IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 35/2012

[2016] SCSC 964

FREDERICK LEON
Plaintiff

versus

CIVIL CONSTRUCTION COMPANY LTD
Defendant

Heard:

Counsel: Mr. A. Derjacques for plaintiff

Mr. F. Chang Sam for defendant

Delivered: 30 November 2016

JUDGMENT

Renaud J

Introduction

[1] The Plaintiff Mr. Frederick Leon brought a Plaint before this Court on the 22nd February 2012, claiming the following as damages from the Defendant arising from the faute of the Defendant when blasting rocks in the vicinity of his property which caused material damages to his houses and property and moral damages to himself and his family.

1.	Repairs, labour and materials to repair cracked walls (house)	SR 227, 500.00
2.	Repairs, labour and material to house 2	SR1,055,000.00
3.	Loss of value to property	SR6,023,800.00
4.	Moral damages for stress, inconvenience, anxiety, psychological harm, distress, fright for	
	a) 1st Plaintiff	SR 50,000.00
	b) 2nd Plaintiff	SR 50,000.00
	c) 3rd Plaintiff	SR 50,000.00
	d) 4th Plaintiff	SR 50,000.00
	e) 5th Plaintiff	SR 50,000.00
	f) 6th Plaintiff	SR 50,000.00
5.	Special damages for constant colds, flues, coughs and ill health to plaintiffs	SR 100,000.00
	Total	SR7,706,300.00

The Parties

[2] Mr. Fredrick Norbert Leon, the 1st Plaintiff, Miss Celine Claire Marylis Accouche, the 2nd Plaintiff, Master Sedrick Noris Michel Leon, the 3rd Plaintiff, Master Sebastien Abel Sam Leon, the 4th Plaintiff, Master Reuben Joseph Leon, the 5th Plaintiff and Master Leroy Angelin Leon, the 6th Plaintiff hereinafter were inhabitants of a house and property, owned by the 1st Plaintiff, namely land parcel PR 1217, situated at Baie Ste Anne, Praslin.

[3] The Defendant is Company registered in Seychelles and at the material time engaged in quarry works known as Cap Samy Praslin Quarry on Praslin, a short distance away from the Plaintiffs' residence and property.

Plaintiffs' Case

[4] The 1st Plaintiff purchased the said pertinent property on the 14th of April 1989 and built two houses thereon including their present home. The 2nd Plaintiff is the concubine and 3rd, 4th, 5th and 6th Plaintiffs are the children of the family and inhabitants of the said property.

[5] The Plaintiffs pleaded that the Defendant during the years 2007 and 2008 started removing granite boulders from land at close proximity to the Plaintiffs' residence. In July 2009 the Defendant commenced a complete and full quarry project, including the extraction of granite boulders, the crushing of the said boulders, and mass transportation, in and out of the said project area. The Defendant is alleged to have utilised heavy machinery, heavy equipment, blasting material and intense usage of transportation and manpower. The project was commenced without an environment impact assessment plan nor was a full, thorough and acceptable study or consultation done with the member of the community.

[6] The Plaintiffs contended that the Defendant's actions, through its employees, servants and agents, constitute a faute in law for which the Defendant is vicariously liable to the Plaintiffs. The particulars of the faute are stated to be:

(i) Failing to carry out an environmental impact assessment plan prior to the commencement of the Quarry project.

(ii) Failing to consult the community in any meaningful manner

(iii) Blasting the terrain and granite surface areas in proximity to plaintiffs' residence

(iv) Extracting and crushing granite boulders in proximity to the said properties.

(v) Causing dust and noise pollution on plaintiffs' property.

(vi) Causing pollution through activity including personal, transportation and habitation.

(vii) Causing fright and alarm upon use of explosives.

(viii) Causing pollution through fuel and heavy machinery emissions.

(ix) Causing shock waves and vibrations upon the usage of explosives, heavy equipment and machinery.

(x) Causing cracks to the plaintiff house

[7] By reason of the foregoing acts of the Defendant, the Plaintiffs contended that they have suffered loss and damage for which the defendant is liable. The Plaintiffs sought judgment for the said sum with interest at 4% per annum, a mandatory order of injunction to the Defendant to cease from operating Cap Samy Praslin Quarry Project and costs of the suit

Defendant's case

[8] The Defendant responded by way of Memorandum of defence filed on the 28th of June 2012. The Defendant opposed this action and denied all the contents of the Plaint save for paragraph 2.

