denies owing Jesselent any money and states if anyone owes Jesselent money it is Jessley. She further claims that the situation is a result of Jessley and Jesselent's own malicious acts: It started when their mother Volcilia gave Josianne permission to build her house on a small portion of land which upset Jesselent. She was always be angry with Josianne and whenever she came to La Digue, she would always say that this was the property where she wanted to build her café, her shop, and her business although she never did. Jessley purposely did not re-pay his loan, so that the property would be seized.
- [121] As to whether she had done anything to prevent Jesselent from running her business, repaying her loan, interest and arrears and renting her premises, Josianne stated that if LD221 had been seized and sold, all the three buildings on that plot – her and her mother's house and Jesselent's shop - would all have suffered the same fate.
- [122] In cross examination it was put to Josianne that according to **Exhibit P4** – the letter from the SLA – the reason that Jesselent did not initially get a license was not because of any defects with the premises but because Volcilia Cecile, as owner of the property, had objected to the application because Jesselent had not obtained her permission. Josianne replied that the SLA only stated that the written permission of the owner of the property was required before the application could be granted, and maintained that Jesselent was not granted a licence because the premises had no septic tank of its own and no electricity. According to her Jesselent wanted to make a connection from the main electricity line from Volcilia's house. She was unable to explain why the letter was silent

on these issues and stated that she knew about them because she lived at that place. It was again put to her that the only reason Jesselent did not get a licence was because she did not obtain her mother's permission and she replied that she does not know, and that the property is not hers but her mother's. It was further put to her that she was speaking of matters of which she was not aware and she stated that she knew that Jesselent did not get a license.

[123] It was also put to her that according to her testimony she and Jessleen decided to take possession of the shop when the *Commandment* was issued. She replied that she did not take the property of Jesselent but that the shop being on LD221 was also subject to the seizure in terms of the *Commandment*. She and Jessleen repaid the loan which led to the *Commandment* being issued but Jesselent never made any contributions. She further pointed out that if the SCU had seized LD221 Jesselent would not be making any claims with regards to the shop as she is now.

[124] Josianne claims that the defendants never stopped Jesselent from renting out her shop. They only rented out the shop to one Mr. Sharo Valentin in 2016 for a year, after which no one rented it until August 2019, when they rented it to one Mr. Kenneth who is still occupying it. However, she conceded that between the time that Mr. Valentin stopped renting the shop to the time that Mr. Kenneth took over, Volcilia Cecile had the key to the shop and Jesselent has no access thereto. It was put to her that the defendants were therefore in control of the shop and she replied that this was because the place had been seized by the SCU for non-payment of loan by Jessley.

[125] Josianne stated that Jesselent cannot get back her shop now because she and Jessleen are still paying off the loan to SBFA that was used to pay off the loan to the SCU. It was put to her that Jesselent was being punished for Jessley's actions and she replied that if Jesselent had come forward and helped to pay back the loan to the SCU she would still have her shop today. She stated that Jesselent and Jessley are responsible for borrowing the loan from the SCU and that they enjoyed the money from that loan so the defendants cannot give Jesselent back the shop. She explained that Jesselent is responsible for

Jessley's loan because she stated in Court that she was the one who was responsible for paying it back as Jessley was not working.

[126] It was put to her that Jesselent had only testified that she was using the money obtained from renting the shop to repay Jessley's loan to help him, and that she had made no commitment to repay the loan. She was only helping Jessley who was ultimately responsible for repaying his own loan. Josianne replied that Jessley was not working and maintained that Jesselent was responsible because of her involvement in the whole matter and because her shop is on LD221.

[127] It was further put to her that the defendants took possession of the shop to rent it out to get money to repay Jessley's loan at the detriment of Jesselent, who has nothing to do with the loan. Josianne replied that Jesselent had been repaying Jessley's loan and if she wanted her shop back she had to pay the loan they took from SBFA. Jesselent could not benefit from them repaying the loan and get the shop back without paying anything. The defendants were not prepared to return the shop to her except if the Court ordered them to.

[128] In re-examination Josianne confirmed that **Exhibit P4** – the letter from the SLA – was dated 15th of April 2003, and that Volcilia Cecile ultimately allowed Jesselent to rent the premises, which she did to the SLA and Mr. Ah time.

[129] As for counsel for the plaintiff's contention that the defendants were being unreasonable towards Jesselent who was not a party to the loan agreement with the SCU, Josianne pointed out that Jesselent was involved in charging LD221 as security for the loan Jessley borrowed from the SCU which led to the property almost being seized. She reiterated that Jesselent, Jessley and Julia came together to see Volcilia Cecile and tried to brainwash her to sign the document without explaining to her what it was. They should have explained to her what she was about to sign and the consequences if the loan was not paid. If they had not gotten her to mortgage her property, this issue would not have arisen.

[130] Josianne confirmed that at the time that the *Commandment* was issued in respect of LD221 on the instructions of the SCU, other than the shop, Josianne and Volcilia's houses also stood on that property.

Testimony of Volcilia Cecile

[131] Volcilia recalls purchasing parcel number LD221 from SHDC in 1998 but does not know who it belonged to before that. Prior to purchasing the property herself, she only recalls that her daughter Jessleen told her that she had purchased the property from a woman, and since she was having problems with her husband at the time she moved there with her children. At the time there was a dwelling house which had not been completed on the property.

[132] Volcilia purchased LD221 from SHDC for a sum of SCR150,000 which was repaid by monthly deductions from her Social Security Pension. When she purchased the property she was not aware nor was she told by SHDC that Jesselent Cecile had any right on that property. It is only upon her return from a trip to Mauritius that she saw that Jesselent was constructing a shop on the property. At that point the roofing was about to be done. She is not aware if Jesselent had taken a loan to build the shop.

[133] Volcilia never went to school and does not know how to read and write. She also stated that she cannot sign documents as she had just started to attend literacy classes when the classes stopped. She cannot recall clearly if she signed any document when she purchased the property from SHDC but accepted that she had done so when shown her signature on the transfer document (Exhibit D3).

[134] She was not aware whether Jesselent was refused permission to operate the shop but recalls that she rented it out to the SLA and later to Mr. Ah-Time.

