

SUPREME COURT OF SEYCHELLES

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Reportable  
[2023] SCSC 733  
CS 39/2022

In the matter between:

**MICHEAL JOHNSON**

**Plaintiff**

**OF CONDOMINIUM C2,**

**EDEN ISLAND SEYCHELLES**

*(represented by Mr. Govinden standing for Mr. Rene Durup))*

v/s

**ABSA BANK (SEYCHELLES) LIMITED**

**Defendant**

**OF INDEPENDENCE AVENUE, VICTORIA**

**MAHE, SEYCHELLES**

*(represented by Ms. Afif standing for Mr. Keiran B. Shah)*

**Neutral Citation:** *Johnson v/s Absa Bank Seychelles Limited* (CS39/2022) [2023] SCSC 733

**Before:** **Adeline, J**

**Summary:** Loan contracts/charges registered against property title V 17391 as continuing security for performance of contractual obligations/ 1<sup>st</sup> and 2<sup>nd</sup> loans paid off by 3<sup>rd</sup> loan/3<sup>rd</sup> loan subject to specific terms and conditions/existing 1<sup>st</sup> line and 2<sup>nd</sup> line charges retained as continuing security for 3<sup>rd</sup> loan/3<sup>rd</sup> loan in the sum of USD 385, 000.00 also secured by 3<sup>rd</sup> line charge of USD 60, 000.00/whether the 1<sup>st</sup> and 2<sup>nd</sup> line charges as continuing security for the 1<sup>st</sup> and 2<sup>nd</sup> loans already paid off should be discharged. Relevance of Articles 1234, 2114 and 2180 of the Civil Code of Seychelles Act.

**Heard:** 28<sup>th</sup> February 2023

**Delivered:** 22<sup>nd</sup> September 2023

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**JUDGMENT**

**Adeline, j**

## INTRODUCTION.

[1] By way of a plaint dated 13<sup>th</sup> April 2022, filed in court on the same date, one Micheal Johnson of Condominium C2 of Eden Island (“the Plaintiff”), instituted a civil action based on the law of contract against the Absa Bank (Seychelles) Limited (“the Defendant”) by which plaint, he prays this court to enter Judgment in his favour by granting him the following reliefs, namely;

- “(a) *Declaring that the principal obligation to loan 1 and loan 2 have been made extinct pursuant to loan 3.*
- “(b) *Declaring that the 1<sup>st</sup> line and 2<sup>nd</sup> line charges have been extinguished by the extinction of the principal obligation to loan 1 and 2.*
- “(c) *Ordering the removal of the registered charges pursuant to loan 1 and 2 on the property under the Land Registration Act and the Condominium Property Act.*
- “(d) *Ordering the removal of all restrictions pursuant to the aforesaid charges on loan 1 and 2 under the Land Registration Act, and*
- “(e) *cost.*

## THE PLEADINGS

[2] In his statement of claim, the Plaintiff’s pleadings hereunder replicated read as follows;

*“1. The Plaintiff owns property V 17391, condominium C2 at Eden Island (hereinafter referred to as “the Property” and the defendant has registered 3 charges against the property*

*2. The Plaintiff initially took 2 Loans from the defendant:*

- (a) A home loan (referred to as “loan 1”) in which the principal amount is USD 294, 000.00*

*(b) An executive loan (referred to as "loan 2") in which the principal amount is SCR 400,000.00*

*3. For loan 1 and 2, the defendant registered the following charges against the property;*

*(a) Loan 1: 1<sup>st</sup> line charge for the amount of USD 294, 000.00*

*(b) Loan 2: 2<sup>nd</sup> line charge for the amount SCR 400, 000.00*

*4. Pursuant to an agreement between the Plaintiff and the defendant, the defendant issued a new Loan (referred to as "Loan 3") which has been registered against the property and in which, inter alia, the principal obligation in Loan 1 and Loan 2, became extinct and taken up within Loan 3.*

*5. Despite the agreement mentioned in paragraph 4, the registered charges for loan 1 and Loan 2 remains on the register under the Land Registration Act and Condominium Property Act.*

[3] In its statement of Defence, the defendant admits paragraphs 1, 2, and 3 of the Plaintiff's statement of claims but denies paragraph 4. In its defence of the plaint, he then pleads, inter alia, as replicated hereunder;

