

**IN THE SUPREME COURT OF SEYCHELLES**

**ALEX BURON**

**VS**

- 1. BERARD MONTHY**
- 2. PARTRICK MOUSTACHE**

*Civil Side No:* 30 of 2008

*Civil Side No:* 278 of 2007

**JUDGMENT**

**Renaud, J.**

**Introduction**

At the instance of the Learned Counsel for the parties the Court granted leave for suits **CS 30/08** and **CS 278/07** to be consolidated and heard together as the parties are one and the same and the matters involved are based on the same incident and they would be relying on the same evidence.

Mr. Buron, the Plaintiff in suit **CS30/08** and Defendant in suit **CS 278/07** is a Seychellois national who used to live in England at all material time and was a client of the 1<sup>st</sup> Defendant, namely Unicorn Construction represented by Mr. Berard Monthy, a Company registered in Seychelles and holding a Building Contractor's licence, and, the 2<sup>nd</sup> Defendant, Patrick Moustache was and is a Civil Engineer at all material times.

Unicorn Construction represented by Mr. Berard Monthy, is the Plaintiff in suit CS 278/07.

For ease of reference in this judgment the respective parties in both cases will be termed by the names **Buron**, **Monthy** and **Moustache** in order to maintain consistency.

### **The cases**

The Plaintiff, Mr. Alex Buron (hereinafter "**Buron**") entered suit **CS 30/08** on 7<sup>th</sup> February 2008 whereby he prayed for a judgment ordering the 1<sup>st</sup> Defendant, namely Unicorn Construction represented by Mr. Berard Monthy (hereinafter "**Monthy**") and the 2<sup>nd</sup> Defendant, Mr. Patrick Moustache, (hereinafter **Moustache**) to jointly and severally pay him the total sum of **SR1,141,031.30** and the accruing loss of rent revenue and a further sum of **SR250,000.00** as moral damages for alleged breach of a building contract because Monthy did not complete his house.

The 1<sup>st</sup> Defendant, Unicorn Construction represented by Mr. Berard Monthy, (**Monthy**) entered another suit against the instant Plaintiff (**Buron**) in case **CS 278/07** on 25<sup>th</sup> September, 2007 praying for an order of specific performance ordering the Defendant therein (Buron) to pay him the sum of **SR102,441.00** to enable him to continue the next phase of the work or further and in the alternative, to order Buron to pay the sum of **SR428,441.00** together with interest and cost.

### **Issues**

Upon my analysis of the pleadings of the parties in the two cases I discerned the so many issues that are in dispute by the parties in those two suits. I have addressed all those issues on the basis of the evidence adduced which I accepted as revealed in my findings.

### **Findings**

This Court heard the evidence of Buron, Monthy and Moustache as well as those of the Quantity Surveyor Mr. L. Quatre, representative of the Seychelles Bureau of Standards Mr. G. Madeleine and a representative of the Ministry of Land Use and Habitat Mr. J. Adeyemi. The Court also received in evidence various documents which have been exhibited.

I meticulously analyzed all the evidences before the Court and on the basis of all such evidences I now record my findings which follow. I have as much as possible addressed the pleadings seriatim.

Buron is a Seychellois who was at the material time living and working in the United Kingdom. Monthy was a Company registered in Seychelles which held a licence as a Building Contractor. Moustache is a Civil Engineer.

On or about 20<sup>th</sup> October, 2005, Buron and Monthy entered into an agreement whereby Monthy agreed to build a residential house for Buron on parcel No. S4374 at Gaza, Anse Aux Pins, Mahe for the mutually agreed contractual sum of **SR864,000.00**. Buron gave the drawings of the house Ref: DC 336/05

approved by the Planning Department, to Monthy for the latter to commence the work.

There were exchanges of correspondences between the parties as per the exhibits tendered. I believe that it was Monthy who told Buron to pay the money in pound sterling in his overseas account with Barclays Bank in New Jersey. It could not have been otherwise. Where would Buron get Monthy's account reference in Jersey in that was not the case?

I also believe that Buron paid to Monthy the entire sum of the contractual price. Buron applied a rate of exchange which had been mutually agreed upon and I find that rate to be **SR23.00** for one pound sterling and not as Monthy claims. Although Monthy disputed the rate of exchange he did not indicate what was, according to him, the rate that they have agreed upon.

During his cross-examination, Buron explicitly conveyed that out of the sum of SR864,000.00 he had paid **33,000.00 Pound Sterling (GBP)** which was equivalent to **SR759,000.00** on the basis of the exchange rate cited earlier. There was an unpaid balance of **SR120,000.00** representing about 15 % of the contractual price that Buron admitted retaining as "retention money" to be kept back until the expiration of 6 months after completion of work in case of defects.

Buron transferred a total sum of **GBP43,000.00** to the bank account of Monthy and he candidly stated that only **GBP33,000.00** of that total sum was to go towards the payment of the contractual price.

