

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS115/2010

[2016] SCSC 873

VERONIQUE VANACORE
Plaintiff

versus

DESIGN AND BUILD LIMITED
First Defendant

DANIEL PORTLOUIS
Second Defendant

KEVIN MEME
Third Defendant

Heard:

Counsel: Mr. Bernard Georges for plaintiff

Mr. Frank Elizabeth for defendants
(Ex Parte)

Delivered: 8 November 2016

JUDGMENT

Robinson J

[1] **Background**

[2] By an agreement dated 28 November, 2008, (herein the "Contract") Defendants agreed to complete a house for Plaintiff for Seychelles rupees 1, 696, 369.15/-. Defendants started the work. Defendants vacated the site without completing the work and despite repeated requests, refused to mobilise on site and complete the work. Plaintiff had paid Defendants Seychelles rupees 1, 464, 000.00/-. Plaintiff claims that according to the report of Mr. Nigel Roucou, a qualified quantity surveyor, the work done so far is valued at Seychelles rupees 593, 800.00/- and that Defendants have been overpaid by Seychelles rupees 930, 000.00/-. Plaintiff prays the court to make an order calling upon Defendants to reimburse Plaintiff the following with interest and costs —

- | | | |
|------|-----------------------------------|---------------------------------|
| i) | legal costs including filing fees | Seychelles rupees 20, 000.00/- |
| ii) | surveyor's fees | Seychelles rupees 4, 117.65/- |
| iii) | balance of Contract amount | Seychelles rupees 930, 000.00/- |

[3] The suit proceeded *ex parte*.

[4] The court received oral evidence from Mr. Nigel Roucou and Plaintiff.

[5] Evidence of Mr. Nigel Roucou

[6] Mr. Nigel Roucou was presented as an expert witness. Mr. Roucou trained as a quantity surveyor and property consultant. He has about 12 years professional experience as a qualified quantity surveyor. Mr. Nigel Roucou has carried out valuation work as a quantity surveyor many times. He has appropriate experience as an expert witness.

[7] Plaintiff contacted him with regards to Defendants leaving the work site and not completing the work. Plaintiff instructed him to value the work done by Defendants. He visited the property of Plaintiff situated at Cap Samy, Praslin. The house was incomplete. The construction had been abandoned for a few months. The site had become overgrown with plants. He valued the work carried out on the house by Defendants in accordance with the plans, the Contract and the other matters provided for in the Contract. He prepared a formal valuation of the work in the form of a report, which he produced as exhibit P1. The value of the work carried out on the house, by Defendants, was

Seychelles rupees 593, 800.00/-. Defendants were overpaid by Seychelles rupees 930, 000.00/-. In his opinion the total amount due to Plaintiff is Seychelles rupees 930, 000.00/-.

[8] Evidence of Plaintiff

[9] Plaintiff lives at Cote D'Or, Praslin. Plaintiff is a diving instructor. The property situated at Cap Samy, Praslin, belongs to Plaintiff. Plaintiff wished to have a house built on the property. In 2001, a contractor, Mr. Winsley Volcere, started to build the house for Plaintiff on the property. The foundation of the house was laid and a part of the house using bricks was built. Because of a lack of building materials and the passing away of Mr. Winsley Volcere, the construction of the house was interrupted. Plaintiff entered into a Contract with Defendants to complete the house. The Contract sum is Seychelles rupees 1, 696, 369.15/-. Defendants have only completed part of the house and since July, 2009, vacated the site. Despite various telephone calls and reminders, the Defendants refused to complete the work. Subsequently, Defendants gave a verbal assurance to Plaintiff that the work would be completed. To date Defendants have not mobilised on the site and work has not started.

[10] Plaintiff photographed the various stages of the work. She produced an album of photographs showing the progression of the work as exhibit P6. Photographs 1 and 2, on page 1, of exhibit P6, show the work undertaken by one Mr. Winsley Volcere, in 2001 and 2002. The other photographs show the work done by Defendants on the site from 2008 until they vacated the site at the end of July, 2009.