*"3. Each and every allegation of paragraph 4 of the plaint is denied. The Defendant avers that the Plaintiff had been in arrears with his loan repayment and needed additional borrowing which had to be secured by charges over the property.*

*4. By letter of offer dated 10<sup>th</sup> July 2015 from the Defendant, the Plaintiff accepted a credit facility of USD 385, 000.00 secured by 2 existing charges already held as a 1<sup>st</sup> line charge and a 2<sup>nd</sup> line charge, and then charged the property as a 3<sup>rd</sup> line charge for USD 60,000.00 as additional security and not by way of substitution.*

*5. Each and every allegations in paragraph 4 is denied.*

*6. The Defendant avers that all 3 registered charges against the Property remain as a continuing security for the Plaintiff's indebtedness to the Defendant, and must remain on the Land and condominium registers. "*

- [4] The Defendant prays this court for Judgment in his favour by dismissing the Plaintiff's complaint with cost.

#### **A SYNOPSIS OF THE FACTUAL BACKGROUND**

- [5] The undisputed facts of this case as borne out in evidence, are that the Plaintiff owns a property known as condominium C2 at Eden Island, registered as title V 17391, purchased by way of a credit facility, that is, a loan of USD 294, 000.00 secured from the Defendant under the terms specified in a letter of offer which the Defendant accepted, dated 13<sup>th</sup> August 2008, exhibit P1. As a continuing security in favour of the Defendant for the Loan, by virtue of the terms and conditions of the offer, a deed of charge was registered on the 12<sup>th</sup> January 2010 against the property title V17391 in favour of the Defendant entered in the encumbrance register of title V 17391 as a 1<sup>st</sup> line charge for USD 294, 000.00 Loan, exhibit P1.
- [6] Consequent upon an application for a Barclay Loan/executive loan to purchase household items, by letter dated 19<sup>th</sup> March 2010, exhibit P5, the Plaintiff was informed by a representative of the Defendant, that his application for the loan has been successful, and there upon, he was issued with a letter of offer dated 19<sup>th</sup> March 2010, exhibit P7, containing the terms and conditions of the credit facility in the form of a loan of SCR 400, 000.00.
- [7] As a continuing security for the loan in favour of the Defendant, by virtue of the terms and conditions of the offer, which offer was accepted by the Plaintiff, a deed of charge was registered on the 20<sup>th</sup> May 2010 against the property title V 17391 in favour of the Defendant, entered in the encumbrance register of the said title V 17391 as a 2<sup>nd</sup> line charge as security for the SCR 400, 000.00 Loan, exhibit P6.
- [8] For the purpose of 'Equity Release', the Plaintiff secured from the Defendant a 3<sup>rd</sup> "credit facility" in the form of a 3<sup>rd</sup> Loan in foreign currency in the sum of USD 385, 000.00 on



the terms and conditions specified in the letter of offer dated 10<sup>th</sup> July 2015, exhibit P7, which the Plaintiff accepted. As a continuing security in favour of the Defendant for the 3<sup>rd</sup> loan, in accordance with the terms and conditions of the offer, a deed of charge was registered on the 8<sup>th</sup> of September 2015 in the sum of USD 60,000.00 (offer) against the property title V 17391 in favour of the Defendant entered in the encumbrance register of title V 17391 as a 3<sup>rd</sup> line charge for USD 60,000.00, exhibit P11.

### **SUBMISSION OF COUNSELS**

- [9] In his written submission on behalf of the Defendant, learned counsel, inter alia, submits, that as per the terms of the agreement between the Plaintiff and the Defendant as regards to the loan of USD 385, 000.00, the 1<sup>st</sup> and 2<sup>nd</sup> line charges entered in the encumbrance register of title V 17391 were to be maintained.
- [10] It is contended by learned counsel, that the Plaintiff's proposition that since the Loan of USD 385, 000.00 was to pay off the two previous loans and therefore the 1<sup>st</sup> and 2<sup>nd</sup> line charges entered against the property title V 17392 ought to have been cleared off or discharged "does not hold water". Learned counsel contends, that it is illogical for the Plaintiff to have expected the Defendant to grant the Plaintiff a loan of USD 385, 000.00 that would have cleared the existing charges, and then have the loan of USD 385, 000.00 secured by a single charge of USD 60,000.00.
- [11] Learned Counsel submits, that the evidence shows, that the representative of the Defendant did explain to the Plaintiff why a 3<sup>rd</sup> line charge in the sum of USD 60,000.00 would be entered against property title V 17391 as security for the loan of USD 385, 000.00, and that the Plaintiff agreed to the arrangement to avoid the extra costs that otherwise he would have incurred.
- [12] Learned counsel also submits, that at no point did the Plaintiff request for a discharge of the existing charges (the 1<sup>st</sup> and 2<sup>nd</sup> line charges) that would have been subject to payment of a fee. Learned counsel further submits, that as per the evidence of the Defendant's representative, the Plaintiff would have incurred extra costs for the discharge of the two previous charges given that there is a fee payable for that, and the fee for the registration

