

SUPREME COURT OF SEYCHELLES

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**Reportable**

[2023] SCSC ..... 679

CS35/2022

In the matter between:

**PROPERTY MANAGEMENT CORPORATION**

**Plaintiff**

**Represented by its Executive Officer**

*(rep. by Manuella Parmentier )*

and

**GARRY JOINVILLE FLORENTINE**

**Defendant**

*(unrepresented)*

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**Neutral Citation:** *Property Management Corporation v Florentine* (CS 35/2022) [2023] SCSC ..... 679 (3rd July 2023).

**Before:** Pillay J

**Summary:** Breach of Contract

**Heard:** 26<sup>th</sup> May 2023

**Delivered:** ... September 2023

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**ORDER**

Judgment is entered in favour of the Plaintiff as follows:

- (1) The Defendant shall pay the sum of SCR80, 274 as charge for the beneficial occupancy of the premises with interest at the legal rate from the date of filing.*
  - (2) The Defendant shall vacate the house and property at S14-14 at Perseverance, Mahe, with immediate effect.*
  - (3) Costs awarded to the Plaintiff.*
  - (4) Copy of the Judgment shall be served on both parties.*
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## JUDGMENT

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**PILLAY J:**

[1] The Plaintiff seeks a judgment against the Defendant:

- i) *declaring that the Defendant has breached the purchase agreement;*
- ii) *declaring that the purchase agreement has become ipso facto null and void;*
- iii) *ordering the Defendant pays the Plaintiff the sum of SCR 80, 274 as charge for the beneficial occupancy of the premises;*
- iv) *ordering the Defendant to vacate the premises with immediate effect*

[2] The Plaintiff claims that:

- 2. *The Defendant is occupying the Plaintiff's property at S14-14, Ile Perseverance, Mahe, Seychelles.*
- 3. *On the 31<sup>st</sup> October 2016, the Plaintiff together with the Defendant entered into a purchase agreement, for the purchase of a two bedroom unit at S14-14, Ile Perseverance, Mahe, Seychelles ("the premises").*
- 4. *It was a term of the agreement, amongst other things, that:*
  - a) *The Defendant would pay a total consideration price of SCR 339,583/- for the premises;*
  - b) *The Defendant would pay a sum of SCR 1823/- on a monthly basis;*
  - c) *That the payment of the instalments would commence in November 2016;*
  - d) *That the Defendant would pay his monthly instalments diligently and on time;*

- e) *That if the Defendant default in the performance of any of the conditions of the purchase agreement, then this agreement shall ipso facto become null and void and the occupation of the Defendant would immediately become illegal, and the Defendant would be liable to vacate the property; and*
  - f) *In the event the Plaintiff has to compel the Defendant to vacate the property, the Plaintiff may at its discretion charge for beneficial occupancy based on the rental value commensurate with rent payable on comparable properties and all legal and other costs incurred by the seller in exercising the option;*
5. *Since the signing of the purchase agreement, the Defendant has constantly been in breach of the purchase agreement by failing to pay the monthly sums of SCR 1823/- on time and/or at all.*
  6. *Due to the Defendant's failure and/or refusal to pay the Plaintiff the monthly instalments, the sum of SCR 80,274/- has accrued, which is now owing as charge for beneficial occupancy of the premises.*
  7. *Despite various notices and warnings to the Defendant to remedy his breach, he has failed and/or refused to do so.*
  8. *On the basis of the aforesaid the Plaintiff has suffered loss and damage in the sum of SCR 80,274/-, with interest at the legal rate.*

[3] The Defendant was served, appeared and attempted to negotiate with the Plaintiff. When the attempts at settlement between the parties failed, the Defendant was given time on 8<sup>th</sup> February 2023 to file his defence which he failed to do resulting in the matter being scheduled for ex parte hearing against him. However, the Defendant subsequently appeared and he was given a chance to file his Defence which he did.

[4] Mrs Dorina Robert testified on behalf of the Plaintiff. She is an accounts supervisor in debt control and authorised to represent the Plaintiff in the current proceedings. She testified that she knows the Defendant as she works in debtors control and she is the one who has been following the Defendant's case. It was her evidence that the Plaintiff owns a house on Perseverance namely S1414 and the said property is the subject of the current