[9] It contended that the site of its quarry activities belongs to the Government of Seychelles which granted its consent to carry out the quarry project since August 2000 but it commenced its quarrying activities in June 2002 but intensified its activities in 2009 with increased demand. It only started a full quarry operation on the site at the beginning of 2010 after an Environment Impact Assessment (EIA) had been carried out sometime in August 2009.

[10] The EIA Report had been accepted by the relevant governmental authority in December 2009 and the implementation of, among others, dust suppression and noise reduction measures. A public meeting was held as part of the EIA and the meeting was attended by certain residents of Cap Samy.

[11] The Defendant took additional precautionary measures by bringing in and installing additional equipment in order to reduce to the minimum any possible impact resulting from its increased activities.

[12] Defendant admitted receiving a request dated the 1st of April 2011 from Mr. A Derjacques, Attorney at Law, acting for Mr. Frederick Leon and others, asking for the payment of a sum of R 575, 000.00 by way of loss and damages. But the Defendant has to date refused to pay the sum requested or any part thereof as the request had never been substantiated as requested by the Defendant in its letter dated 8th June 2010 to Mr. Frederick Leon and/or proven.

Hearing

[13] At the hearing 1st Plaintiff Mr. Frederick Leon, 2nd Plaintiff, Miss Celine Accouche, and 6th Plaintiff Master Leroy Leon testified as well as two other expert witnesses, Ms. Cecile Bastille, a Quantity Surveyor and Mr. David Port Louis, a Structural Engineer testified for the Plaintiffs.

[14] Testifying on behalf of the Defendant were a total of 7 witnesses including the Managing Director of the Defendant Company CCCL, Mr. Khan Kimsun also known as Sunny Kan, Louis Barbe, an Environmental Specialist, Thomas Marie, a Master Blaster, Anel Erikson Marie, a farmer who lives at Cap Samy, Praslin, Martin Fredrick Lewis the General Manager of the Defendant's Praslin Quarry operations, Mr. Nigel Stanley Valentin, a licensed Quantity Surveyor and Mr. Andre Low Lam a Structural Engineer.

[15] What emerges from the testimonies of the witnesses is that the Defendant acquired an old quarry site from the Government of Seychelles by way of lease in 2000. The Defendant was put in occupation of the property as the formalities were being worked upon.

[16] There were two families already on the land at the time. The Defendant was required to relocate them and build houses for them elsewhere which it did.

[17] The Defendant began operations in 2001 with blasting and supplying of rocks to the Government of Seychelles to renovate the Port area on Praslin. It was supplying red soil and rock to its customers as well.

[18] Sometime in 2007 or 2008 the Defendant was granted permission by the Government of Seychelles which owns the land where the quarry is, in order to start extracting granite from the said quarry site. It embarked upon expanding its operations into a full quarry operation by importing a crusher and other related equipment which were assembled and installed by September 2009. The quarry started operations in January 2010.

[19] An environmental impact assessment was done by Louis Barbe which was submitted to the Department of Environment in October 2009 and received approval towards the end of the year or early 2010. During the year 2009, a public meeting was held to inform the public concerning the changes that were going on in their area. Mr. Barbe denied that the EIA was carried out in response to public outcry.

[20] The 1st Plaintiff who is a Pastry Cook by profession purchased land parcel PR 1217 at Cap Samy in 1989. He built two houses thereon. He lived in the house with his family, the other Plaintiffs in this case. It took him 6 to 7 months to build the 1st house which was completed in 1990. The second house was built over a period of five years. He had employed masons and carpenters to do the work. In their testimony Plaintiffs No 1, 2 and 6 stated that they have been affected by the works that have been going on at the quarry. Their house was always moving and breaking all the time, there was a lot of noise and dust that was affecting them. There are cracks all over both houses.

[21] Mr. David Port Louis, the Structural Engineer testified on behalf of the Plaintiff that after seeing the damages done to house number one, he submitted that the cracks must have been caused by the vibrations. He looked at two other houses in the neighbourhood close to the 1st Plaintiff's house and found that they too had cracks. He testified that blasting brings about shock waves causing localize ground distortion and cracking.