of the new charge to secure the full loan of USD 385, 000.00 would have been much higher as opposed to the balance of the existing value held in favour of the Respondent.

- [13] In the last paragraph of his written submission, Learned counsel for the Defendant has this to say;

*“At no point in any of the documentation, now in evidence adduced before the court, was it shown that the Plaintiff was misled to be told that the pre-existing charges would be removed. In fact, it was explicitly stated in the credit facility letter that it is held and therefore maintained” (see exhibit P7).*

- [14] In his written submission on the facts of the case as laid before this court in evidence, learned counsel submitting on behalf of the Plaintiff, focuses primarily on the salient aspects of the Plaintiff's evidence in examination in chief. Learned counsel submits, that the Plaintiff had stated in evidence, that the 3<sup>rd</sup> loan of USD 385, 000.00 was applied for because he needed extra funding, and that such loan was to consolidate the other obligations he had under loan 1 and 2 which under the terms and condition of the offer (exhibit P7) was for “equity release”.

- [15] Learned counsel refers this court to the fact, that the Plaintiff had stated in evidence, that the 3<sup>rd</sup> loan was taken to pay off the loans in Seychelles (loans 1 & 2) and the remainder to pay off the loan in the UAE. Learned counsel makes references to exhibit P8, an email dated 11<sup>th</sup> September 2015, from an officer of the Defendant, one Josepha Albert, giving details of how the 3<sup>rd</sup> loan of USD 385, 000.00 was to be disbursed towards the balance due on the previous Loans locally, and one in Dubai.

- [16] Learned Counsel refers the court to the Plaintiff's CFC Loan account statement, exhibit P9, which statement indicates, that on the 16<sup>th</sup> September 2015, “closed press loan USD 12, 797.32” which in evidence, the Plaintiff had stated, that to him that meant that Loan No2, the executive loan, was closed. Learned counsel also refers the court to the Plaintiff's evidence with reference to exhibit P9, indicating that, on the 17<sup>th</sup> September 2015., there was a loan paid off in the amount of USD 207, 996.64 in respect of the 1<sup>st</sup> loan of USD

294, 000.00 and that the sum of USD 159, 110.87 was disbursed by way of payment into his HSBC account in Dubai.

- [17] Learned Counsel mentions the fact, that in evidence, the Plaintiff did produce his Premier FC current account as exhibit P10, and testified, that it shows the USD 159 thousand that remained in the CFC Loans account was withdrawn. Learned counsel also states, that the Plaintiff did correlate this withdrawal with documentary evidence, exhibit P17, showing, that the remainder was released to his HSBC account in Dubai to settle the Loan and personal expenses, and that thereafter, in respect of the third Loan of USD 385, 000.00, there was zero balance left.
- [18] It is submitted by Learned counsel, that in evidence, the Plaintiff conceded, that there are slight differences in the amount mentioned in the statements and the email containing the breakdown from the Defendant, and stated, that this was as a result of changes in the exchange rates as indicated in the email. Learned counsel also submits, that the Plaintiff also conceded, that in accordance with the security clause of the 3<sup>rd</sup> loan, charges 1 and 2 were to remain and kept, and that he did testify, that he did not have any knowledge vis à vis laws on registration of charges, and that he testified, that it was the bank that advised him that, that was the correct process to follow.
- [19] It is the submission of learned counsel, that the Plaintiff did testify, that after he received the 3<sup>rd</sup> loan, he was no longer bound by the terms and conditions stipulated under loan 1 and 2 because these two loans had been paid off, and the accounts pertaining to these two loans were effectively closed. Learned counsel calls for the attention of this court on the fact that in cross examination, the Plaintiff had reiterated that loans 1 and 2 were paid off, and therefore, he was advised by his lawyer that charges 1 and 2 had been extinguished, and that in re-examination, he did confirm, that he had no knowledge on how to register a valid charge.
- [20] Learned counsel submits, that in evidence, Mr. Morel who testified on behalf of the Defendant, conceded under cross examination, that it was the bank that advised the client that this process of registering charges was the correct process, and that if the court deems it otherwise, it is by no means the fault of the Plaintiff. Learned counsel also submits, that