[135] She denied that she, Jessleen and Josianne were malicious towards Jesselent and prevented her from renting out her shop and stole her materials claiming that if there had been any materials in the shop Jesselent would not have been able to rent it out.

- [136] She denied objecting to Jesselent obtaining a license to rent the shop. She also stated that she was not aware of a letter written by her to the Director of Seychelles Licensing Authority in 2004 authorizing Jesselent to rent out the shop. When she was shown the letter (Exhibit P5) and the signature thereon and asked if she recalled signing it she replied in the negative. She added she had told Jesselent to give her a little money when she rents out the shop but that Jesselent had insulted her and had not given her anything.
- [137] In regards to the charge purportedly signed by her agreeing to charge LD221 to secure repayment of a loan taken by Jessley Cecile (Exhibit D5), she stated that one day she was coming home from the shop and she saw Jesselent, Jessley and one Julia and they told her that there was a paper for her to sign. She asked them what it was for and they said it was because Jesselent's shop was on her property but did not explain why she had to sign the paper. If they had told her the real purpose she would not have signed it but they did that because they know that she cannot read and write. She stated that the document that she signed in the presence of Jesselent, Jessley and Julia was signed at her home on La Digue and that Notary Mr. Kieran Shah was not present. When she was asked if she had ever appeared before him to sign the charge she stated that she does not even know who he is.
- [138] Volcilia denied Jesselent's testimony and allegations in her plaint that after she had completed construction of her shop, Volcilia behaved in a hostile manner and acted maliciously towards her as a result of which she could not rent out the shop and derive an income from it.
- [139] She was asked why it was not possible for Jesselent to continue renting out her shop after she had rented it to SLA and Mr. Michel Ah-Time and she replied that it was because she did not have electricity or a septic tank.
- [140] She recalls when the SCU was initiating proceedings to seize LD221 and understands that it was because Jessley had taken a loan of SCR800,000 from them which he had not repaid. Two police officers came to her house and one of them made a phone call to Jessley. The officer said that Jessley had told him to put the defendants out on the street if

necessary. However the Bank did not proceed with the seizure because Jessleen and Josianne took a loan from SBFA to clear Jessley's loan to the SCU and stop the seizure. To date the defendants are still repaying the loan to SBFA, using money obtained from renting out the shop as Jesselent also used the loan money from the SCU.

[141] In 2015 Volcilia transferred LD221 to Jessleen and Josianne so that Jessley would not fool her again, as he had stated that he would take back the land again. She also transferred the land to them because they were repaying the loan to SBFA from their own funds, together with the rental from the shop.

[142] Volcilia was asked if she recalls giving Jesselent permission to charge LD221 in 2003 and she replied that she does not know. When asked if she recalls coming to Mahe to see a Notary with Jesselent to sign a charge, she said that she only recalls coming to Mahe to sign the transfer of LD221 from SHDC to herself.

[143] In regards to the damages sought by Jesselent from the defendants, Volcilia stated that she does not owe Jesselent any money because when the property was sold to her it was sold with all the buildings thereon. Furthermore she never stopped Jesselent from using her shop but on the contrary she removed rotting goods from her shop. It was Jesselent who sold the chiller, and deep freezer which were in the shop. Jesselent also benefitted from the rent money which she did not, so she does not think she owes her any money.

[144] In cross-examination Volcilia agreed that when she came from Mauritius the shop was already under construction but stated that she had never given permission for the same. She is not aware if at the time that the shop was constructed the property belonged to her or Jessley, and stated that it was Jessleen who brought her to live on the property.

[145] She stated that Jesselent had brought her to sign a document from SHDC but that she could not recall clearly if this was before or after her trip to Mauritius. However she stated that it was not too long ago. It was put to her that this means that when she went to sign the documents with Jesselent, the shop was already built.

- [146] She also stated that she is not aware if Jessley gave permission to Jesselent to build the shop, and that she did not ask any questions in regards to the shop because it was Jesselent's shop and did not concern her. It was put to her that this means that when she purchased LD122 from SHDC the shop was already there to which she replied in the affirmative, but stated that when she bought the land there were 4 houses on the land which all belonged to her by virtue of her purchasing the land. She further stated that when she bought the land the shop was there and nobody told her that the shop was not hers and she did not ask any questions in that regard. At the time her relationship with Jesselent was fine.
- [147] Volcilia stated that Jesselent never approached her at any time to ask for permission to obtain a license for her shop. She does not recall drafting any document to allow her to obtain such license. It was put to her that certain documents have been admitted by the Court signed by her and she was asked whether she was now saying that she had not signed those documents. She replied that she does not recall. She explained that it has been a while and she has no knowledge of such documents. She only remembers signing the document which was signed at her home on La Digue, and the transfer of LD221 from SHDC to her dated 20th of March 1998 for a sum of SCR150,000 (Exhibit D3) which she signed in an office.
- [148] Volcilia does not recall signing a letter addressed to the SLA granting permission to Jesselent to operate her shop business on Volcilia's premises and stated that that the shop belongs to Jesselent.
- [149] She stated that she is on good terms with Jesselent and denied that Jesselent ever came to her for any financial support when she needed to buy a chiller for the shop.
- [150] Volcilia was asked if she recalled granting permission to Jesselent to charge her property to secure a loan of SCR38,000 Rupees from the DBS and signing a document to that effect before Notary Miss Lucie Pool on the 28th March 2003. She was shown **Exhibit P2** in that regard and stated that she did not recall doing so. When asked if she was denying that the signature on the document was hers she stated that as a pensioner she is unable to

sign any documents for a person to be granted a loan and that therefore she did not sign the document.

[151] Volcilia recalls transferring her property to Josianne and Jessleen by a transfer document dated 4th July 2015 made before Mr. Basil Hoareau (**Exhibit P1**). She stated that this transaction had been done very recently and hence she remembers it but she could not remember if she signed the document. She said that she could not recall clearly because she seems to forget quite quickly. However when she was told that both parties have to sign such a document she conceded that maybe she had signed it.

[152] When she was asked if she was saying that she had never signed the documents produced before the Court or that she was not aware of them she replied that she does not know and is not aware.