[22] In their testimony both Mr. Kan and Mr. Lewis the Operations Manager of the Defendant, confirmed the holding of the meeting with the public in 2009 and that the Defendant started operating the site as a quarry proper in 2010

[23] During the early stages, until it started its operations as a quarry proper, there was only extracting of rocks. There was no production of aggregate and crusher dust. Rocks were sold to the public. No EIA was required for this. It was never challenged by the Environmental Authority of Seychelles with regard to these early activities.

[24] Testimony was given by Mr. Marie, a neighbour to the Plaintiffs, asserting that the quarry operations had not adversely affected them in anyway including any of their activities. The Defendant's witnesses testified that the house that the Defendant found on the land had remained there and is unaffected by both the blasting and quarrying operations of the Defendant. It had no cracks at all.

[25] Mr. Nigel Valentin, a Quantity Surveyor in a report made after examining the Plaintiffs' properties in 2011 found that there were cavity cracks in both houses. The smaller house had major cracks as compared to the bigger house. He could not confirm if the cracks at all were caused due to the vibrations caused by blasting.

[26] The Defendant's Master Blaster testified to the effect that the blasting techniques and material used by the Defendant were such that ground vibrations were minimised and would not cause damage to properties 200 to 300 meters away.

[27] The Defendant's Structural Engineer Mr. Lam testified that cracks can be formed for various reasons and blasting is one of them. Mr. Lam testified that he witnessed a blast and took a reading next to Mr. Leon's house and the reading was 1.02 millimeters per second, a reading he said is so low that it is not possible to affect any building.

Submissions

[28] Counsel for the Defendant filed its closing submissions on 6th May 2015. Counsel submitted that the Plaintiffs or any of the witnesses brought forth failed to show that the damage to the houses of the 1st Plaintiff and that the claim by each of the Plaintiffs resulted

from the operations of the Quarry. Counsel also submitted that through the testimonies of Mr. Valentin and Mr. Low Lam, it was clear and certain that the house that suffered most damage was not built on a homogeneous surface but partly built on a hard rock surface and partly on softer backfilled land, the damages to the house was most probably caused by the differential ground movement of the 2 surfaces. The witnesses were also of the view that vibrations did not affect the house. Counsel for the Defendant refuted the evidence of Mr. Port Louis, saying that what he said was based on mere assumption as he carried out no formal test.

[29] Counsel cited the case of Rose and others v CCCL SCA 26/12. In that case the Seychelles Court of Appeal came to the conclusion that the Plaintiffs failed to prove that it was the acts of the Defendant that caused the damage complained about by the Plaintiffs.

[30] Counsel humbly submitted that for reasons given herein, the evidence of the Plaintiffs fall terribly short of (i) proving the damage they claim they sustained and/or (ii) establishing the casual link of the damage to the Defendant.

[31] I have considered the submissions of the Learned Counsel.

Issue

[32] The main issue for my determination is whether the Plaintiffs are entitled to the cost of damages that they seek as well as the injunction. In order to determine this issue the Court must consider the following:

1. Did the Defendants commit any fault under Article 1382?

The Law

[33] This claim was brought under Article 1382 of the Seychelles Civil Code (CCSey) which provides that:

(1) "*Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.*"

(2) *Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.*

(3) *Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.*

[34] Accordingly, it is evident that three elements are required in law in order to establish liability. They are - (i) damage (ii) a causal link and (iii) fault.

Findings - causes

[35] The operative word in this context is causes. The most important and the most contested issue is whether the works that were going on at the quarry carried out by the Defendants on their property solely caused or contributorily caused the damages (cracks) to the Plaintiffs' two houses. The determination of this issue requires expert witnesses and from the testimonies given during hearing, witnesses for the Plaintiffs did give evidence though no tests were done to indicate that the blasting going on at site and the use of heavy machinery at the Defendant's property caused vibrations that lead to the cracks not only on the Plaintiffs property but two other houses that he had occasion to inspect. He stated that vibrations were the only source that could cause cracks as there were no other geological factors in the vicinity that came into play. On cross examination he said that blasting was the most probably contributing factor. The Defendant, went a little further to provide test results, a blasting was done and a reading was produced of 1.02 millimeters per second, a reading the expert witness said was so low that it was not possible to affect any building. Chief Justice Ntende J in the case of Rose &ors v Civil Construction Company Ltd (2012) SLR 207 stated that in order for the Plaintiff to succeed in their claim:

