

IN THE SUPREME COURT OF SEYCHELLES

VENISE DELORIE

Plaintiff

VS.

RADLEY SINON

Defendant

Civil Side No. 42 of 2005

Ms. Domingue for the Plaintiff

Gaswaga, J

JUDGMENT

Radley Sinon has been sued by Venise Delorie for breaching the terms of an agreement (P2) which was signed on 29th December, 2003. It reads in part as follows:

1. Party ONE agrees to cut a road with machinery 75 meters in length and 3 meters in width as Les Canelles, Mahe. Party ONE hereby confirms that after the road has been cut by machinery, he shall have the road concreted on 37.5 meters of the said road and to be paid with his personal finances.

2. Party TWO hereby agrees to have 37.5 meters of the said road concreted and to be paid with her personal finances.

When the Defendant appeared in court on the 10th May, 2005, in response to the summons on plaint, he informed the court that that place where they were going to

build the road is in the names of Myriam Sinon who was at the time on an overseas course. Subsequently an amended plaint was filed and duly served on the Defendant who did not file a defence or turn up for the hearing hence giving way for the case to proceed ex-parte under **Section 65 of the Seychelles Civil Procedure Code Cap 213.**

It was averred in the said plaint that at all material times the Plaintiff is the owner of a parcel of land registered as C4874 situated at Les Canelles, Mahe while the Defendant's wife is the owner of an adjacent piece of land at the same place on which the Plaintiff is supposed to have a 3.5 meter right of way at its edge.

One witness, Venise Delorie and the Plaintiff herein was called and during her testimony she said that despite repeated requests and in breach of the said agreement the Defendant has failed to cut the road for its construction to begin. That it was subsequent to entering the said agreement with the Defendant that the Plaintiff discovered that the property on which the Defendant was to cut the road belonged to the Defendant's wife and not to the Defendant. Two letters (P3 and P4) dated 20th January, 2004 and 19th October, 2004 respectively were written to the Defendant by the Plaintiff's lawyer as a reminder but it is clear from the evidence on record that the Defendant refused ignored and or failed to perform his part of the agreement. Moreover, when the Plaintiff was buying the said parcel of land the Defendant assured, her and she verily believed, that the adjacent plot belonged to him and an access road, the cost of which to be shared equally, was to be built on it to enable her to transport construction materials since she wanted to start the construction of her residence immediately and stop living in rented accommodation. That if there was no right of way then she should not have bought the land. In fact she first signed the agreement forming the subject of this case on 29th December, 2003 to get assurance for the provision of a road before finally purchasing the land on 12th February, 2004 (See P1 and P2).According to

Article 1315 of the Civil Code “A person who demands the performance of an obligation shall be bound to prove it.” See **Ogilvy Berlouis Vs Georgette Pool Civ. Side No. 184 of 2001.**

It was submitted, and rightly so, that the Defendant deceived the Plaintiff by misrepresenting the relevant facts and leading her into buying the parcel C4874 and to believe that she had the authority to build the said road. It was clear in the Defendant’s mind at the time of signing the agreement that he was purporting to give what he did not have and has to date not even bothered to ameliorate the loss occasioned thereby. No doubt such failure or refusal to honor ones part of the agreement that subsequently causes loss to another party attracts damages. I am satisfied that the plaintiff has proved that the defendant did not perform his obligation in this arrangement. As a result both the Plaintiff and the Defendant have not been able to build the road forcing the Plaintiff to keep living in rented accommodation.

She therefore holds the Defendant liable thereof and claims damages as illustrated bellow for the loss suffered:

- Rental accommodation: SR 3, 000/- per month from date of filing of plaint to date of judgment.
- Moral damages: SR 25, 000/-

As deposed, the Plaintiff has been placed in a situation where she cannot develop the parcel of land she acquired and build a residential house thereon and as such she continues to suffer the inconvenience of renting premises to live in. She ably demonstrated to the satisfaction of the Court that because of the Defendant’s misrepresentation she could not start construction of the house within a year’s time after purchasing the land. A lease agreement (P4) and receipts (P5) for payment of

a monthly sum of SR 3, 000/- as rent for a house situated at Pascal Village, Mahe were seen and the Plaintiff demands for a refund of the same to her by the Defendant.

In her claim for moral damages the Plaintiff is unable to quantify exactly any particular items in it; for example stress, inconvenience and suffering. **See Aerial Advertising Co. vs. Bachelor's Plea Ltd (1938) 2 ALL E. R P. 788.** The Court will therefore estimate a reasonable sum of money basing on among other things the circumstances of the case, earlier awards made in similar or related claims and the extent to which the pleadings justify or substantiate the claimed quantum of damages. When the Defendant was not performing his part of the agreement the Plaintiff traveled a number of times to track him down in various places including his home at Anse Boileau as well as Anse Royale where he was at the time building a house. All attempts to talk to the Defendant and convince him to construct the road yielded nothing and the Plaintiff engaged the services of legal counsel and continues to visit the law offices of her lawyer and the court to monitor the progress of the case. That she was stressed for not being able to build her house yet continues paying rent every month which acts she says are physically and morally tiring and as such asks for a sum of SR 25, 000/- as moral damages.

This Court finds that on the uncontroverted evidence before it the Plaintiff has proved her case on a balance of probability and judgment is accordingly entered against the Defendant in the following terms;

- (a) That the Defendant pays the Plaintiff a sum of SR 3, 000/- per month from the date of filing of the plaint to the date of judgment.

(b) The Plaintiff is awarded a suitable sum of SR 3, 000/- as moral damages,
and

(c) Costs of the suit.

D. GASWAGA
JUDGE

Dated this day of November, 2006.