[153] She was asked who the shop belongs to and she stated that when she bought LD221 there was her house, Josianne's house and the shop on the land, and that therefore when she bought the land she paid for all the properties on it. However she then conceded that the shop belongs to Jesselent. She was then asked whether she was saying that the shop belongs to her because she bought the property on which it stands and she said that the Court would decide.

[154] The defendants are currently earning SCR800 for the rent of the shop which is the amount of the loan repayments to SBFA. Volcilia stated that the defendants do not owe that money to Jesselent and reiterated that when she purchased the land she purchased everything on it. When asked if there is any chance of Jesselent regaining possession of her shop she replied that she does not know.

[155] In re-examination Volcilia stated that when she bought LD221 from SHDC she was not told that Jesselent had a right over the property because she had built a shop thereon.

Submissions

[156] Only counsel for the plaintiff filed written submissions and due consideration was given thereto and will be referred to as appropriate in the analysis below.

Analysis

[157] In terms of the plaint, the plaintiff seeks compensation from the defendants for loss and damages arising from the alleged acts of the defendants which deprived her of the possession and enjoyment of the shop situated on LD221, and prevented her from carrying out her retail business from that shop, and renting it out. The loss and damages are as particularised below:

(a) Cost for the building base (sic) on evaluation	SR. 430,000.00
(b) Interest and arrears on loan	SR. 45,000.00
(c) Loss of revenue from June 2016 the date the Property was transferred to the 2 nd and 3 rd Defendants at SR,150000 (sic)per month to April 2018. (22 months)	SR.330,000.00
(d) Moral Damage	SR.80,000.00

[158] The plaintiff's claim is based on rights she claims to have on the shop arising from a *droit de superficie* granted by a written agreement between herself and her brother Jessley Cecile at the time that he was the owner of LD221. Jessley subsequently transferred LD221 to SHDC, which then transferred it to the 1st defendant, who in turn transferred it to the 2nd and 3rd defendants who are the current registered proprietors of LD221. The plaintiff avers at paragraph 3 of the plaint that “[b]y a written agreement executed on the 26th June, 1996 Jessley Cecile granted permission to the plaintiff to build a shop on the said property land parcel LD221 with special mention that the Plaintiff acquired an automatic *Droit De Superficie*.” She goes on to state at paragraph 4 that “In reliance on the said agreement the plaintiff borrowed a loan from SIDEC which the Plaintiff used to build the shop building.” This is denied by the defendants who aver in their defence that they have no knowledge of any permission to build or *droit de superficie* on LD221; that there was no permission to build registered against LD221 when the 1st defendant purchased it from SHDC or when she sold it to the 2nd and 3rd defendants; and that any *droit de superficie* granted by Jessley Cecile to the plaintiff would have terminated when he transferred LD221 to SHDC.

[159] The evidence does not bear out that there was a written agreement granting a *droit de superficie* to the plaintiff. Such an agreement was never produced before this Court. Mr Hoareau, the representative of the Land Registrar testified that no *droit de superficie* was registered as an encumbrance against LD221. Furthermore Exhibits D4 (transfer of LD221 from Jessley Cecile to SHDC), D3 (transfer of LD221 from SHDC to Volcilia Cecile) and P1 (transfer of LD221 from Volcilia Cecile to) do not contain anything to that effect.

[160] In that regard Jessley Cecile testified that during the time that LD225 was in his ownership he gave permission to Jesselent to build a shop on the land but that their agreement was not reduced in writing nor was the SHDC informed of such agreement. He also stated that although he transferred LD221 to SHDC he did not transfer ownership of Jesselent's shop. I take this to mean that ownership of the shop remained with Jesselent despite the transfer. It would also seem that at the time of the transfer the relationship between all parties was amicable and he had not felt it necessary to expressly provide for the same. Jesselent is the only one who claims that there was such a written agreement. She testified that there was a document prepared by attorney-at-law Mr. Shah by which Jessley granted her permission to build a shop on LD221 but could not recall the date of the document. In cross examination she maintained that such a document existed but stated that she had given it to Mr. Lucas and that he could have lost it. I do not believe Jesselent's testimony that there was a written agreement and that Mr. Lucas lost it especially in light of her evidence in cross-examination that the document was registered when it is clear from Mr. Fred Hoareau's testimony that there is no *droit de superficie* registered as an encumbrance against LD221.

[161] In *Monthy v Seychelles Licensing Authority & Anor* (SCA37/2016) [2018] SCCA 44 (13 December 2018) Robinson JA defines a *droit de superficie* as follows:

“... the right which a person (the “*superficiaire*”) has on immovable property found on or under land belonging to another person (the “*tréfoncier*”) who owns the land on or under which the immovable property of the *superficiaire* is found. Therefore, a

person who has a “droit de superficie” on a property is the owner thereof without being the owner of the land on or under which the immovable property is situated”.

[162] In *Coelho v Collie* (1975) SLR 78, it was held *inter alia* that “[t]acit consent of the owner for the construction of a building on his or her property so as to create a “droit de superficie” in favour of the builder is not sufficient to produce the legal effects of consent which must be positive although not necessarily express.”

[163] The Court in that case, after considering all relevant factors, came to the conclusion that the previous owner of the land (Irene Collie) was neither asked permission by, nor gave permission to, the defendant to build a house on the land at the time that it was in Irene Collie’s ownership, and which she subsequently sold to the plaintiffs. The Court stated that Irene Collie may have been told by the defendant or she may have known through other persons that the house was being built and that she did not expressly object, until her attorney wrote a letter to the defendant stating that the house had been built without her knowledge, consent or authority and requesting the defendant to remove the house failing which legal proceedings would be commenced against her. The Court went on to state that –

This however does not amount to positive consent that the house may be built on the land by the defendant. Such positive consent was necessary in such a case to produce the legal effects of consent which, in the absence of any contrary contractual stipulation, amount to –

(a) the renunciation by the owner of the land of the right of accession conferred upon him by the Civil Code; and

(b) the conferment upon the person who erects the construction of a right to enjoy the use of the land so long as the construction covers it.”