"Must be able to prove that the damage [they have] suffered has been caused by the acts of the Defendant, or its servants and agents. Causation is a key element in determining liability. This must be proved on a balance of probabilities. It is not enough for the Plaintiff to show that the Defendant's acts could be one of several possibilities that could have

caused the damage he or she has suffered. The Defendant's acts must be the cause of the damage."

[36] In contrast to the case of Rose, the cases of, Desaubin v United Concrete Products Ltd (1977) SLR 164; De Silva and ors v United Concrete Products (Sey) Ltd (unreported) SC 273/1993 and Isnard and ors v China Senyang Corporation (Seychelles) Ltd (unreported) SC 325/2002, causation was established and liability proven.

[37] I find the test carried out by the Defendants not to hold water. In as much as it may be true that on that particular day the reading was 1.02, it does not account for the time that the Defendants were operating on the quarry without the machine that measures the level of vibrations. It is feasible that before the introduction of the machine, the blasting could have caused vibration readings that were much higher than this.

[38] The standard of proof is also very different in a criminal case than in a civil case. Crimes must generally be proved "beyond a reasonable doubt", whereas civil cases are proved by the lower standards of proof such as "the preponderance of the evidence" or "on a balance of probability." The law is that causation must be established and it should not be remote. The claimant must prove that harm would not have occurred 'but for' the act and/or omission of the Defendant.

[39] No investigations were made in relation to the ground conditions surrounding the houses or upon which the houses were built. No investigation was made in relation to the materials used in the construction of the houses or workmanship thereof by both sides in this case. No doubt it is possible that ground vibrations arising from blasting, heavy traffic, or the running of heavy machinery could cause or contribute to the cracks in the Plaintiffs' houses. But so could faulty workmanship, faulty or inferior materials, or ground conditions upon which the houses were built that could cause uneven settlement. However, where there are multiple causes, the claimant does not have to prove that the Defendant's breach of duty was the main cause of the damage provided that it materially contributed to the damage. It may be sufficient for the claimant to show that the Defendant's breach of duty made the risk of injury more probable. It is known that a but-for test will be inadequate in

a number of cases, for example, where the breach of duty was an omission to act or where the claimant's damage is the result of more than one cause.

[40] The case of McGhee v National Coal Board, [1972] 3 All E.R. 1008, 1 W.L.R. 1 has also been applied to a case where there were three possible causes of injury. In that case the claimant worked at the Defendant's brick works. His normal duties did not expose him to much dust but he was then asked to work on the brick kilns in a hot and dusty environment. The Defendant was in breach of duty in not providing washing and showering facilities. The claimant thus had to cycle home still covered in the brick dust. The claimant contracted dermatitis. There were two possible causes: the brick dust he was exposed to during the course of his employment which was not attributable to a breach of duty and the brick dust he was exposed to on his journey home which was attributable to a breach. It was held that the claimant only had to demonstrate that the dust attributable to the breach of duty materially increased the risk of him contract dermatitis. Similarly, in the case of Barker v Corus (2006) UKHL 20 Lord Scott of Foscote stated;

"Liability was not imposed on any of the Defendant employers on the ground that the employer's breach of duty had caused the mesothelioma that its former employee had contracted. That causative link had not been proved against any of them. It was imposed because each, by its breach of duty, had materially increased the risk that the employee would contract mesothelioma".

Lord Hoffmann said: "... *there is no reason why your liability should be reduced because someone else also caused the same harm.* "

[41] In tort, there is the principle called efficient proximate cause. Under this rule, a Court looks for the predominant cause which sets into motion the chain of events producing the loss or damage, which may not necessarily be the last event that immediately preceded the loss. The Plaintiffs must therefore demonstrate that the Defendant's action increased the risk that the particular harm suffered by the Plaintiffs would occur and that if the action were repeated, the likelihood of the harm would correspondingly increase.

