

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HELD AT VICTORIA

Civil Suit No. 12 of 2012

Aarti Investments Ltd=====Plaintiff

Versus

Peter Padayachy=====Defendant No.1

ABC Trading [PTY] Limited=====Defendant No.2

Somasunduram Rajasunduram for the plaintiff

France Bonte for defendant no.1

Serge Rouillon for the defendant no.2

RULING

Egonda-Ntende, CJ

1. As the plaintiff was testifying in this matter and referring to a lease agreement between him and defendant no.1, learned counsel for the defendant no.2, Mr Serge Rouillon objected to this line of testimony and to the production of the lease agreement [referred to in paragraph 4 of the plaint] in evidence on the ground that that lease agreement was a back letter and therefore inadmissible by virtue of article 1321(4) of the Civil Code of Seychelles, hereinafter referred to as CCS. He submitted that as this document is prohibited in law there can be no testimony about the same.

2. Mr Rouillon further submitted that where you have a registered a document such as transfer in this case of the three units between defendant no.2 and defendant no1, a prior agreement which was not registered within 6 months of its making such as the lease agreement between the plaintiff and defendant no.1 cannot be admissible in evidence, to contradict the registered document.
3. Mr Rouillon further drew the attention of the court to the Court of Appeal cases of Gilbert Hoareau v Miriam Hoareau SCA No.38 of 1996; Gabriel Adonis v Remy Laure SCA No.39 of 1999; and Sidna Ruddenklau v Timm Adolf Botel SCA No.4 of 1995 in support of his arguments.
4. Mr Somasunduram Rajasunduram, learned counsel for the plaintiff, in reply, submitted that this objection was wrongly taken. Firstly that the lease agreement was no back letter whatsoever as a back letter must be a secret document between the parties which contradicts another document between the parties. This was not the case here. The lease was not a secret document. Secondly if the lease was not in the authentic form for registration case law has established it still creates rights between the parties thereto. He referred to the case of La Goelette [Proprietary] Limited v Jacques Van Hecke [1982] SLR 431.
5. I have read the decisions of the Court of Appeal referred to by Mr Rouillon. I am grateful that Mr Rouillon made them available. These cases discuss clearly what amounts to a back letter. If I understood the cases correctly, a back letter, is a secret agreement between the parties that contradicts a simulated agreement between the same parties.

6. In Sidna Ruddenklau v Timm Adolf Botel SCA No.4 of 1995 the Court of Appeal stated,

‘A simulation is the concealment by the party of the true nature of their agreement behind a façade of a disguised transaction which the parties never intended to have ostensible effect. **The hidden agreement by which the parties agreed to conceal the true nature of the ostensible transaction as a sham is referred to in the Civil Code of Seychelles as a back-letter. The back letter provides evidence of the simulation.**’ [Emphasis is mine.]

7. The foregoing view was restated in Gilbert Hoareau v Miriam Hoareau SCA No. 38 of 1996 and Gabriel Adonis v Remy Larue, SCA No. 39 of 1999.

8. The transfer agreement of the units in question between defendant no.1 and defendant no.2 is not, on the pleadings, nor on the evidence adduced so far, ‘a simulated’ agreement. Neither is the lease agreement between the plaintiff and defendant no.1 ‘a back letter’ in any sense of the phrase back letter. Firstly it is not between the same parties nor is it between the defendant no.1 and defendant no.2. It does not seek to contradict the transfer document between the defendants.

9. Whether the lease agreement between the plaintiff and defendant no.1 has any legal consequences for any of the parties hereto is the issue that shall be determined after all the evidence has been heard in this case. At this stage I over rule the objections made by Mr Rouillon and allow the plaintiff to testify about and to produce this agreement in evidence, unless there is a new objection.

Signed, dated and delivered at Victoria this 18th February 2013

FMS Egonda-Ntende

Chief Justice