

IN THE COURT OF APPEAL OF SEYCHELLES

CIVIL APPEAL NO. 11 OF 1985

DORIS RAIHL. APPELLANT

VERSUS

STEINER PRODUCTS. RESPONDENT

JUDGMENT OF MUSTAFA, P.

The appellant was the plaintiff in the Supreme Court in a suit she had filed against the respondent. The appellant was carrying on the business of hair dressers, called "Doris the Hairdressers" at the premises she had leased at Pirates Arms Building, Victoria. She had entered into negotiations with the respondent, a limited liability company registered in the United Kingdom, and operating, among other places, a hairdressing business at Mahe Beach Hotel, Victoria, for the sale of, in the words of paragraph 3 on the plaint "the equipment and fitting of the Plaintiff situate in her salon in Victoria so that the defendants could operate out of the premises leased by the Plaintiff".

It is common ground that the terms of the agreement were reduced to writing. The respondent eventually refused to complete the purchase and to sign the agreement to lease on the ground that the conditions precedent contained in the agreement to lease had not been fulfilled.

The appellant had vacated and closed her hairdressing business on or about 31.3.84 and had claimed from the respondent damages for breach of the agreement to lease totalling Rs. 140,000, made up of Rs. 60,000 for total loss of business, Rs. 60,000 for loss of goodwill, and Rs. 20,000 for inconvenience. In the Supreme Court, Proag J. dismissed the appellant's claim and from that judgment the appellant has appealed.

The agreement to lease after briefly setting out the names of the parties and the terms of the lease, contains the following condition, among others:

"4. The Agreement is subject to the following conditions precedent:

(a) That the lease of the premises occupied by the Vendor is transferred to the Purchaser."

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It is not in dispute that despite attempts the Government of Seychelles had refused to give permission to the respondent to operate a hairdressing salon from the premises at Private Arms, i.e. the necessary sanction by the Government for the transfer of the lease was withheld. That was the main reason given by the respondent for refusing to complete the purchase and sign the lease agreement. The respondent had contended that the lease could not be completed because a condition precedent could not be complied with. The appellant was fully aware of the conditions precedent in the lease agreement before she closed her hairdressing business on 31.3.84.

Mr. Georges for the appellant has repeated before us his argument that an oral agreement that the respondent would purchase the equipment and fittings for Rs. 60,000 from the appellant had been reached without any conditions precedent or subsequent. The agreement to lease was drafted subsequently to the oral agreement and did not apply to the antecedent oral agreement. He relied on the provisions of Article 1583 of the Civil Code of Seychelles which read:

"A sale is complete between the parties and the ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid".

The trial judge dealt with Mr. Georges submission in his judgment. He said:

"I find it established that there was an agreement between the parties to be effective subject to conditions precedent..... It is true that an oral agreement of sale has been reached by the two parties before the drawing of the draft agreement, but it contained a condition precedent which has clearly been described in para 3 of the plaint. It was an offer to sell fittings and equipment and transfer the lease of a salon at Private Arms Building all for £6,000. Plaintiff had the obligation to transfer a valid lease. This she was unable to do owing to lack of Government sanction. Therefore I cannot entertain plaintiff's counsel submission that the moment that the things and the price have been agreed, ownership of the plaintiff's salon passed as of right to the defendant..... Worse still, the offer cannot be severed".

In my view the trial judge was right. I am satisfied that the sale of the xxxp equipment and fittings was subject to the conditions precedent contained in the agreement to lease. It was clear that the parties had

...../3.

contracted on the basis of the sale of a running business with the transfer of the lease; not a mere sale of equipment and fittings which obviously was of no use to the respondent.

I would dismiss the appeal with costs.

DATED at VICTORIA this 29th day of August 1986.

A. Mustafa

A. MUSTAFA
PRESIDENT.

IN THE SEYCHELLES COURT OF APPEAL.

Civil Appeal No.11 of 1985.

Between -

DOHIS RAIHL Appellant

and

STEINER PRODUCTS Respondent

Mr. Georges for the appellant.

Mr. Shah for the respondent.

JUDGMENT OF LAW J.A.

The appellant owned and operated for some 15 years a hairdressing salon in premises which she leased from the owners of the Pirates' Arms Hotel at Victoria. The respondent is a company incorporated in the United Kingdom where it carries on the business of hairdressing under the name of "Steiners". It also operates hairdressing salons at various places outside the United Kingdom including one in Seychelles, at the Mahe Beach Hotel.