[42] As LORD DENNING said in Davies v. Swan Motor Co. (Swansea) Ltd [1949] 2 C.B. 291 at p. 321;

"... the efficiency of causes does not depend on their proximity in point of time. It is enough that the cause forms part of a chain of events which has in fact led to the injury."

[43] Whilst it is evident from all the exhibits shown of the two houses that there are cracks to the houses, it is not certain and for sure that these cracks were caused only as a result of the vibrations due to the works carried on by the Defendants, rather there are many possible explanations for the cracks and these are due to foundation settlement, poor workmanship or weak supporting soils especially since there is evidence that one of the houses was constructed partly on glacis and partly manmade backfield materials. With this in mind, house number one which was built on what the experts called homogenous ground and more recent than the first house still sustained cracks even though the cracks were not substantial as compared to the old house referred to in this case as house number one.

[44] From this, one can conclude that the blasting was not the only sore reason why the Plaintiff suffered cracks to his house; however, the vibrations due to the blasting and use of heavy machinery by the Defendant did attribute to the increased risk of ground borne vibrations which caused movements in the foundation and as such causing the cracks. It can be said that the vibrations materially increased the risk of cracks appearing.

[45] It must also be remembered that when the 1st Plaintiff originally constructed his houses he did so based on the standard prevailing at the time and in the circumstances that then existed. It was not incumbent on him to have foreseen that in the future there will be blasting going on in the area therefore he had to construct his house to withstand vibrations caused by the rock blasting and quarrying.

[46] For these reasons, I am of the opinion that although the Defendant's acts on their properties did not constitute the sole cause for the damage to the Plaintiffs' property, they obviously constituted the primary cause amongst possibly other contributory causes such as poor workmanship or foundation settlement. As decided in the case aforementioned, Plaintiff

just has to demonstrate that the blasting was attributable to the harm suffered. The risk of damages to the Plaintiffs' property was more probably due to the acts of the Defendant.

[47] The Plaintiffs had lived on their property for more than 25 years and in 2010, 1st Plaintiff made his complaint to the site manager at that time. I find it hard to fathom that after 25 years the houses began to crumble due to poor workmanship etc, Hence, I find on the evidence and conclude that there exists the necessary causal link and proximity between the acts of the Defendants and the damage caused to the plaintiff's' property.

[48] I hold the view that the vibrations caused by blasting and movement of heavy machinery contributed materially to the damages suffered by the 1st Plaintiff. The Defendants were negligent in failing to carry out tests from the very beginning when they commenced blasting on their site. They should have carried out tests within the neighbourhood to ascertain how much (level) of shock or vibrations the houses built in that area could sustain before damage can be caused.

Liability

[49] An owner of land commits a faute under Article 1382 CCSey, known as an "abuse of his right of ownership", if he carries on an activity on his land which causes prejudice to a neighbour if such prejudice goes beyond the measure of the ordinary obligations of neighbourhood. Herein, it is relevant to note that in the case of Desaubin v UCPS (1977) SLR 164, the Court held, as summarised in the head note:

"Under the Seychelles Civil Code, although an attempt had been made in Article 1382 to define and restrict the notion of "fault" , the equivalent of "faute" in the French Civil Code, and the definition of "fault" in the Seychelles Code seemed to require an element of imprudence or negligence or an intention to cause harm, it appeared from paragraph 3 of article 1382, as well as from sect 5 (2) of the Seychelles Code, that there was nothing exclusive in such definition and that the concept of "fault" had not been curtailed within the narrow compass of the definition in the Seychelles Code. Hence the legal position had not been changed by the enactment of the new Article 1382."

[50] A person who undertakes to perform a task, even gratuitously, assumes a duty to act carefully in carrying it out. The tort/delict of 'negligence' is a legal wrong that is suffered by someone at the hands of another who fails to take proper care to avoid what a reasonable person would regard as a foreseeable risk.

[51] The general principle for determining the existence of a duty of care was firmly established in Donoghue v Stevenson (1932) AC 562; in this case Lord Atkins established the "neighbour principle" saying:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

[52] This means that one owes a duty of care to other people who are likely to be closely affected by one's actions. From this case has evolved the principle that we each have a duty of care to our neighbour, or someone we could reasonably expect to be affected by our acts or omissions.