[164] As to the nature of the right which arises from the unwritten consent of the owner to the erection of constructions on his land, the Court quoted the following extract from footnotes 1 and 2 to the case reported in D.P. 1891 .1.181. :

*Un tel consentement ne saurait rester sans effet. Emportait-il abandon à titre gratuit de la propriété de la fraction du terrain anticipé? La cour a hésité à aller jusque-là préoccupée qu'elle était du vice de la donation, car **aucun acte notarié n'avait été dressé**. A défaut de donation de la propriété, **il y avait du moins une convention d'une nature spéciale s'expliquant par les relations de bon voisinage entre les parties et qui (en la supposant régulièrement prouvée) devait être respectée**. Un propriétaire peut parfaitement renoncer au droit d'accession établi en sa faveur par les arts. 552 et 553 c.civ. , et conférer ainsi au constructeur le droit de jouir du terrain tant que les constructions le couvriront. **C'est là une sorte de concession de droit de superficie temporaire, de servitude qui grève le fonds et dont il sera affranchi quand le constructeur voudra rebâtir ou se trouvera dans la nécessité de le faire**. (Conf. Rouen, 20 fev. 1838, sous Civ. cass. 26 juill. 1841, Jur. gén. , Vo. Propriété, no. 452). L'autorisation donnée par le propriétaire de la parcelle usurpée l'empêche, en tous cas, d'exiger la suppression des travaux, en créant contre lui une fin de non-recevoir, une véritable exception de dol, car la règle qui domine en pareille matière est celle de l'appréciation souveraine des juges du fait (V. Demolombe, Traité de la distinction des biens, Tome 1 (t. 9) No. 691 ter; Jur. gén. , Vo. Propriété, nos. 450-452. Emphasis added*

[165] The Court went on to say that tacit consent is not sufficient to produce the legal effects of consent, and that in order to produce legal effects consent must be positive although not necessarily express. It further stated that any act of the owner amounting to consent which is sought to be proved is a “*fait juridique*” to which the rules regarding proof in writing applies (Vide notes 3 and 4 in the case reported in D.P. 1891. 1. 181 above quoted), but pointed out that, in that case (*Coelho v Collie*) no objection was taken to proof of consent by oral evidence. On the question of tacit consent, the Court reproduced the following excerpt from a note by Saint-Alary published as an appendix to the case reported in D. 1955.590 at page 592:

De même la cour de Nancy, dans l'espèce rapportée, avait condamné le propriétaire à payer la plus-value donnée par l'ouvrage à son terrain.

Mais son arrêt a été cassé, et il ne pouvait, nous semble-t-il en être autrement. C'est que la thèse que nous venons d'exposer est critiquable. Elle l'est surtout quand l'accord du propriétaire a été simplement tacite, ce qui était le cas ici. On ne peut induire d'un pareil accord à l'éviction totale de l'art. 555; comme le dit la Cour de cassation, il n'en résultait pas nécessairement que le bailleur eût renoncé au droit qu'il tient de la loi, c'est-à-dire à celui de conserver les

ouvrages en vertu de son droit d'accession à charge de rembourser le coût de la main-d'œuvre et des matériaux. **Il est en effet de jurisprudence constante que le silence ou l'inaction du titulaire d'un droit n'implique pas en règle générale renonciation à ce droit** (v. rep. civ., vo. renonciation, par Malaurie, no. 23. – cf. Civ., sect. Civ., 5 nov. 1952, D. 1953. 35 ; J. C. P 1953 II. 7487, note Ponsard). **Pour qu'elle soit établie il faudrait au moins que d'autres circonstance (telles qu'un lien de parenté entre le constructeur et le propriétaire : Req. 22 mars 1875, D.P. 75.1.488) fussent constatées** (V. Ziegel (*Le droit d'un contractant à la plus-value créée par lui*, thèse Paris 1939, p. 77-78 ; or, la cour d'appel n'en avait relevé aucune dans son arrêt. Nous irons plus loin : de l'autorisation tacite, on ne peut même pas induire, pour des raisons identiques, une renonciation au droit de demander la démolition (cf. st. Alary, op, cit. , no 8. V cependant Rép. civ. vo. Louange, par Tunc, no. 500). En réalité l'édification des constructions au vu et au su du propriétaire ne modifie en rien la situation légale des parties. Et ce n'est, il faut l'ajouter, que justice ; sinon le bailleur, pour n'avoir pas pris la seule précaution de s'opposer par des actes formels à l'exécution des ouvrages faits par le locataire, aurait pu être obligé de verser une indemnité parfois considérable, surtout si elle devait être calculée d'après la plus-value acquise par son fonds; il n'est pas rare que certains preneurs aient édifié des constructions de grande valeur, telles que des usines. Le paiement de l'indemnité pourrait alors entraîner la ruine du propriétaire. Emphasis added

[166] In *Coelho v Collie* the Court found that before starting to build on the land the defendant obtained the verbal consent of the joint proxies of Irene Collie. However it also found that the joint proxies did not have authority to give permission to the defendant to erect a house on the land so as to confer upon the defendant a right to enjoy the use of the land so long as the house remained standing over it without being rebuilt or in need of rebuilding. Nevertheless the Court stated that:

I am satisfied on the evidence that the defendant started building the house and completed it in the bona fide belief that the joint proxies were entitled under their power of attorney to grant her permission to build on the land on behalf of Irene Collie. The particular family relationships are especially significant in this case. On account of her bona fides the defendant is to be assimilated to a “tiers de bonne foi” to whom the last part of Article 555 applies. Under those provisions the owner of the land has no right to request the removal of the constructions erected on the land by the “tiers de bonne foi”. Irene Collie would have had no such right and the plaintiffs

who purchased the land from Irene Collie are in no better position (Vide Dalloz, Jur. Gen., Vo. Propriété, no, 452 in fine).

I find therefore that the plaintiffs have no right to request the defendant to remove the house from the land.

However they have the right to ask the defendant to vacate the land. Such right is correlative to an obligation on their part to pay an indemnity to the defendant. The plaintiffs may exercise the option of paying as indemnity either what it cost the defendant to build the house or the enhancement in value of the land due to the house having been built thereon.