under cross examination, Mr. Morel also conceded, that the 3<sup>rd</sup> loan paid off the obligations under the 1<sup>st</sup> and 2<sup>nd</sup> Loans, and that he also conceded, that the Plaintiff is no longer bound to any of the conditions under Loans 1 and 2, as they are deemed paid off.

- [21] Learned Counsel goes further as to submit, that all the 3 charges are not in dispute regarding the validity of their registration, and that what is in dispute, is whether the Defendant could have the 1<sup>st</sup> and 2<sup>nd</sup> charges as registered bound the Plaintiff against a new obligation. As the basis for his contention, learned counsel relies on Article 2180 of the Civil Code of Seychelles Act, that reads as follows;

*“Mortgages shall be considered extinguish if the Principal obligation is deemed extinct,”*

Learned counsel submits, that a principal obligation under loans contracts ought to be considered extinct if such obligation is discharged by payment in accordance to Article 1234 of the Civil Code of Seychelles Act that reads as follows;

*“Payment of an obligation shall cause the discharge of that obligation in a loan contract”.*

- [22] As to the law which learned counsel seeks to rely upon in support of his contentions, learned counsel cites a number of statutory provisions of the Civil Code of Seychelles Act, and the Land Registration Act, which in my considered opinion, them alone, do not provide the correct answers to the issues in contention. Another provision of the Civil Code of Seychelles Act cited by Learned counsel for the Plaintiff in his quest to argue the case for the Plaintiff, is Article 2114 of the Civil code of Seychelles Act, 1976 (now replaced by the Civil Code of Seychelles Act, 2020 that reads as follows;

*“the purpose of a mortgage/charge is to secure the creditor against the discharge of an obligation of the debtor”*

- [23] In essence, Learned counsel for the Plaintiff is right in his submission on the law, save that, it is my considered opinion, that he seems to discuss the law in a vacuum rather than in the context of the whole facts and circumstances of this case as transpired in evidence. I am hastened to add, though, that the evidence pertaining to the 3<sup>rd</sup> loan will shed light on the sort of arrangement the parties bound themselves to amid the various statutory provisions.



## DISCUSSION OF THE EVIDENCE AND THE LAW

- [24] I have thoroughly read the submission of learned counsel representing the parties in this case, and is of the view, that learned counsel for the Defendant's submission is a succinct one, and one that put greater emphasis on the facts of the case as transpired in evidence which are almost undisputed. Conversely, I find the submission of Learned counsel for the Plaintiff to be more elaborate, both, on the facts and the law, although I observe, that it doesn't necessarily address all the issues that is required for consideration to achieve a just determination of the plaint.
- [25] Notwithstanding learned counsel for the Plaintiff detailed rehearsal of the evidence, particularly as regards to the three loans the Plaintiff borrowed from the Defendant in terms of the type of the loans, their purpose and their security for repayment, there is one significant aspect of the evidence which learned counsel for the Plaintiff has been quite economical about the facts. That is to say, the evidence pertaining to the circumstances that led to the Plaintiff securing the 3<sup>rd</sup> loan of USD 385, 000.00 secured by way of a 3<sup>rd</sup> line charge of USD 60, 000.00 only, which unless the USD 385, 000.00 was subject to other form of security, this transaction in itself would have made no commercial sense for the Defendant as a commercial bank.
- [26] Given, that the facts as laid before this court in evidence is largely undisputed, to adjudicate on the current dispute between the Plaintiff and the Defendant, I will not venture, or dwell too much on the evidence pertaining to the 1<sup>st</sup> loan of USD 294, 000.00 and its corresponding 1<sup>st</sup> line charge entered against property title V 17391 as security for the loan repayment and the 2<sup>nd</sup> loan of SCR 400, 000.00 and its corresponding 2<sup>nd</sup> line charge entered against property title V 17391. Suffice to say, that it is an admitted fact by both parties, that the 3<sup>rd</sup> loan of USD 385, 000.00 was disbursed to pay off the 1<sup>st</sup> and 2<sup>nd</sup> loans, and that there was no continuing obligation on the Plaintiff as regards to repayment of the two loans once they were paid off. The Plaintiff contents, that the 1<sup>st</sup> line and 2<sup>nd</sup> line charges that were registered against property title V 17391 in respect of the two loans ought to have been removed or discharged.