[53] There are two types of omissions. Firstly, a person may fail to take appropriate precautions, which would be regarded as a negligent act. Secondly, it may refer to passive inaction where a person does not take any action.

[54] Therefore Lord Atkins statement forms the basis of modern law and was adopted in the case of Caparo Industries v Dickman (1990) 2 AC 605. This case established a 3 stage test to determine whether a duty of care is owed to a person. They are:

(1) It was reasonably foreseeable that a person in the claimant's position would be injured.

(2) There was insufficient proximity between claimant and defendant.

(3) It is fair just and reasonable to impose a duty of care under the circumstances.

[55] In the present case, the Defendants failed to reasonably foresee the effects that would arise due to the works that commenced on site (quarry). They failed to make necessary provisions for proper assessment from the onset and how to monitor the vibrations produced from their blasting and regulate dust and noise pollution. The Defendants obviously failed to take necessary precaution and reasonable care in the use of their rights of ownership. The Defendants in the instant case though they have acted in the exercise of their legitimate right of use and enjoyment of their respective property, have indeed acted causing detriment to the owners of the property in the neighbourhood.

[56] An EIA was only conducted in 2009, as well as a public meeting and the machine that measures the vibration was brought on site in 2011. In my opinion these measures all came about rather late when some damage have already been caused to several houses. All of these things I believe were ought to have been done from the beginning prior to the quarry starting to extract granite from the ground. The Defendants simply assumed that the blasting that they did without proper measurement would not cause any harm.

[57] The Learned Authors of Volume 28 of HALSBURYS LAWS OF ENGLAND (3rd Edition) say as follows at page 28:

"When negligence has been established, liability follows for all the consequences which are in fact the direct outcome of it, whether or not the damage is a consequence that might reasonably be foreseen."

[58] Therefore, I find that the Defendants are liable in terms of Article 1382(1) of the Civil Code, which reads:

"Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it."

Damages

[59] It is not in dispute that the Plaintiffs' house did sustain cracks. This is substantiated by the evidence adduced through photographs taken by the 1st Plaintiff and the Quantity Surveyor. Furthermore, Exhibit P10 shows that a petition had been put forth by the

members of the community to illustrate that the quarry was causing damages to their respective homes and much more. I find that the element of damage required for establishing liability is present in the instant case.

[60] There is a claim for special damages for constant colds, flues, coughs and ill health of the Plaintiffs of SR100,000.00. A claim for special damages must be specifically proved. There is no evidence before this Court to establish this claim at all. There is no evidence to show how this sum was arrived at. Or if such an amount of money was spent at all. Nothing was produced in Court to authenticate this claim, no medical report showing moneys spent in this regard. Proof is lacking both in terms of showing that colds, flues, coughs and that ill health was suffered on account of the Defendant's fault and that the sum claimed was incurred thereby to deal with the said conditions. For this reason, this head of claim fails.

[61] The Defendants testified that an EIA was carried out and recommendations from that have been implemented thus reducing the adverse effects that a quarry such as this would have on the community. Injunctive relief is generally considered a legal remedy of last resort, so when lawsuit is filed it must show that there is a need for an injunction because no other remedies are adequate to address the situation complained of either because the subject of the lawsuit is unique or money is not enough to deter bad behavior. Essentially, it must be shown that an irreparable harm will occur if the injunction is not granted. This has not been shown in this case to warrant the granting of an injunction.

[62] The "working rule" was established in Shelfer v City of London Electric Lighting Co[1891-94] All ER Rep 838, this was a case of nuisance caused by vibration and noise. AL Smith LJ at page 848 said that a good working rule was that, where 4 conditions are satisfied, damages in lieu of an injunction may be awarded:

(1) the injury to the claimant's legal right is small;

(2) the injury is capable of being estimated in money;

(3) the injury can be adequately compensated by a small money payment;

(4) it would be oppressive to the Defendant to grant an injunction.

[63] The jurisdiction to grant a mandatory injunction in those circumstances cannot be doubted, but to grant it would subject the Defendant to a loss out of all proportion to that which would be suffered by the Plaintiffs if it were refused, and would indeed deliver him to the Plaintiff bound hand and foot to be subjected to any extortionate demands the Plaintiff might make.