[167] In the present case, I am satisfied in particular on the basis of Jessley's testimony, that before building the shop the plaintiff obtained the verbal consent of Jessley who was the proprietor of LD221 at the time. Such consent, although not reduced in writing, cannot be said to be tacit in my view, and I hold that it was positive consent although not express. Furthermore there was a "*lien de parenté*" between Jessley and Jesselent from which it can be inferred that Jessley as the landowner renounced his right of accession conferred by law albeit temporarily. It is also evident from the testimony of the defendants that they considered the shop as Jesselent's shop because she had built it from which a strong inference can be drawn that she did receive such consent.

[168] On the authority of the extract reproduced at paragraph [164] above such consent would confer on the plaintiff a "*droit de superficie temporaire, de servitude qui grève le fonds et dont il sera affranchi quand le constructeur voudra rebâtir ou se trouvera dans la nécessité de le faire*". To put it simply as explained in *Ministry of Land Use and Housing v Stravens SCA 24/2014 [2017] SCCA13 (21 April 2017)* "*In the case of Coelho v Collie (1975) SLR 78, Sauzier J found that where there was no transfer evidenced by a notarial act but only a simple act granting a right to build on the land, the droit de superficie created would subsist temporarily at least until the building needed rebuilding*".

[169] The consent being oral, the question of the droit de superficie having to be registered does not arise. I therefore find no merit in the defendants' argument in that regard.

[170] In regards to the point raised by the defendants that any *droit de superficie* granted by Jessley Cecile to the plaintiff would have terminated when he transferred LD221 to SHDC, it is worth noting that such *droit* subsists until its termination i.e. when the building subject to the *droit* needs rebuilding. The *droit* does not terminate upon the transfer of the property burdened by such *droit* unless otherwise provided. In *Leonel v Turner & Ors* (MC No.56/2013) [2022] SCSC599 (7 July 2022) the Court stated at paragraph [24] that the Court in *Adonis v Celeste* (SCA 28 of 2016) [2019] SCCA 32 (22 August 2019) highlights that a purchaser or successor in title will take the land subject to the *droit de superficie*.

[171] Having established that there is a *droit de superficie* in favour of the plaintiff. I now turn to the effect of such right. The relevant legal provisions are Articles 552 and 553 which establish the right of accession of the owner of immovable property and Article 555 of the Civil Code of Seychelles Act Cap 33 which provides for want of a better word an exception to such right of accession. Article 555 provides that:

Article 555

1. *When plants are planted, structures erected, and works carried out by a third party with materials belonging to such party, the owner of land, subject to paragraph 4 of this article, shall be empowered either to retain their ownership or to compel the third party to remove them.*
2. *If the owner of the property demands the removal of the structures, plants and works, such removal shall be at the expense of the third party without any right of compensation; the third party may further be ordered to pay damages for any damage sustained by the owner of land.*
3. *If the owner elects to preserve the structures, plants and works, he must reimburse the third party in a sum equal to the increase in the value of the property or equal to the cost of the materials and labour estimated at the date of such reimbursement, after taking into account the present conditions of such structures, plants and works.*

4. *If plants were planted, structures erected and works carried out by a third party who has been evicted but not condemned, owing to his good faith, to the return of the produce, the owner may not demand the removal of such works, structures and plants, but he shall have the option to reimburse the third party by payment of either of the sums provided for by the previous paragraphs ...*

[172] In *Reginald Rose & Anor v Alois Hoareau (Pty) Ltd* (SCA 5 of 1992) [1993] SCCA 7 (31 March 1993) the Court of Appeal in considering the true ambit of Article 555 stated that: “*Paragraph 4 of Article 555 takes away the right of the owner to elect to demand the removal of such structure and plants where the third party concerned "has been evicted but not condemned owing to his good faith, to the return of the produce."*”

[173] It further opined that:

In my opinion the relevance of the consent of the owner to the planting of plants, erection of structures and execution of works by the third party with his own materials in regard to the application of article 555 is delimited by article 555 itself. Although a thing affixed to land by another party becomes the property of the owner of the land, the owner of the land can by his agreement, in the plenitude of his right of ownership, relinquish his right to retain ownership of the thing or limit his power to compel the third party to remove the thing which has been affixed by his consent. Where there has been no such specific agreement, consent by the owner of the land that the thing be affixed to the land would in my opinion not affect his right of accession but would limit and qualify his power to demand that the third party remove the thing which had been affixed by his consent. Presumably, he could evict the third party, if the circumstances in which consent was given permits such eviction, but he may not demand the removal of such structures.

[174] In the present case the plaintiff, having obtained the verbal consent of Jessley Cecile to build a shop on LD221, is considered as a “*tiers be bonne foi*” to whom sub-article 4 of Article 555 applies. The plaintiff being in the position of a “*tiers de bonne foi*”, the 2nd and 3rd defendants as owners of LD221 cannot demand that she removes the shop but they have the option of reimbursing her by payment of a sum either “*equal to the increase in the value of the property or equal to the cost of the materials and labour estimated at the date of such reimbursement, after taking into account the present*

conditions of such structures” as provided for under sub-article 3. This brings us to the reliefs prayed for by the plaintiff each of which will be considered individually below.

Compensation for costs of the building based on evaluation

[175] The first relief sought by the plaintiff is for compensation for costs of the building based on an evaluation of the same in the sum of SCR430,000.

[176] As stated, under sub-article 3 of Article 555 the owners of LD221 have the option to reimburse the plaintiff in a sum either (1) equal to the increase in the value of the property brought about by the structure erected by the third party, in this case the shop built by the plaintiff; or (2) equal to the cost of the materials and labour.

[177] The plaintiff testified that she commissioned Cecile Bastille to carry out an evaluation of the shop in the year 2000 and that the shop was valued at SCR430,000. In cross-examination it was established that the plaintiff was not even present when such evaluation was supposed to have been carried out and could not even be sure that Ms Bastille actually went to the property to carry out the evaluation. In any event no valuation report was produced to this Court. Counsel for the plaintiff in his submissions stated that the valuation report could not be produced because its maker Ms Cecile Bastille “*declined to participate in this process*”. In the absence of such report this Court finds itself unable to rely on the unsupported evidence of the plaintiff as to the value of the shop.

[178] Relying on a valuation of the property not being a feasible option, this Court has to resort to other means to try and ascertain the money that was spent on construction of the building.