[27] Therefore, the primary issue that falls to be addressed to determine this plaintiff is, whether, the 1<sup>st</sup> and 2<sup>nd</sup> loans having been paid off, it must follow, base of course on the facts and circumstances of the instant case, that the 1<sup>st</sup> and 2<sup>nd</sup> line charges should have been extinguished, and therefore discharged and removed from the encumbrance register of property title V 17391. This, of course, requires consideration of a secondary issue. That is;

*(i) whether, the evidence shows, the existence of any special arrangement or agreement between the Plaintiff and the Defendant for retention of the 1<sup>st</sup> and 2<sup>nd</sup> line charges in the encumbrance register of property title V 17391 over and above the 3<sup>rd</sup> line charge of USD 60, 000.00 as continuing security for the 3<sup>rd</sup> loan of USD 385, 000.00*

[28] Based on the law, as correctly discussed by learned counsel for the Plaintiff in his written submission, prima facie, one would have expected a discharge of the 1<sup>st</sup> and 2<sup>nd</sup> line charges against property title V 17391 once they were paid off, and that would have been a legitimate expectation. It is, however, unclear to me, whether the Plaintiff has ever given thought to the implications and the effect on the Defendant as regards to the 3<sup>rd</sup> loan of USD 385, 000.00 which had been secured by a 3<sup>rd</sup> line charge of USD 60, 000.00 only, if the 1<sup>st</sup> and 2<sup>nd</sup> line charges were to be discharged in accordance with Article 1234 of the Civil Code of Seychelles Act.

[29] It is my considered view, that the outcome has not been as was expected by the Plaintiff, and indeed by learned counsel for the Plaintiff, for obvious reasons. Notably, because the Plaintiff contracted otherwise. The offer of the 3<sup>rd</sup> loan of USD 385, 000.00 made to Plaintiff by the Defendant, as per the letter of offer, exhibit P7, was dependent on the Plaintiff accepting its terms and conditions, which he did. One of these terms stipulated in the letter of offer, clearly spells out what the security for the loan would be, and is stated to be the following;

*“security*

- 1<sup>st</sup> line charge over property apartment P10A22 situated on Parcel V 17391 registered and stamped to cover USD 294, 000.00 (Held)*

- *2<sup>nd</sup> line charge over property apartment P10A22 situated on Parcel V 17391 registered and stamped to cover SCR 400, 000.00 Held*
- *3<sup>rd</sup> line charge over property apartment 10A22 situated on Parcel V 17391 registered and stamped to cover USD 60, 000 (offer)”*

[30] At paragraph 38 of his written submission, learned counsel for the Plaintiff submits, that the Plaintiff did say in evidence, that *“although he did sign the contract for the 3<sup>rd</sup> loan, he cannot be held accountable for matters of legally registrable charges”*. That is reflected in the Plaintiff’s evidence, having said that *he did not have any knowledge vis à vis laws on registration of charges*.

[31] In the realm of the notion of “freedom of contract,” a contract freely entered into by the parties with capacity, is enforceable if not against public policy. In the instant case, there is no suggestion, that the arrangement for the retention of the 1<sup>st</sup> and 2<sup>nd</sup> line charges against property title V 17391 as continuing security for the 3<sup>rd</sup> loan of USD 385, 000.00 renders the contract to be against public policy. In fact, at paragraph 23 of his written submission, learned counsel for the Plaintiff does acknowledge, that *“it is not in dispute that the 3 loans contract were valid contractual agreement”*. That, therefore, makes the 3<sup>rd</sup> contract in respect of the 3<sup>rd</sup> loan of USD 385, 000.00 enforceable.