[64] With regards to noise and dust, according to testimonies given during trial, the Defendant have put forth evidence to show that there are now in place noise suppression measures that are effective both at blasting stage and crushing stage. This was after the recommendations from the EIA assessment. The Plaintiffs also did testify that that dust and noise on a whole had decreased.

[65] As for traffic to and from the quarry I would not found any liability on this as this is largely daytime traffic and is not unreasonable in any case per se. The dust also raised by the trucks has been rectified as there is a hard surface black road now as opposed to the dusty road that was there before the EIA was carried out.

[66] The remedy of an injunction in this case will therefore not be granted for the reasons set out above.

[67] There is a claim for moral damages for stress, inconvenience, anxiety, psychological harm, distress, and fright of R50,000.00 for each Plaintiff. Their claim remains unproven. The 1st, 2nd and 6th Plaintiff testified that when a blast is done, they get a shock and it is very scary. Their children are afraid and have grown to dislike their home because of the noise and have expressed desire to live elsewhere. Notwithstanding their testimonies, all these three witnesses do not spend all their time at home. The 1st and 2nd Plaintiff go to work and the 5th Plaintiff goes to school so the effects they claim to experience are minimal if not none at all because by the time they come back at home the quarry would also be closing for the day.

[68] On Cross examination, the 6th Plaintiff despite claiming to be terrified of the blasting, testified that twice he went inside the quarry site to pick up blocks with his friend. Their

claim remains unproven; however, I would award each of the Plaintiffs a nominal sum of SR10, 000.00 for inconvenience, making a total of SR60.000.00.

[69] The Plaintiffs claimed loss of value of property at SR6,023,800.00. This is authenticated by the testimony of the Quantity Surveyor, Miss Bastille who valued the property. She stated that in the absence of the quarry, the property would be valued at SR9,020, 800.00. Based on what she saw at the property site the day she went to inspect, the value had been reduced to SR2,997,000.00 and the difference in value is what the 1st Plaintiff is now seeking. The 1st Plaintiff has not or appears not to be interested in putting his property on the market where the real market price could be determined by market forces. In any event the Defendant cannot solely be made accountable for the depreciation of the house in view that it also has the right to operate its business in that vicinity. I consider that an award of 10 percent of the estimated depreciation is sufficient in the circumstances. I award the Plaintiffs SR300.000.00 under this head of claim.

[70] According to the figures given by the Quantity Surveyor, she calculated the amount that it would cost to repair house number one and house number two. From the evidence in the case, it became clear that house referred to as number 2 is the old house while house number one is the newer one. The figures given to repair house number one is in the sum of SR227,500.00 and house number two SR1,055,000.00. The repairs envisaged would bring the standard of both houses to that of a new one. In awarding damages the Court must ensure that a party does not make undue profit out of the situation. Both houses were not new at the time of the incident and had been built some years prior. House number one had been there for over two decades. The Plaintiffs in any event would have had to repair and maintain his two houses in the normal course of time due to its natural depreciation. I will award 50% of the sum claimed in the case of house number one being the newer one - that is SR113,750.00. With regard to house number two I will award 25% of the sum claimed – that is SR263,750.00.

[71] This case can be distinguished from the case of Rose v CCCL relied upon by the Defendant. In the case of Rose there was no expert witness to attest to the cause of the cracks and more

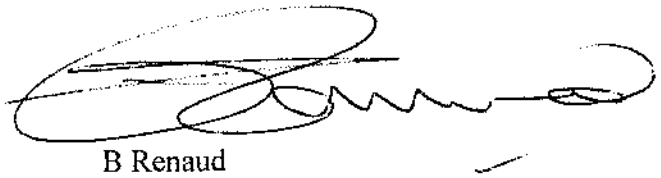
so they purchased their property in 2002, knowing full well that quarry existed and hence assumed the risk. They knowingly and deliberately placed themselves at risk.

Judgment/Order.

[72] I accordingly enter judgment in favour of the Plaintiffs as against the Defendant and order the Defendant to pay the Plaintiffs the total sum of SR737,500.00 with interest at the legal rate.

[73] I award costs to the Plaintiffs

Signed, dated and delivered at Ile du Port on



B Renaud
Judge of the Supreme Court