proceedings against the Defendant. ON 31<sup>st</sup> October 2016 the parties entered into a purchase agreement whereby the Defendant was to purchase the property from the Plaintiff. The property is two bed-room house for the consideration of SCR 339, 584.00. The Defendant was to make monthly payments of SCR 1898. Payment was to commence in November 2016 however since signing the agreement the Defendant has not been consistent in his repayments. Reminders were sent to the Defendant with the first being sent out on 21<sup>st</sup> November 2018 and a final reminder dated 2<sup>nd</sup> December 2019. This was followed by a radio message on 24<sup>th</sup> September 2021 requesting the Defendant to attend a meeting at the Plaintiff's offices. The Defendant reported to the Plaintiff's offices, drafted and signed a letter agreeing to start repayments by SCR 2500.00 monthly as of October 2021. On 25<sup>th</sup> February 2022 the Defendant was once again requested to report to the Plaintiff's offices for payment by way of a radio message. The Defendant failed to report to the Plaintiff or make any payments at which point legal action was instigated against him. Since the case has been in the Court system, the negotiations were attempted between the parties resulting in an agreement for salary deductions from AZ Transport Services where the Defendant was employed. However only one payment was received and thereafter the Defendant defaulted on his payment once again. As of February 2023 the Defendant is in arrears to the tune of SCR 103, 846.00. The witness prayed for repayment of the sum, termination of the agreement and eviction.

- [5] Having considered the uncontested evidence of the Plaintiff's witness as well as the documents exhibited in support of the Plaintiff's case, I find no reason to disbelieve her. On that basis I find that the Plaintiff has proved its case to the satisfaction of the Court.
- [6] I further note that the Defendant in his Defence denied every single claim of the Plaintiff but for paragraph 5 of which he stated, "Of paragraph 5 of the Plaintiff. The Respondent avers that he was not in a stable employment and was unable to meet with the monthly payments. In October 2022, the Defendant authorises his new employer to deduct the sum of RS2500/- which was later increased to SCR 3000/- to pay the Plaintiff. The Defendant is prepared to continue with this present arrangement until he finishes with the payment."
- [7] Section 75 of the Seychelles Code of Civil Procedure provides that:

*The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alleged in the plaint must be distinctly denied or they will be taken to be admitted.*

- [8] In ***Victoria District Council v Pillay (1968) No. 13*** it was found that paragraph 6 of the Plaint concerned a number of material facts one of which was the number of turtles that had died. The Court found that in light of section 80 of the Seychelles Code of Civil Procedure “material facts had to be distinctly, i.e. individually or separately denied and in default would be taken to be admitted”.
- [9] In the case of ***Mullery v Stevenson-Delhomme (1936-1955) No 49*** the Court on appeal, relying on Odgers, Pleading and Practice (14<sup>th</sup> Edition) at p. 122, found that as the Respondents in their pleadings had not specifically denied the allegation that the Appellant was a graduate, but had put the Appellant to the proof of the averment, it should be taken to have been proved.
- [10] Given the above, the Defendant having failed to specifically deny each and every allegation, it is taken as admitted.
- [11] Furthermore, similarly in the case of ***The Property Management Corporation v Labrosse (CS 108 of 2021) [2022] SCSC 1100 (9 December 2022)*** judgment was entered in favour of the Plaintiff against the Defendant after he was found to have “breached the agreement entered into with the Plaintiff by not paying the monthly instalments which has led to the arrears. As per paragraph 10 of the Agreement which has been reproduced in paragraph [3] f) of this judgment above, such breach brings an end to the Purchase Agreement.”
- [12] The Agreement signed by the Defendant contained a similar clause at 13:

*The Purchaser(s) further covenants that if he/she/they make default of performance of any of the covenants hereof of clauses contained in the agreement or commits any breach of the conditions hereof, then this agreement shall ipso facto become null and void and deemed to have been terminated forthwith and the occupation of the Purchaser(s) shall immediately become illegal for all legal intents and purposes rendering the purchaser(s) liable to vacate the property and handover the same to the Seller with vacant possession.*

[13] The parties further agreed at clause 14 that:

*The Seller may, in the event of the Purchaser(s):-*

*Making default in the performance of any of the covenants or clauses contained in this Agreement; or*

*(i)...*

*(ii) compel the Purchaser(s) to vacate the said premises and the Purchaser(s) shall hands over vacant possession of the same to the Seller.*

*In the event of option (ii) being exercised the Seller may at its discretion refund the sum already paid after deducting:*

*(a) A charge for beneficial occupancy based on the rental value commensurate with rent payable on comparable properties.*

*(b) ...*

[14] On the basis of all the above, I find that the Defendant has breached the agreement entered into with the Plaintiff by not paying the monthly instalments and that the Plaintiff is entitled to repossess the property. Judgment is accordingly entered for the Plaintiff as follows:

*(1) The Defendant shall pay the sum of SCR80, 274 as charge for the beneficial occupancy of the premises with interest at the legal rate from the date of filing.*

*(2) The Defendant shall vacate the house and property at S14-14 at Perseverance, Mahe, with immediate effect.*

*(3) Costs awarded to the Plaintiff.*

*(4) Copy of the Judgment shall be served on both parties.*

Signed, dated and delivered at Ile du Port on ..... 12th September 2023



Pillay J