

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC 48/2014

[2016] SCSC 823

EDEN ISLAND DEVELOPMENT COMPANY (SEY) LTD
Plaintiff

versus

STUART LESLIE HIBBERD
Defendant

Heard:

Counsel: Mr. Shah for plaintiff

Mr. Ferley for defendant

Delivered: 26 October 2016

JUDGMENT

Robinson J

[1] This suit proceeded *ex parte*.

[2] Plaintiff claims from Defendant the sum of United States Dollars ("US\$") 33, 450. 00/- for "*optional extras*" installed by Plaintiff.

[3] The court heard evidence from Jerry Henry, a certified chartered accountant ("Witness"). Witness works for Plaintiff. Witness relates that Plaintiff is engaged in property development on Eden Island. Plaintiff and Defendant have entered into an *"Agreement of Sale Maison"* produced as exhibit P1. In terms of exhibit P1, Plaintiff built a *"maison"* for Defendant on *"parcel 7"*. At the request of Defendant and in terms of the *"Schedule of Finishes Maisons and Apartments"*, produced as exhibit P2, Plaintiff installed *"optional extras"* as follows —

<i>"Particulars of Extras</i>	<i>Cost of extras in US\$</i>
(a) Additional external patio shutters	12, 900.00/-
(b) External drop down blinds on the patio	3, 200.00/-
(c) Additional ceiling fans	5, 200.00/-
(d) Additional television outlets	450.00/-
(e) Splash pool	9, 700.00
(f) A private mooring service ballard (water and electricity)	2, 000.00/-
(g) Total	33, 450.00/-"

The *"Completion Certificate"* is produced as exhibit P1. Defendant did not give Plaintiff a list of defects in terms of exhibit P1. Since the completion of the work, Plaintiff has not been paid the sum of US\$ 33, 450. 00/-. Plaintiff has sent a written notice of *"mise en demeure"*, before suit, requesting Defendant to pay Plaintiff the sum of US\$ 33, 450.00/. The written notice of *"mise en demeure"* is produced as exhibit P4. Despite request, Defendant has failed to pay Plaintiff the sum of US\$ 33, 450. 00/-.

[4] Article 1153 of the Civil Code of Seychelles Act provides —

"1153 With regard to the obligations which merely involve the payment of a certain sum, the damages arising from delayed performance shall only amount to the payment of interest fixed by

law or by commercial practice; however, if the parties have their own rate of interest, that agreement shall be binding.

These damages shall be recoverable without any proof of loss by the creditor. They are due from the day of the demand, except in cases in which they become due by the operation of the law.

However, the creditor who sustains special damage caused by a debtor in bad faith and not merely by reason of delay, may obtain damages in addition to those of delayed performance."

[5] In terms of Article 1153 of the Civil Code of Seychelles Act, this court is of the opinion that "demand" must mean a prayer for the principal sum. The "demand" is intended to play the part of a "notice" sufficient to set interest running in cases of non-fulfilment of obligations, by which "notice" the principal sum alone can be obtained. Article 1153 of the Civil Code of Seychelles Act provides that the interest is due, that is to say, in my opinion, demandable. In view of the construction which I have placed on the word "demand", being due as from the date of the claim for the principal, interest should be granted as from that date : (see Baichoo v. Fowdar 1975 MR (Mauritius Report) 80 SCJ 76 Garrioch, S.P.J.*, and de Ravel, J; Lewis Gerald v. The New India Assurance Co. Ltd 1943 MR 109; Alleaume v. Biram 1913 MR 44, Jean Louis v. Jenkins 1907 MR 71, and the judgment of this court in CC35/2014 Dolor Ernesta v Frankie Petrouse, delivered on 29 April, 2016.

[6] Having concluded that a notice of "*mise en demeure*", before suit, is not necessary in terms of Article 1153 of the Civil Code, the court is satisfied that interest is due from the date of the filing of the plaint.

[7] **DECISION**

[8] The court is satisfied on the unchallenged evidence of Plaintiff that Plaintiff has proven its claim on a balance of probability. The court enters judgment for Plaintiff against Defendant in the principal sum of US\$ 33, 450. 00/- together with costs of this suit and

interest fixed by law on the principal sum of US\$ 33, 450. 00/- due from 30 December, 2014, until payment in full.

Signed, dated and delivered at Ile du Port on 26 October 2016



F Robinson
Judge of the Supreme Court