[11] Plaintiff produced a "*Schedule of Payment*" as exhibit P3. She explained that she did not make payments strictly in accordance with exhibit P3. She made regular payments in small sums. She recorded each payment made to Defendants on the "*Schedule of Payment*". She paid Defendants Seychelles rupees 1, 464, 000.00/-. Exhibit P4 contained a list of all payments made to Defendants in the sum of Seychelles rupees 1, 464, 000.00/. Plaintiff produced bank documents evidencing payments made by Plaintiff to Defendants as exhibit P5.

[12] Plaintiff incurred additional costs to solicit the services of Mr. Nigel Roucou to assess the value of the work to date. Plaintiff produced an invoice with regards to the valuation of the work as exhibit P7.

[13] **Discussion**

[14] The court has considered the unchallenged evidence of Plaintiff and Mr. Nigel Roucou.

[15] Mr. Roucou owed the Plaintiff the duty to only value the work completed by Defendants in accordance with the plans, the Contract and the other matters provided for in exhibit P1. Exhibit P1 provides as follows —

"CONTRACT PARTICULARS

We have been provided with a copy of the agreement between the two parties and it is summarised as follows:

...

The following additional details were given to us by the employer:

- *The works have not been completed by the contractor as per the contract period.*
- *The contractor has been paid SR 1, 464, 000.00, which is above the value of works completed, same was done to help secure materials, which were claimed to have been already bought.*
- *The contractor has left the site and cannot be contacted*

PROGRESS

The works have stopped and are generally at the following stages:

<i>Timber suspended ground floor</i>	<i>50%</i>
<i>Timber walls, post and beams</i>	<i>50%</i>
<i>Timber attic floor and stairs</i>	<i>0%</i>

<i>Roof structure and covering</i>	40%
<i>Windows and doors</i>	0%
<i>Finish to existing block walls and concrete floor</i>	5%
<i>Balustrading and kitchen Unit</i>	0..
<i>Sanitary appliances and external drainage</i>	0%
<i>Electrical installation</i>	0%".

[16] On the basis of the agreed Contract sum of Seychelles rupees 1, 696, 369.15/- Mr. Nigel Roucou valued the work carried out by Defendants in the sum of Seychelles rupees 593, 800.00/-.

"The said sum can be broken down as follows:

Works carried out:

<i>Timber suspended ground floor</i>	200, 800.00
<i>Timber walls, post and beams</i>	120, 000.00
<i>Timber attic floor and stairs</i>	0.00
<i>Roof structure and covering</i>	181, 700
<i>Windows and doors</i>	0.00
<i>Finish to existing block walls and concrete floor</i>	3,800.00
<i>Balustrading and kitchen Unit</i>	0.00
<i>Sanitary appliances and external drainage</i>	0.00
<i>Electrical installation</i>	0.00
<i>Sub total</i>	506, 300.00
<i>Preliminaries</i>	87,500.00
<i>TOTAL VALUE OF WORKS CARRIED OUT TO DATE</i>	593,800.00
<i>Less: Replacing the Masonite ceiling with plywood type and sislation incl preliminaries</i>	(59, 800.00)
<i>Previous Payments</i>	(1, 464, 000.00)
<i>TOTAL AMOUNT DUE TO CONTRACTOR</i>	-930, 000. 00"

[17] Mr. Nigel Roucou included in exhibit P1 a sum with regards to *"replacing [m]asonite ceiling with plywood type and sislation incl preliminaries"*. That is not the correct approach. Mr. Nigel Roucou had the duty to only value the work that had been completed by Defendants.

[18] The work carried out by Defendants includes *"Preliminaries"* valued at Seychelles rupees 87, 500. 00. It is not clear to the court what *"Preliminaries"* entail. Plaintiff did not contest *"Preliminaries"* and that amount. Since it is in favour of Defendants, the court will not interfere with the valuation under that head.

[19] **Decision**

[20] Save for the matter discussed in paragraph 17, of this judgment, on the basis of the unchallenged evidence of Plaintiff, the court is satisfied that Plaintiff has proven the remainder of her claim on a balance of probability. For the above reasons the court enters judgment for Plaintiff against Defendants in the sum of Seychelles rupees 874, 317.65/- together with costs of this suit and interest fixed by law on the sum of Seychelles rupees 874, 317.65/- due from 25 March, 2010, until payment in full.

Signed, dated and delivered at Ile du Port on 8 November 2016


F Robinson
Judge of the Supreme Court