Monthy accepted that Buron transferred money in pounds sterling to his account but again he did not clarify how much he has been paid and how much remained unpaid. I do not believe that Monthy had been truthful and candid.

I find that Buron paid the total contract sum either in Seychelles Rupees and/or by foreign currency directly in the bank account of Monthy and that Monthy had indeed received such payments through Bank Transfers in accordance with their prior mutual arrangement.

I do not believe the averment of Monthy that it was a term of the agreement that the house was to be completed two and half years later, that is, by March, 2008. This is unreasonable in the circumstances as Buron was anxious to have his house completed the soonest possible in order for him to earn rent and he promptly paid Monthy. I bear in mind that the project involved a normal residential house and any reasonable contractor operating in the normal circumstances ought to have completed the house within a shorter period. I find the contention of Monthy not to be true and is therefore rejected. On that score I believe the averment of Buron that the house was to be completed by the middle of the year 2006 and not by March 2008. On that basis I also find as a consequence that Monthy did indeed delay that construction works.

Buron regularly communicated with Monthy as to the inordinate delay of and urged the latter to minimize the delay so as to complete the house on time. Buron's Lawyer also sent written reminders to Monthy urging the latter to

complete the house but Monthy instead demanded additional sums of money which Buron was not liable to pay. Monthy, however, not only neglected and/or delayed the construction of Buron's house but failed to complete the house, which until today remains incomplete. Monthy completely stopped work, left and abandoned the site sometime in late 2006 after writing to inform Buron of his decision to do so. As Monthy did not comply with Buron's request to complete the house, Buron also formally terminated the contract of Monthy by a letter dated 3<sup>rd</sup> September, 2007.

**Exhibit P16** is a report dated 11<sup>th</sup> January, 2008 drawn up by the Seychelles Bureau of Standards and its contents clarified in Court by its Engineer Mr. Madeleine.

**Exhibit P17** is a letter dated 10<sup>th</sup> January, 2006 from Planning Authority. Mr. Adeyemi testified in connection with that letter and related matters. The evidences of both Mr. Madeleine and Mr. Adeyemi did not assist the Court very much to determine whether the claim of Buron that the quality of workmanship executed by Monthy up to that stage remains very poor and far below the specification. This averment of Buron is therefore not maintainable due to lack of cogent evidence.

It is the averment of Buron that the 2<sup>nd</sup> Defendant, Moustache, who is a Civil Engineer was the Project Officer for the construction of his residential house and that he grossly failed to supervise the works of Monthy and that he issued incorrect certificates that led him (Buron) to believe that works were done in

accordance with the approved drawings. Buron also pleaded that he came to know that Moustache, never carried out his inspection works and allowed Monthy to carry out poor quality works with materials not specified in the drawings.

I find that Mr. Moustache was contracted by Monthy to design the architectural and engineering drawing of Buron's house. Monthy paid him SR9,000.00 for the job. I further find that the averments of Buron is not supported by satisfactory and sufficient evidence and hence not sustainable. In the circumstances, find that Buron has not established any cause of action against Moustache. I dismiss the claim of Buron against Moustache with costs.

**Exhibit P20** is a Valuation Report dated 23<sup>rd</sup> August, 2007 drawn up by Mr. L. Quatre, Quantity Surveyor at the instance of Buron. The main purpose of the Report was to establish the value of the works carried out by Monthy on the house in order to resolve the payment issue between the Client and Contractor. The Report *inter alia* reveals that – *“the foundation, reinforced concrete beams, columns, staircase and suspended slab have been fully completed. The blockwork walls to the ground floor level have also been completed.”*

The Report continues thus – *“the remaining works to be completed are as follows:-*

- *External & internal walls to 1<sup>st</sup> floor*
- *Roof*
- *Plastering of walls*

- *Wall tiles*
- *Floor tiles*
- *Timber floor to 1<sup>st</sup> floor*
- *Plywood ceilings*
- *Painting and decorating*
- *Balustrade to balconies and staircase*
- *Windows and doors*
- *Sanitary appliances*
- *Plumbing and drainage installations*
- *Electrical installation*
- *Kitchen cabinet.”*

*“The value of the works executed on site is **SR321,914.25**. A breakdown of the cost is attached ( Annexure A).*

*As instructed, I have also valued the remaining works to be completed as follows:-*

- *Gross floor area of 289m<sup>2</sup> x 60% = **SR780,000.00.**”*

Mr. Quatre testified as a witness and was examined and cross-examined on his Report. He gave me the impression that he stood his ground and defended the basis of his valuation and the conclusions he reached. I accept that Valuation Report and the conclusions of the Quantity Surveyor as contained in **Exhibit P20**. I find that the value of the works executed on site by the Monthy is **SR321,914.25**.