[32] It is in evidence, that the Plaintiff needed the 3<sup>rd</sup> loan of USD 385, 000.00 to consolidate his other obligations as regards to the 1<sup>st</sup> and 2<sup>nd</sup> loans, and the fact that it is stipulated in the letter of offer, exhibit 7, that the purpose of the loan is for “equity release,” substantiates that fact. Further proof of that fact, is the email tendered as exhibit P8 that explains how the 3<sup>rd</sup> loan would pay off the 1<sup>st</sup> and 2<sup>nd</sup> loans, which actually happened when the loan was disbursed and the 1<sup>st</sup> and 2<sup>nd</sup> loans paid off, exhibit 9 and 10.

[33] The Plaintiff’s proposition, that having paid off the 1<sup>st</sup> and 2<sup>nd</sup> loans and the accounts closed, he is no longer bound by the conditions attached to the 1<sup>st</sup> and 2<sup>nd</sup> loans, prima facie, appears to be quite convincing in theory. More so, when one considers it in isolation rather than in the context of the 3<sup>rd</sup> loan and the terms and conditions agreed between the parties for the 3<sup>rd</sup> loan of USD 385, 000.00. The Plaintiff, having knowingly agreed for the



1<sup>st</sup> and 2<sup>nd</sup> line charges to be retained against property title V 17391 as continuing security for the loan of USD 385, 000.00 over and above the 3<sup>rd</sup> line charge of USD 60,000.00 cannot now turn round and say that this was unlawful, when in my considered opinion, it was not, and it is not.

[34] In fact, at no point did the Plaintiff request for a discharge of the 1<sup>st</sup> and 2<sup>nd</sup> charges, understandably so, because there is a fee payable for the discharge, and more so, he would have had to incur a much greater fee for the registration of the new charge to reflect the full loan amount of USD 385, 000.00 instead of the USD 60, 000.00 which was worked out as the difference between the 1<sup>st</sup> line charge and the 2<sup>nd</sup> line charge. He agreed for the 1<sup>st</sup> and 2<sup>nd</sup> line charges to be retained in the encumbrance register of property title V 17391 to avoid the extra cost that he would have incurred if the two charges were to be discharged and removed.

[35] Furthermore, at paragraph 2 of the 3<sup>rd</sup> charge, exhibit P11, registered against property title V 17391 on the 8<sup>th</sup> September 2015, it is clearly stated, that the chargor (who is now the Plaintiff) “*do hereby specifically charge as a third priority charge, and as a continuing security free from all encumbrances*”. That indicates, that the Plaintiff specifically agreed, that the 3<sup>rd</sup> charge is a continuing security and that it would not operate as a sole charge in respect of the third loan agreement for the loan of USD 385, 000.00. If it was the understanding or in the contemplation of the Plaintiff, notwithstanding the fact that the evidence shows otherwise, that by paying off the 1<sup>st</sup> and 2<sup>nd</sup> loans using the funds obtained from the 3<sup>rd</sup> loan, that, that should have extinguished the 1<sup>st</sup> and 2<sup>nd</sup> charges entered against the property title V 17391, and that the loan of USD 385, 000.00 was to be secured by a sole charge in the sum of USD 60,000.00 only, then it was a misconceived idea because that would not have made any commercial sense for the Defendant.

[36] It is clear from the facts of this case, that the Defendant would been severely prejudiced if the 1<sup>st</sup> and 2<sup>nd</sup> charges were extinguished, as the only security for the 3<sup>rd</sup> loan of USD 385, 000.00 would have been the 3<sup>rd</sup> line charge of USD 60,000.00. This, amid the fact that the Plaintiff is still liable towards the Defendant for the full loan amount of USD 385, 000.00. Therefore, although Article 1234 of the Civil Code of Seychelles Act, provides, *that*

*payment of an obligation shall cause the discharge of that loan contract*, on the facts of the instant case, it can also be argued, that the loans obligations in its entirety was not discharged, as the 1<sup>st</sup> and 2<sup>nd</sup> loans were consolidated by the 3<sup>rd</sup> loan. Hence, the Plaintiff still owes the Defendant the amount of USD 385, 000.00 for which the property title V 17391 has been used as security, which security has been lawfully obtained.

## CONCLUSION

[29] In the final analysis, therefore, and for the reasons discussed in the preceding paragraphs of this judgment, I have no hesitation to dismiss this plaint on its merit, with cost awarded to the Defendant.

Signed dated and delivered at Ile du Port 22<sup>nd</sup> September 2023.