[179] In the plaint the plaintiff avers that she took two loans – an initial loan from SIDEC which she took to build the shop but which she does not state the amount of (paragraph 4), and another in the sum of SCR45,000 from DBS to complete the shop (paragraph 8). She avers that her mother granted her permission to charge LD221 as security for the second loan by letter dated 28th March 2003 (paragraph 6). I note that Exhibit P2 is dated

28th March 2003 and grants permission to the plaintiff to secure a loan of SCR38,000 from the DBS and not of SCR45,000. The plaintiff has not produced any loan agreements relating to the two loans pleaded.

[180] The evidence of the plaintiff is at variance with her pleadings regarding the loans. In examination in chief, the plaintiff testified that she borrowed an initial loan of SCR50,000 from the Concessionary Credit Agency with which she started construction of the shop, and a subsequent loan of SCR40,000 from Barclays Bank to complete construction thereof. She also testified that after construction was completed, she borrowed another loan from DBS to purchase a chiller and deep freezer for which her mother gave her permission to charge LD221 as security for such loan by way of Exhibit P2 dated 28th March 2003. I have noted above that Exhibit P2 bears the same date as the letter averred in paragraph 6 of the plaint to grant permission to charge LD221 as security for a loan of SCR45,000 from DBS to complete construction of the shop. The plaintiff is obviously confused as to which loan Exhibit P2 applies but exhibit P6 supports the plaintiff's testimony that she did borrow a loan of SCR38,000 from DBS to purchase a chiller and deep freezer.

[181] Exhibit P6 is a statement of account in the name of the plaintiff dated March 8th 2010 in regards to Account No. 412Z064S for a Re-schedule Loan amount of SCR38,000. The name of the bank does not appear on the statement of account. The reason for the loan is stated as "SETTING UP A RETAIL BUSINESS AT ANSE REUNION". The date of 1st and last repayments are stated to be 01/02/2005 and 01/01/2008 respectively. The security for the loan is "PLEDGE ON FREEZERS, TWO GUARANTORS, FIRE, SP. PERIL INSURANCE". It would appear that this is the loan borrowed by the plaintiff from DBS to purchase the freezers and chiller as opposed to construction of the shop, given that the stated purpose of the loan and that there is a pledge on the freezers. The loan amount of SCR38,000 accords with Exhibit P2 (letter of Volcilia Cecile granting permission to charge LD221 for a loan of that amount from DBS) making it more likely that the plaintiff took a loan SCR38,000 from DBS to buy the freezer and chiller as per her testimony. That loan cannot therefore be taken into account for the construction costs of the shop.

[182] Exhibit P7 is another bank document relating to another loan account. It is a final reminder dated 14th September 2012 on the DBS letterhead regarding “ARREARS ON LOAN ACCOUNT NUMBER 4164519H”. It is addressed to the plaintiff and informs her that as at the date of the letter her account is in arrears of SCR4,275.00 with the last payment received on 6th June 2012. It is not possible to ascertain the original amount of the loan, when it was taken and for what purpose. It is therefore unhelpful in assisting to ascertain the construction costs of the shop.

[183] To summarise it is pleaded that the construction of the shop was funded by a loan from SIDEC the amount of which is not stated. In her testimony the plaintiff stated that she took a loan of SCR500,000 from the CCA. Given that both SIDEC and CCA are institutions which provide funding to small and medium businesses it is possible that the plaintiff was confused as to which institution she borrowed from. However in the absence of any reliable supporting evidence as to the sum that she borrowed from any of those two institutions, the Court cannot make a finding of the same. The plaintiff has also pleaded that she borrowed a loan of SCR45,000 from the Development Bank of Seychelles to complete the shop. She has not brought any evidence of the same either. She testified that she took a loan of SCR40,000 from Barclays Bank to complete construction of the shop which she has also not substantiated. As for the loan of SCR38,000 for the freezers and chiller, which the first defendant testified the plaintiff removed from the shop, the Court has already explained why this cannot be taken into account in determining the construction costs of the shop. In the result the Court finds the amount of the loans pleaded or testified to by the plaintiff to build the shop unsubstantiated.

[184] When it was drawn to her attention in cross-examination that the loans she claimed to have taken only amount to SCR128,000, the plaintiff stated that she and her husband also pooled their earnings to add to the loans to build the shop. She stated that she used money from her earnings and two-yearly gratuity payments of SCR25,000 from when she was in the police force, but did not give any evidence as to how much of this money was used to build the shop. This Court finds itself unable on the evidence led in that respect, to

determine the sum contributed by the plaintiff and her husband from their earnings to the construction of the shop.

[185] Even if this Court has found that the plaintiff has a *droit de superficie* and as a tiers de bonne foi should be reimbursed a sum “*equal to the increase in the value of [LD221] or equal to the cost of the materials and labour estimated at the date of such reimbursement, after taking into account the present conditions of [the shop]*” it is unable to order such reimbursement for lack of evidence as to the sum to be reimbursed. The plaintiff has substantiated neither the sum of SCR430,000 claimed nor any of the loan amounts she claims to have borrowed. Furthermore there is no proof of the amount of her and her husband’s earnings which she claims was also used to fund construction of the shop. The plaintiff’s claim for compensation for costs of the building based on an evaluation of the same must therefore be dismissed.

Interest and arrears on loan

[186] Secondly the plaintiff is seeking interest and arrears on loan in the sum of SCR45,000. She avers at paragraph 16 of the plaint that due to the alleged acts of the defendants she could not carry out her retail business. Consequently she could not repay her loan as a result of which she fell into arrears with the loan repayments with interest accruing on such arrears.

[187] As previously stated, the plaintiff avers in the plaint that she took a loan from SIDEC and another from DBS in the sum of SCR45,000. She testified that she borrowed a loan of SCR50,000 from the Concessionary Credit Agency, another of SCR40,000 from Barclays Bank and a further loan of SCR38,000 from DBS to purchase a chiller and deep freezer. The plaintiff also testified that she repaid her loan to the CCA in full, but was unable to complete repayment of her loans to DBS because she was prevented by the defendants from operating the shop herself or renting it out to a third party. According to her she has never been able to run the shop herself but only rented it out to SLA for about a year and to Mr. Michel Ah-time for five years, after which the defendants confiscated the key to the shop. Exhibits P6 and P7 show that she did fall into arrears with her loans and that

interest accrued on these arrears. The account numbers on these two Exhibits show that they relate to two different loan accounts.

