

IN THE SUPREME COURT OF SEYCHELLES

ARDYEN B.V.
(Rep. by Mr. Rob de Winter)

VS

BARCLAYS BANK (SEYCHELLES) LTD
(Rep. by its Managing Director Mr. Sidambaram)

Civil Side No: 300 of 2009

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Mr. Elizabeth for the plaintiff
Mr. Sabino for the defendant

Ruling and Judgment

The Plaintiff entered its Complaint against the two Defendants on 29th October, 2009. On the same day it also entered a Notice of Motion moving this Court to grant an order of interim mandatory injunction ordering the (first) Respondent to freeze the funds in bank account number 0107683542 belonging to (Second Defendant) Geo Consulting until further order of the Court for reasons stated in an Affidavit in support.

On 26th November, 2009 the 1st Respondent responded to the motion giving its reasons in support of its prayer for the dismissal of the motion. On the same day the 1st Defendant entered its statement of defence to the Complaint and that included pleas in *limine litis*.

The two points of law raised were as follows:

(a) The 1st Defendant is not a legal entity capable of being a party to a claim. The Plaintiff must be dismissed against the 1st Defendant.

(b) No cause of action is made out against the 1st Defendant. The Plaintiff must therefore be dismissed against the 1st Defendant.

On 8th February, 2010 the Court heard the Plaintiff on an application for service of process on the 2nd Defendant outside the jurisdiction and accordingly granted the application.

On that same day the name of the 1st Defendant as cited was corrected in order to meet the challenges of the points *in limine litis* raised by the 1st Defendant. Learned Counsel for the Plaintiff stated the following before Court– *“there is a sum of one million euro in my(Plaintiff’s) account and that the sum of 20,000 euro went through and I would agree that the sum of 20,000 be frozen and the rest be allowed to be used by the client.”* On that score the 1st Defendant went on record as follows – *“I will inform the bank of today’s proceeding not to (sic) any transaction on this account.”*

On 15th February, 2010 Learned Counsel for the Plaintiff sought time to obtain the signature of the Plaintiff to an Affidavit that was to be entered in response.

On 30th March, 2010 Learned Counsel entered a Petition applying for an order of Provisional Seizure, seizing the money in the 2nd Respondent's bank account.

On 6th July, 2010 the matter was adjourned *sine die* at the instance of the Plaintiff and was restored on the list on 13th January, 2011.

The Registry only complied with my order to serve the 2nd Defendant outside the jurisdiction on 12th April, 2011. It was not clear whether the 2nd Defendant was served outside the jurisdiction.

On 31st January 2012 Learned Counsel for the Plaintiff entered a Notice of Motion supported by an Affidavit deponed to by himself, praying this Court for the following orders:

- (i) Make an order granting leave to the Plaintiff to withdraw the case against the 1st Defendant.
- (ii) Give judgment in favour of the Plaintiff as prayed for in terms of Section 128 of the Seychelles Code of Civil Procedure (Cap.213).
- (iii) Make any other and further order the Court deems fit.

On the 6th February, 2012 when the case came up Learned Counsel for the Plaintiff was absent. However as Learned Counsel for the 1st Defendant was present the Court heard him on prayer (i) of the Motion. Learned Counsel for the 1st Defendant signified that he has no objection and the 1st Defendant was accordingly removed as a party. The case was to henceforth be proceeded against the 2nd Defendant only.

On 12th April, 2011 the Deputy Registrar of the Supreme Court sent to the Defendant summons and plaint at its address in the Commonwealth of Dominica summoning it to appear to answer the said plaint in this Court on the 25th May, 2011 at 9a.m. A copy of this Court's proceeding of 11th February, 2011 was also enclosed. All these were sent by DHL courier service and had not been returned which raised the presumption that these were duly delivered to the Defendant.

