

IN THE SUPREME COURT OF SEYCHELLES

SADEP BUILDERS (PTY) LTD

Rep by one of its Director Mrs Siana Bistoquet

PLAINTIFF

VERSUS

MR ANTONIO STRAVENS

DEFENDANT

Civil Side No 25 of 2005

Mr. F. Bonte for the Plaintiff

Mr. F. Ally for the Defendant

JUDGMENT

Perera ACJ

The plaintiff, a building contractor, sues the defendant, a client on an alleged breach contract and claims a sum of Rs328,519.20 for extra work done.

Admittedly, by an agreement dated 14th June 2001, the plaintiff agreed to build a dwelling house at Carana for the defendant for a sum of Rs1,475,743. While the plaintiff avers that that sum included the cost of materials and labour, the defendant avers that it was agreed that the defendant would provide most of the materials, and that accordingly, he provided all materials except for bricks, cement and crusher dust. The plaintiff avers that the contract price was later revised by an invoice dated 31st May 2007 to Rs1, 584,743 as extra work was involved. This is denied by the defendant. The plaintiff further avers that the defendant paid

Rs800,000 towards the contract price. The defendant avers that Rs800,000 was not the only amount he paid and sets out other payments in paragraph 5 of the statement of defence.

The claim of the plaintiff is based on the revised contract sum of Rs.1,584,743. In this regard they aver that, the following were taken into consideration in claiming the sum of Rs.328,519.20.

1. A deduction of Rs.300,000 as payment for a JCB brought by the plaintiff from the defendant.
2. Rs.91,755 for materials supplied by the defendant.
3. Rs61,468 being payment made by the defendant to one Ralph Lesperance, the electrical contractor.
4. Rs.3000 being payment made by the defendant to one Sibert Rose, the plumber.

The defendant disputes these averments and maintains that the contract price was Rs1,475,743 and not Rs.1,584,743. As regards the other payments he avers that -

1. The price of the J.C.B was Rs450,000 and not Rs.300,000, and that it was the contract price.
2. The defendant claims that he supplied the plaintiff building materials worth in excess of Rs.91,755.
3. The payments to the electrical contractor and the plumber are admitted.
4. The defendant avers that he sold his Mercedes Benz motor car to the plaintiff or its Director for a sum of Rs.400,000,

and that it was agreed that that sum be set off against the contract price.

Accordingly, the defendant avers that he has paid the whole contract price, and that the plaintiff has no further claim against him.

The case for the plaintiff is based on extra work done. As was held in the case of **Lesperance v. Brown (No.2) (1971) S.L.R. 288**, where there is an agreement to work for a lump sum on a definite plan, no increase in the stipulated price for additional work performed can be claimed except if there is written proof thereof authorizing such additional work. This pronouncement is based on Article 1793, of the Civil Code which contains a proviso that a claim for additional work can be made if there is an escalation clause. There is no such clause in the present contract, and in any event is not relevant to this case. Clause 2(b) of the contract provides that.

“The said project shall be erected at a cost of Rs.1,475,743 inclusive of materials and labour as per revised quotation with exception all wall and floor tiles, windows and sliding doors, interior wooden balustrade and pillars, all bathroom fixtures, waste and taps, kitchen cabinet and sink, electrical fittings, glass blocks and all door locks are excluded in the quotation”.

The main issue in this case is whether there was written agreement between the parties regarding the alleged extra work outside the