[188] Although Exhibit P7 states that the plaintiff is in arrears of SCR4,275.00 on loan account number 4164519H with DBS, it is not possible to determine the purpose of the loan from that document. This Court, being unable to ascertain whether or not the loan is related to the plaintiff's retail business, cannot make a finding that the defendants are liable for interest and arrears on such loan.

[189] Exhibit P6 is a statement of account for Account No. 412Z064S for a Re-schedule Loan amount of SCR38,000, which this Court has found was from DBS for the purchase of freezers and chiller. According to this document, there is no capital outstanding on the loan but there are arrears with accrued interest amounting to SCR8,299 which are outstanding as at 08/03/2010. If the Court finds that the defendants were responsible for the plaintiff being unable to repay her loan, on the strength of Exhibit P6, they would be liable in a sum of SCR8,299 to the plaintiff for arrears and accrued interest on those arrears.

[190] In that regard, I have considered the testimony of the parties with care. None of them have been completely honest which made the work of this Court extremely difficult. It is clear that the family is divided into two camps with Jessley and Jesselent on one side and Volcilia, Jessleen and Josianne on the other side. There is a great deal of animosity between these two camps and Jessley and the parties have all to some extent tailored their testimony to support their respective cases. As a result, this Court has the unfortunate and unenviable task of trying to discern the truth, or as much of the truth as it possibly can, given that none of the parties and witnesses have not been completely truthful. I believe that when Jesselent started building her shop, the parties were all on good terms. Somewhere along the way their relationship soured. Both camps blame each other for that but in my view none of them are completely blameless. It would also seem that Volcilia was somewhat caught in between. This is shown by Exhibits P2, P4 and P5 which show that in March 2003 Volcilia gave permission to Jesselent to charge LD221 to secure a loan from DBS but in April 2003 she objected to the granting of Jesselent's retail

licence because her permission had not been obtained. She then relented in 2004 and gave her permission for the licence to be granted. I also do not believe that Volcilia only signed some of the documents where her signature appears, but not all. I believe she was being selective with the truth to bolster her claim that her signature on some documents was illegally obtained. I also do not believe that SLA refused to grant a licence to Jesselent because the shop had no electricity and septic tank as subsequently the shop was rented out to SLA for SCR3000 per month and to Mr. Michel Ah-Time for SCR5,000 per month. It was established in the plaintiff's cross examination that the shop was rented to SLA from September 2007 to September 2008 and thereafter to Mr. Michel Ah-Time up to 2013. Having observed the parties in Court, it is plausible that the defendants made it difficult and likely impossible for the plaintiff to operate her shop. As I previously stated, the plaintiff's attitude would not have helped either.

[191] Having said that I am mindful of Jesselent's testimony that at the time that she was in arrears with her loans namely 2010 (as shown in Exhibit P6) and 2012 (as shown in Exhibit P7), she had also been repaying Jessley's loan of SCR5,000 for two years from 2010 to 2012. Exhibit D5 shows that Jessley's loan from BOB was taken some time in 2010 as the charge on LD221 to secure that loan is dated 6th June 2010. Exhibit D6 shows that Jessley's loan from the SCU was also granted around 2010 as the charge securing that loan was dated 5th October 2010. The testimony of Jessley and Jesselent are that the 2nd loan with the SCU was taken to pay off the first loan with BOB. I therefore agree with the defendants that the plaintiff having chosen to repay Jessley's loan with money she obtained from renting her shop instead of repaying her own debts first, cannot now blame the defendants for the arrears and accrued interest on her own loan. I am perplexed by her reply when it was put to her in cross-examination that she did not benefit from renting out the shop because she used the money to repay Jessley's loan, that the money was hers to do as she wished.

[192] For the reasons given above, I do not find the defendants liable for the arrears and accrued interest on the plaintiff's loans which must be dismissed.

Loss of revenue

[193] The plaintiff testified that she is claiming the loss that she has sustained based on what she would have received from her investment. In the plaint she seeks loss of revenue from June 2016, the date the property was transferred to the 2nd and 3rd defendants, to April 2018 presumably when the case was filed (22 months) at the sum of SCR15,000 per month, amounting to SCR330,000. It is to be noted that Exhibit P1 (transfer of LD221 from Volcilia Cecile to Josianne Fleurange Jean and Jessleen Cecile) is dated 4th July 2015 and was registered on 9th June 2016.

[194] At paragraph 13 of the plaint it is averred that at the beginning of 2017, the 2nd and 3rd defendants took over control of the shop and carried out some maintenance work in preparation for the renting of the shop. It is also averred that the plaintiff objected by letter dated 5th May 2017 to the SLA – which was not produced – to the granting of a license to any person to operate the shop. However a retail licence was granted for Mr Sharo Valentin operating under the business name A.B. to Z Boutique to whom the shop was rented by the defendants.

[195] In her testimony however, the plaintiff stated that since 2010 when Mr Ah-Time vacated the property the defendants took over the property. In cross-examination she conceded that Mr. Ah-Time moved out in 2013. It is not seriously disputed the monthly rent paid by SLA was SCR3000 and that Mr. Ah-Time rented the shop for a monthly rent of SCR5000. The plaintiff claims in her testimony in chief that after Mr. Ah-Time moved out someone was prepared to pay a rent of SCR10,000 for the shop and it is on that basis that she is claiming SCR330,000 as loss of revenue from 2010. She has brought no evidence whatsoever to substantiate her claim that a person was prepared to pay a rent of SCR10,000. She has not substantiated the monthly rent of SCR15,000 claimed either. No expert report or other evidence has been produced as to the amount of rent which could be expected for the shop. Furthermore in cross-examination she stated that after Mr. Ah-Time moved out her daughter tried to take over the shop but was prevented from doing so by the defendants. She stated that her daughter had been prepared to pay SCR5000 per month for the shop. Volcilia has stated that at the time of the hearing, the shop is being rented out for SCR800 which is the amount that the 2nd and 3rd defendant's have to repay

for the loan they took from SBFA to repay Jessley's loan to SCU so that LD221 would not be repossessed.