Steiners wanted to acquire the appellant's business which she carried on at the Pirates' Arms Hotel. Negotiations to this effect took place between the appellant and representatives of Steiners both in Seychelles and in England. An agreement was drawn up early in March, 1984, but was never signed by the parties. By clause 4 of that agreement, the agreement was stated to be subject to certain conditions precedent, two of which were that Steiners should receive permission from the Seychelles Government to lease the Pirates' Arms premises under the provisions of the Immovable Property (Transfer Restriction) Act (Cap.96) and that the appellant should transfer a valid lease. Government approval was applied for by Steiners, but was refused. Steiners appealed, but that appeal was rejected. Steiners accordingly informed the appellant that they were unable to complete the transaction, and withdrew.

On 26th. December, 1984, the appellant filed the suit in the Supreme Court, from which this appeal stems. By her plaint, she alleged that "during the weeks leading up to the month of March" Steiners had negotiated

her to purchase her equipment and fittings so that Steiners could operate its business out of the premises leased by her, that the negotiations were reduced by Steiners into a written agreement which was never signed, and that it was a condition of the purchase of the appellant's equipment and fittings that the appellant would cease to operate as a hair-dresser and would vacate the premises occupied by her, which she did by the 31st. March, 1984. By paragraph 7 of the plaint, the appellant stated that "by reason of the matters aforesaid the plaintiff has suffered loss which the defendant is bound to make good" and she particularized her loss as follows :-

"Total loss of business	R.60,000
Loss of goodwill	R.60,000
Inconvenience	R.20,000"

and she asked for an order that Steiners be ordered to carry out its obligations under the oral agreement with her, alternatively she claimed the sum of R.140,000.

The defence was principally that the agreement between the parties was subject to conditions precedent and was nullified by the Government's refusal to allow Steiners to take a lease of premises in the Pirates' Arms Hotel.

The learned trial judge (Proag J.) dismissed the appellant's suit, holding that the oral contract for the sale of the equipment and fittings was subject to the condition precedent that Steiners "could operate its business out of the premises leased by the plaintiff", as stated in the plaint, and that this condition has been frustrated by Government's refusal to grant a lease to allow the business to be carried on in the plaintiff's premises or in other premises in the Pirates' Arms Hotel.

Mr. Georges for the appellant limited the claim to R.60,000 being the amount which Mr. Marshaw (representing Steiners) has agreed to pay for the equipment and fittings, on some date towards the end of February, 1984, in London. That such an agreement was made is not denied by Steiners, but its case is that the agreement was subject to the conditions precedent embodied in the written but unsigned contract drawn up early in March. The appellant in her evidence agreed that when Mr. Marshaw said he would buy the equipment

stipulated that they should meet later "to sign the agreement". That agreement was in the event never signed.

Mr. Georges relies on Article 1583 of the Seychelles Civil Code, which provides as follows :-

"A sale is complete between the parties and the ownership passes as of right from the seller to the buyer as soon as the price has been agreed upon, even if the thing has not yet been delivered or the price paid."

Mr. Georges submits that there was no suggestion of conditions precedent when Mr. Warsaw and the appellant agreed on the price, in February, 1984, so that there was then a completed sale pure and simple. Those words "pure and simple" are taken from Article 1584 of the Civil Code, which provides that :-

"A sale may be concluded either purely and simply or subject to a condition precedent."

I have no doubt that when Mr. Warsaw referred to a later meeting to sign the agreement, he had in mind the written agreement which came into existence a few days later, but whose contents (including the conditions precedent) must have been discussed between the parties during the negotiations of the preceding five months. In agreeing the price, Mr. Warsaw was doing so subject to the conditions precedent, the general purport whereof must have been known to the appellant. Mr. Warsaw would not have been likely to commit his company to the purchase of a substantial quantity of second-hand hairdressing equipment in Seychelles unless he was assured of a lease. The equipment would be useless to him without premises in which to install and use it. All this is implicit in the learned judge's finding that it was a condition precedent to the oral agreement that Steiners would be able to operate the equipment out of the premises leased by the appellant, or equivalent premises. I see no reason to differ from the learned judge's holding that the oral agreement for the equipment and fittings was subject to the condition precedent that Steiners would be able to use them in premises in the Pirates' Arms Hotel, and that the agreement lapsed by operation of the condition precedent when the government refused to allow Steiners to carry on business in the Hotel. I have some sympathy for the appellant who has been the victim of circumstances beyond her control. I would dismiss this appeal.