work agreed upon in the agreement of 14th June 2001 (P1) with the contract price at Rs.1,475,743. In terms of that agreement, the defendant agreed to pay Rs200,000 as an advance before the contractor commenced work, and the contractor also agreed to deduct Rs.300,000 from the contract price for purchase of J.C.B. excavator. Although the defendant has pleaded that the price of the JCB was Rs.450,000, there is no written proof to rebut Clause 5 of the agreement that the agreed price was Rs.300,000. However the defendant in his testimony admitted that the price was Rs.300,000. He also conceded the amounts the plaintiff set off from the claim, namely Rs.91,755 for materials supplied, Rs.61,468 being the payment made to the electrical contractor, and Rs.3000 paid to the plumber. The disputed item is the amount paid for the "sale" of a Mercedes Benz car by the defendant to the plaintiff. The defendant testified that the purchase price was Rs.400,000, and that it was agreed orally, that that sum was to be deducted from the contract price as a "set out". In proof of the sale, he produced the "vehicle transfer certificate" (D1) which shows that the transfer date was 15th September 2003. Sidna Bistoquet, representing the plaintiff company denied the alleged "set off" and stated that the vehicle was purchased for 17,000 US dollar which was paid in cash but no receipt was obtained. That money she claimed was from her sea cucumber business in Madagascar. She stated that the vehicle transfer document acted as proof of payment. The defendant denied any cash transaction and stated that as a Pilot, he had a foreign exchange account and as the plaintiff also had a car hire business and consequently had a foreign exchange account, there could have been an account to account transfer. He stated that

there was no necessity for him to receive cash at a black market rate.

Article 1315 of the Civil Code provides inter alia that - “ a person who claims to have been released shall be bound to prove payment of the performance which has extinguished his obligation”. This applies to both parties. In the contract signed by the parties (P1), the only set off against the contract price was Rs.300,000, which was the agreed price for the J.C.B. excavator. In the statement entitled “breakdown of payment by client”, dated 31st May 2004 (P4), the plaintiff included only that item as a set off. Since the Mercedes Benz car was transferred on 15th September 2003 the plaintiff would have included the agreed price for the vehicle, whatever amount it may have been, in the statement (P4). Hence on a balance of probabilities, despite lack of proof, the Court accepts that the sale of the vehicle was independent of the obligations under the contract, and that hence, whatever the sale price was, there was no set off against the contract price. The alleged extra works as set out in detail in exhibit P5, amounting to Rs.109,000, in effect increases the original contract price from Rs.1,475,743 to Rs.1,584,743.

The plaintiff has acknowledged that the defendant had paid Rs.1,256,223.80, and hence claims Rs.328,519.20. That sum includes a sum of Rs.62,315.53 for extra electrical works. The electrician Ralph Lesperance’s quotation for the entire work including extra work was Rs.77,850 (P6). The plaintiff has in statement P4 acknowledged that the defendant had paid

Rs.61,468.80 to the electrician, although in the revised quotation (P6), the electrician had deducted the sum of Rs.27,900 as being the contractor's contribution under the contract. On that basis, the defendant was required to pay Rs.49,950 for extra work. Therefore he has in fact overpaid Rs.11,518.80.

As regards plumbing and drainage the agreement was that the contractor would supply only labour costing Rs24,000. However the plaintiff testified that subsequently there was external plumbing work, and an underground water tank had to be constructed. She stated that the materials were supplied by the contractor, and claims Rs.8758.70 for extra plumbing work and Rs9700 for raising a manhole to reach backfilling level, a total of Rs.18,458.70. There is no written agreement for such works. The plaintiff ought to have at least furnished a valuation report for extra work in respect of plumbing as well as all the other items claimed as extra work in the statement (P5). In these circumstances, the claim of Rs.109,000 for extra work cannot be maintained. Hence the contract price would remain at Rs.1,475,743. The defendant has not adduced evidence to substantiate paragraph 8 of the defence that he has paid the entire amount payable under the contract, and in fact overpaid the plaintiff. Further, the defendant produced a receipt dated 15th May 2007 from Laxambhi & CO. Ltd - for Rs.85,000 in respect of finishing works carried out on the premises. No counterclaim has however been made, nor is there an averment in the defence. Hence that amount is disregarded for present purposes. Accepting the admission of the plaintiff that the defendant paid Rs.1,256,223.80, the balance due

from the defendant will therefore be Rs.219,519.20. From this amount, the sum of Rs.11,118.80 overpaid by the defendant should be deducted.

Accordingly judgment is entered in favour of the plaintiff in a sum of Rs.208,400.40, together with interest and costs of action.

.....
A.R. PERERA

ACTING CHIEF JUSTICE

Dated this 9th day of May 2008