[196] In the circumstances, it is my view that a sum of SCR5000 per month is a reasonable sum on which to calculate the loss of revenue of the plaintiff. This is because, it has more or less been accepted that this is the sum that Mr. Ah-Time rented the building for to use as a shop. It is also the sum that the plaintiff says that her daughter was prepared to pay. The plaintiff has not substantiated the higher sum she has claimed. Furthermore it would seem that the defendants are only renting the premises for SCR800 if that is true, because this is the amount they have to repay for the loan and not based on a proper valuation.

[197] The defendant is claiming loss of revenue for the 22 months extending from June 2016 to April 2018. However evidence has been led to show that the defendants have been in possession of the shop earlier than June 2016: according to the plaintiff this has been since Mr. Ah-Time moved out in 2013, and according to the defendants statement of defence they refused to allow anyone to use the shop since the *Commandement* was issued in August 2014. It is trite that evidence must follow the pleadings. The Court is therefore bound to grant the remedy for the period as pleaded, that is for 22 months. The defendants are therefore liable to pay to the plaintiffs the sum of SCR110,000 (22 months x SCR5000).

[198] In that regard I wish to comment on the 3rd defendant's claim that she is not involved in the dispute between Jesselent and Josianne and her mother regarding the shop as she has been living on Mahe since 1986, and only got involved when the *Commandement* was issued in August 2014. Even if that were true, insofar as it concerns events prior to service of the *Commandement*, the claim for loss of revenue concerns precisely the period after the *Commandement* was issued for the period June 2016 to April 2018. Furthermore I am not convinced that the 3rd defendant was completely uninvolved in the dispute despite living on Mahe and I also take note that she is now a co-owner of LD221.

[199] At this juncture I also wish to make the following observations. Jessley and Jesselent Cecile both claim that if the defendants had not taken possession of the shop, Jesselent

would have been able to continue making the loan repayments for Jessley's loan with the SCU which he took to purchase a boat and which was secured by a charge on LD221. They blame the defendants for Jesselent not being able to continue to repay the loan which ultimately led to the *Commandement* being issued for the seizure and sale of LD221 which was only averted by the 1st and 2nd respondents paying off Jessley's loan. The defendants on the other hand state that that they had no choice but to take over the shop in order to rent it out to be able to repay Jessley's loan, failing which LD221 would have been seized and sold leaving the 2nd defendant and her mother without a home. They hold Jesselent responsible for the non-payment of Jessley's loan repayments because she had undertaken to pay the loan for Jessley who was not working at the time he took the loan. They also claim that she had been involved in getting Volcilia to sign the charge on LD221 as security for Jessley's loan although I do not believe that Volcilia was as clueless as she claims to be about about the implications of signing the charge. As for Jesselent, she testified that for two years all the rent she earned from the shop went to pay Jessley's loan. It would seem that she even fell in arrears with repayment of her own loan while repaying Jessley's loan. Jessley seems to have a history of not repaying his loans: he admitted that he was unable to pay the loan that he took with SHDC which led to LD221 being transferred to SHDC back in 1998. However regardless of Jesselent's undertaking to Jessley to repay his loan which she then failed to honour and any involvement on her part in getting Volcilia to sign the charge on LD221, the defendants were wrong to take possession of Jesselent's shop because of the *Commandement* issued to recover the outstanding amount of Jessley's loan. Legally the defendants do not have a claim against her for recovering the money they spent in repaying Jessley's loan. Any steps or action taken towards recovering the same should have been directed at Jessley himself and not Jesselent as she was not the one responsible for taking the loan or who appears to have benefitted from it.

Moral damages

[200] The plaintiff has claimed moral damages in the sum of SCR80,000.

[201] In his submissions, in the summary of the “EVIDENCE ADDUCED BY THE PLAINTIFF”, counsel for the plaintiff submitted that “[t]he plaintiff has also pleaded and testified of how the whole episode and events affected morally to find herself on the losing (sic) side after her lifetime investment which she had worked hard to realize fell into the hands of the Defendants and she could not really enjoy the fruits of her investment”.

[202] However, other than the prayer for moral damages the plaint contains no averments relating to such damages. In her testimony, the plaintiff merely stated that she suffered moral damages because she lost everything, and that at times she had nothing to give her six children to bring to school. No authorities were provided in support of the quantum claimed.

[203] In *Sullivan v Magnan* (CS134/2011) [2016] SCSC 491 (11 July 2016), Twomey CJ as she was then, stated the following in regards to the quantum of damages –

29. I have on several occasions observed how this Court is singularly unimpressed by Counsel who submit no comparators for the assessment of quantum. I have stated once too often that the Court is reluctant to be arbitrary and to pluck figures from the sky. Yet this practice continues. Counsel throws figures on a Plaint and does not support them at trial or in submissions. The Court is expected to carry out the Plaintiff’s duties. This is not acceptable. Counsel should bring together evidence and authorities to support quantum of damages claimed. Conversely Counsel for the defendant should likewise bring authorities to support its defence that the amount claimed is exorbitant and not made out.

30. In these cases the Court may award a sum of damages, estimated to the best of its abilities. Compensation in such cases is purely compensatory ...

[204] The then Learned Chief Justice then proceeded to assess moral damages without any guidance and supporting authorities from Counsel for the plaintiff.

[205] Despite the paucity in the pleadings and evidence as to moral damages suffered by the plaintiff, I accept that she must have suffered some moral damages by the defendants preventing her from operating her shop and ultimately taking it over, thereby preventing

her from enjoying the fruits of her investment. I assess such moral damages without guidance and supporting authorities from Counsel at SCR 20,000.

Decision

[206] For the reasons given above, the plaintiff's claims insofar as it concerns the cost for the building and interest and arrears on loan, are dismissed.

[207] The remedies sought by the plaintiff in regards to loss of revenue and moral damages are granted but in a lesser sum than prayed for. Accordingly the defendants shall pay the plaintiff the sum of SCR SCR110,000 for loss of revenue, and moral damages in the sum of SCR 20,000 amounting to a total sum of SCR130,000 with interest at the legal rate from date of filing.

[208] The parties shall bear their own costs.

Signed, dated and delivered at Ile du Port on this 26th July 2023.

Carolus J