Prayers (ii) and (iii) of the Plaintiff's Notice of Motion was heard on 8th February, 2012. Learned Counsel for the Plaintiff referred the Court to paragraphs 4; 5;7 and 9 of his Affidavit which states as follows-

Paragraph 4. *I aver that I am informed by DHL, namely Miss Barbara Pouponneau that the 2nd Respondent was served with summons outside the jurisdiction on the 10th May, 2011.*

Paragraph 5. *I aver that I am further informed that service was accepted by Mr. Alex James on the 10th May 2011 at 9.20 a.m. and that the said Alex James signed the delivery documents at GEO CONSULTING, 12TH STREET, CANEFIELD 00152, COMMONWEALTH OF DOMINICA.*

Paragraph 7. *I aver that since the 2nd Respondent has now been served with summons and failed to file their defence the Court has power under Section 128 of the Seychelles Code of Civil Procedure Cap 213 to enter judgment in favour of the Plaintiff as prayed.*

Paragraph 9. *I aver that it is necessary and in the interest of justice to activate Section 128 as in the absence of such order the case would procrastinate and caused my client to incur unnecessary expenses and costs.*

Section 128 of the Seychelles Code of Civil Procedure Cap 213 states that – *“On the date to which the suit has been adjourned under the last preceding section, the parties shall appear and the court shall then adjourn the suit to a date to be fixed by the court for the hearing. If the defendant has neglected to file his statement of defence within the time ordered by the court, the court may either give judgment for the plaintiff on his claim or grant further time, subject to such order as to costs, as to the court may seem fit.”*

I have given careful consideration to the matter before the Court. The Plaintiff has taken the necessary steps at its own cost to ensure that the Defendant is notified of this suit. I am satisfied that the Defendant has been duly served with summons and plaint. The Defendant has failed to appear by itself or by Counsel and has also neglected to respond to the summons and Plaint. I believe that it would be futile to adjourn this case to a later date. I find that the Plaintiff has sufficiently set out matters in its Plaint that called for a judgment. Ample opportunity has been given to the Defendant by this Court to at least show its interest in defending this suit but nothing has been forthcoming in response. It is my judgment that this suit ought to be brought to its finality. In the circumstances I believe that it is fair just and necessary that I should invoke the provisions of **Section 128** of the Seychelles Code of Civil Procedure Cap 213 which I hereby do.

Judgment

The Plaintiff is and was the representative of the 2nd Defendant, a Company registered in Dominica. On or about 11th June, the Plaintiff and the Defendant entered into an agreement whereby it was agreed for the Plaintiff to provide payment services for credit card payments to the 2nd December (2009). After the 1st transaction the Plaintiff settled the funds to the Defendant. At the same time both MasterCard and Visa were noticing unauthorized use of their credit cards by the Defendant. Unfortunately this information crossed the settlement transfers

of Euro28,098.25 and Euro3,384.15 to the Merchant's bank account with Barclaycard Seychelles.

After the settlement to the merchant, the Plaintiff noticed excessive increase in volume of transactions and cards were being used multiple times by the Defendant. The Plaintiff suspected that this was a fraudulent merchant (using stolen credit card numbers) and stopped processing the transactions. The Plaintiff tried to contact the Defendant and they were not reachable for comments. The Plaintiff also received several disputes from the Credit Card acquiring parties which resulted in the return of the money to the Cardholder as chargebacks. This money is taken from the Plaintiff's bank account and the Defendant is now liable to pay this money back to the Plaintiff.

The conduct of the Defendant amounts to a fraud and the Defendant is now liable to pay the money back to the Plaintiff so that the latter pay back to the Cardholders who were victims of the fraud committed by the Defendant. The Defendant is also liable for all the processed transactions which amount to Euro107,700.00. The Plaintiff have made settlement transfers for and on behalf of the Defendant with an amount of Euro28,098.25 and Euro3,384.15. The Defendant still owes the Plaintiff an additional amount of Euro4,000.00 for processing costs for the transactions.

The findings stated above are based on the uncontroverted pleadings of the Plaintiff.

In the circumstances I enter judgment in favour of the Plaintiff as against the Defendant in the total sum of Euro111,700.00(one hundred and eleven thousand seven hundred Euro) together with interest and costs.

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B. RENAUD
JUDGE

Dated this 19 November, 2012