Dated at Victoria this ... 29th ... day of ... August ... 1986

... *E. Law* ...

(Sir Eric Law)

JUSTICE OF APPEAL.

IN THE SEYCHELLES COURT OF APPEAL

Doris Railh Appellant
vs.
Steiner Products Respondent

Civil Appeal No. 11 of 1985

The appellant is a hairdresser and was, at all material time, the sole proprietor of a hairdresser saloon located at the Pirate Arms Hotel, Victoria. The respondent is a Company registered in the United Kingdom and inter alia, carries on the business of hairdresser in Seychelles at the Make Beach Hotel. In an action brought before the Supreme Court, the appellant inter alia averred that -

1. During the weeks leading up to the month of March 1984 the Defendant negotiated with the Plaintiff to purchase the equipment and fittings of the Plaintiff situate in her salon in Victoria so that the Defendant could operate its business out of the premises leased by the Plaintiff.
2. The said negotiations between the parties were reduced by the Defendant to a draft agreement, which was never signed, a copy of which is attached hereto.
3. It was a condition of the purchase by the Defendant of the Plaintiff's equipment and fittings that the Plaintiff would cease to trade as a hairdresser and would vacate the premises in the said Pirates Arms Building. The Plaintiff did this and shortly after the 31st March, 1984 the Defendant took possession of the Plaintiff's salon.
4. By a letter dated 14th June, 1984 the Defendant informed the Plaintiff that it could no longer proceed to purchase the Plaintiff's equipment and fittings.
5. By reason of the matters aforesaid the Plaintiff has suffered loss which the Defendant is bound to make good.

Particulars

Total loss of Business	R 60,000
Loss of Goodwill	60,000
Inconvenience	<u>20,000</u>
	R 140,000

Despite requests of the Defendant to make good the Plaintiff's loss the Defendant has refused or neglected to do so.

AND THE APPELLANT PRAYED:

- (a) that the Defendant be ordered to carry out its obligations under the oral agreement with the Plaintiff,
- (b) alternatively to prayer (a), the sum of R 140,000.00

The plea of the respondent was that the contract agreed to by the parties was subject to certain conditions precedent and as these were not fulfilled the contract was nullified.

Evidence was heard and the learned trial judge accepted the version of the respondent and dismissed the plaint.

The appellant is challenging the findings of the learned trial judge.

Both versions were fully investigated before the trial judge.

The evidence reveals that the respondent was interested in acquiring the business of the appellant at the Pirate Arms Hotel and after protracted negotiations an agreement was reached which was reduced to writing but was never signed. Clause 4 of that unsigned agreement which was produced stated that it was subject to certain conditions precedent. The main conditions precedent being (1) Authorisation by the Government to the respondent to lease the premises at Pirate Arms under the provisions of the Immoveable Property (Transfer Restriction) Act (Cap 96) and (2) transfer of the lease of the premises at Pirate Arms Hotel by the appellant to the respondent.

There is evidence to the effect that the respondent's representative had agreed to buy the equipment and fittings of the appellant's saloon for the sum of R 60,000 but there is also evidence which would indicate that the agreement was subject to the conditions precedent contained in the written but unsigned agreement.

The appellant herself admitted that when the respondent agreed to buy the equipment he said they should meet later to sign the agreement. There is also evidence to the effect that the appellant received the unsigned agreement and had seen all the conditions therein. There was no adverse reaction from her regarding the conditions.

counsel for the appellant argued that the agreement to buy the equipment and fittings was a separate transaction which was not tied to any conditions precedent. Therefore, in his view there was a complete sale and the respondent would be liable in damages to the appellant under article 1583 of the S.C.C. The learned trial judge rejected - rightly in my view - all suggestion that the agreement to buy the equipment and fittings was a separate deal not subject to any condition precedent. There is ample evidence on record to support the version of the respondent that it was subject to the conditions precedent mentioned in the unsigned agreement. I find no reason to differ from the conclusion reached by the learned trial judge. The appeal fails and is dismissed with costs.

Dated at Victoria this

29th

day of

August

1980.

H. Goburdhun

H GOBURDHUN

Justice of Appeal

Order. Appeal dismissed with costs.

EBJ

(P. J.)

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