It is not in dispute that the original contract value was **SR864,000.00** out of which Buron had paid Monthy the total sum of **SR759,000.00**. The value of works completed by Monthy under that contract being **SR321,914.25** supports Buron’s claim for works not carried out as being (SR759,000.00 less SR321,914.25)

**SR437,085.75.** I therefore find that the claim of Buron amounting to **SR437,085.75** (not SR469,558.70 as claimed) being for value of works paid for but not carried out, is justified. However, whether this sum ought to be made payable to Buron by Monthly is a matter that has to be determined at the conclusion of the cases in term of the Agreement.

Buron also claimed that he would need a further sum of **SR751,295.00** to engage a new Contractor in order complete his house.

According to the same Valuation Report of the Quantity Surveyor (Exhibit P20 the remaining works that needed to be carried out in order to complete his house as detailed above, Buron would have to spend a sum of **SR780,000.00** at the prevailing escalated cost of construction at the time of the hearing.

On the basis of the Quantity Surveyor's Report I conclude and believe that Buron's claim that he would require a sum of **SR751,295.00** to now complete his house is sustainable and so I find.

Buron also claimed the sum of SR108,000.00 being rent loss due to delay in completion, at the rate of SR9,000.00 per month and continuing. I find that there is no mention whatsoever in the contract that the house was to be for renting. It is simply stated that the house was residential. This head of claim, in my judgment, is remote and was neither foreseen nor implied in the contract. I note that Buron has claimed moral damages as well as interests and costs. In the normal circumstances that ought to sufficiently cover the consequences arising

out of a breach of a building contract. For these reasons I dismiss the claim of Buron under that head.

Upon my assessment of all the evidence it is established to my satisfaction on a balance of probabilities that Buron's contention that Monthy had indeed inordinately delayed the progressive stages of work. All payments due to Monthy under the Agreement had already been made by Buron well in advance of the construction stage. For these reasons I believe Buron's averment that Monthy was not entitled for any further payment under the agreement and so I find.

When Monthy failed to complete the project on time due to the inordinate delay to the disadvantage of Buron, the latter formally terminated the contract by letter dated 3<sup>rd</sup> September, 2007. Monthy had prior to that, on or around 15<sup>th</sup> June, 2007, also terminated the contract on the pretention that Buron had not paid him the further sums that he had requested as being due to him. I already find that Monthy was not due any further sum from Buron as Monthy had already received all moneys due to him under the contract at that stage. I find not merit in that claim of Monthy and I accordingly dismiss it.

The evidence does not establish whether there was indeed any agreement between the parties that Buron was to pay for all architectural drawings, planning fees, engineering fees, rock blasting, electricity and water connection paid by Monthy for and on behalf of Buron amounting to **SR52,441.00**. I find on a balance of probabilities that this claim of Monthy is not established and I therefore dismiss it.

At a point in time Monthly requested Buron to pay the sum of SR50,000.00 for the continuation of the work of brick laying and concreting, but Buron refused to do so claiming that he had already paid Monthly the whole contractual sum. Monthly then wrote to Buron 23<sup>rd</sup> May, 2007 informing Buron that he (Monthly) is terminating the contract with immediate effect. This claim of Monthly is not maintainable in view of my finding that he was not entitled to any sum of money under the contract at that stage and this claim is likewise accordingly dismissed.

Monthly also claimed what he termed “expectation loss” which is meant to be loss of profit under the contract. The contract having been terminated without it going to its completion, I do not believe that the question of loss of profit can arise. I also find no merit in this head of claim by Monthly and I likewise dismiss it.

In summary I have found that the contracted price was SR864,000.00 and that Buron has paid SR759,000.00 to Monthly towards this amount. The works under the contract completed by Monthly is to the value of SR321,914.25. The difference of (SR759,000.00 less SR321,914.25) **SR437,085.75** would have been due from Monthly to Buron as unspent balance of advance payment received.

Buron formally terminated the contract because Monthly had breached the contract for inordinately delays and having failed to complete the works within a reasonable time, under the contract. Monthly also ceased construction and abandoned the site under the pretext that Buron has not sufficiently paid him for works carried out as at June, 2006 which I have found not to be the case. As such Monthly was therefore in further breach of the contract. The breaches of Monthly

caused Buron to suffer financial burden to the tune of SR **SR751,295.00** to enable him to complete his house which includes all the works not originally carried out by Monthy.

Buron was expecting to have the use of his house within a reasonable period after disbursing his money for its construction. If he did not occupy it he could have rented it out and earn income. That is a reasonable expectation. Buron is claiming SR250,000.00 as moral damages as a result of the failures on the part of the Defendant. I award Buron **SR50,000.00** as moral damages.

In the final analysis and based on the findings of this Court as enunciated above, I enter judgment in favour of Mr. Buron as against Monthy in both cases in the total sum of **SR801,295.00**. I also award Buron interests and costs in both suits. I dismiss the claims of Monthy in both cases with costs to Buron.

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**B. RENAUD**  
**JUDGE**

*Dated this 25 February, 2013*