IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS199/2011

[2017] SCSC 65

LCP Development Limited — Plaintiff

versus

1. Island Development Company
2. Government of Seychelles represented by

   The Attorney General — Defendants

Heard: 21 November 2012- 22 November 2016.

Counsel: Mr. Divino Sabino for the plaintiff

Mr. Francis Chang Sam and Mr. Georges Robert for the first defendant
Mr. Benjamin Vipin for the second defendant

Delivered: 30 January 2017

JUDGMENT

M. TWOMEY, CJ

The undisputed facts

[1] The First Defendant is a development company for Seychelles' outer islands and was granted a 99 year lease of Poivre Island by the Second Defendant.

[2] On the 5 May 2003, the First Defendant by agreement executed by a notarial deed, sublet to the Plaintiff 16.5 hectares of land on Poivre, for a period of 60 years commencing on 1 December 2003 for a payment of USD 20,000 per annum reviewable every five years.

[3] The purpose of the sub lease was for the Plaintiff, at its own expense, to construct, develop operate, maintain a Hotel and to perform other associated works with the said development.

[4] The Hotel and other associated works did not materialise and by letter dated 13 August 2008, the First Defendant issued a formal notice of termination of the said sub lease to the Plaintiff.

[5] Following protracted discussions between the parties, a new agreement was prepared by the Plaintiff with the Second Defendant setting 11 October 2010 as deadline for the signature of a new sub lease on the surrender of the original sub lease.

[6] The First Defendant by letter dated 22 July 2008 put the Plaintiff on notice that it was continuously breaching the agreement by failure to complete the construction of the Hotel within the time specified.

[7] On 13 August 2008 the First Defendant by letter to the Plaintiff terminated the sub lease on the grounds that the breach complained of had not been remedied.

[8] Following protracted discussions between the parties, a new agreement was prepared by the Second Defendant for the Plaintiff setting 11 October 2010 as deadline for the surrender of the original sub lease and the signature of a new sub lease.

[9] The deadline was not met and the Second Defendant informed the Plaintiff that it would proceed to tender the development to other bidders.

The Plaintiff's claim

[10] It is the Plaintiff case that the sub lease dated 5 May 2003 has not been terminated and is still in force and that it has a right of ownership and possession of the sub leased land on Poivre. It claims that its endeavours to inject more capital into the company by the sale of shares to an investment company, Birchley Investment Holdings Ltd (hereinafter

Birchley), was frustrated by the Second Defendant's stringent sanction conditions which in any event were ultra vires the Immoveable Property (Transfer Restrictions) Act (hereinafter IPTRA). It prays the Court to issue an injunction to order the Defendants to reinstate it as lessee of the land at Poivre, to refrain from asking for tenders for the development of Poivre and to declare the sub lease dated 5 May 2003 still in force.

The Defendants' defence

[11] The First Defendant has averred that the date of completion of the Hotel was 20 March 2007 but following the issuance of the sanction letter dated 27 March 2007 by the Second Defendant and/or its agents, the completion date was effectively extended to 1 June 2008. It states that the sub lease agreement was legally terminated on 13 August 2008 and no injunction arises.

[12] It is the Second Defendant's case that the sanction conditions in relation to the sale of shares by the Plaintiff's shareholder to Birchley were not ultra vires IPTRA and in any case were not objected to. Since the share transaction was proceeded with, it is deemed acceptance of the terms of the sanction and for which the Plaintiff is estopped from now challenging. Further, since the sanction conditions were not met and no new lease signed, the original lease continued in operation and was effectively terminated by the First Defendant on 13 August 2008.

The Evidence

[13] The matter was heard in fits and starts before Karunakaran J and at the end of the evidence being adduced, with the trial judge not in a position to hear submissions or deliver a judgement the carriage of the case was taken over by myself. Parties unanimously opted for the adoption by this Court of the evidence adduced before Karunakaran J.

[14] I have proceeded to examine the transcripts of evidence adduced in this matter and find that the only issues to be decided by this Court is whether there was a breach of contract by either party and what consequences flow from such breaches.

Breaches of the Sub Lease

[15] It is contended by the Plaintiff that several warranties of the sub lease were breached by the First Defendant, namely: (1) that it did not permit the Plaintiff vacant possession and quiet enjoyment of the sub leased property and full charge and responsibility for the construction and development of the Hotel as per clause 8 of the agreement;(2) that the First Defendant did not assist it to procure the relevant government approvals or authorisations for the development as per clause 12 (b) of the agreement; and (3) that the First Defendant did not abide by the condition that no other agreement with regard to the Hotel with a third party would be entered into which might affect the Plaintiff's rights and interest as per clause 19(r) of the agreement.

[16] The Plaintiff also contends that the Second Defendant imposed conditions that were so rigorous as to make the performance of the contract impossible.

[17] On these issues, the Managing Director of the Plaintiff Company, Mr. Leighton Curd, testified that although the requisite government sanction was obtained by the Plaintiff before the signature of the lease agreement with the First Defendant, the Plaintiff was opposed by the First Defendant through the course of the project resulting in its slowdown and eventual halt.

[18] The documentary evidence produced confirms that planning approval for the Hotel development was granted on 27 May 2003. The certificate of approval had the following conditions:

1. Standard conditions (relating to inter alia landscaping, colour scheme, sullage, water storage)

2. Environmental authorisation with conditions

3. Chief Fire Officer's comments

4. Structural design to be submitted within 28days prior to commencement of the works.

The Sullage Works

[19] The Plaintiff testified that some of these conditions, namely sullage were never met because of resistance from the First Defendant. He was supported in this position by the Plaintiff's Project Manager, Mr. David Reese and the company's Financial Director, Mr. Brijesh Jivan. It was both their testimony that the sullage system being proposed was far superior to the one the First Defendant required.

[20] Mr. Glenny Savy, the Chief Executive Officer of the First Defendant also testified. His evidence was that he had not obstructed the Plaintiff's plans but rather that the Plaintiff had failed to submit the plans as recommended. He added that he had advised the Plaintiff that its proposed plans, for example in respect of a vacuum sewage system would not be granted planning approval given the requirements of the Public Utilities Company and the proposed vacuum system's incompatibility with the proved and tested conventional pump sewage system in operation on the islands of Seychelles. He testified that he was also particularly nervous about a system that might pollute the limited water reserves of Poivre's aquifer.

[21] It is not in dispute that environmental authorisation in terms of the Environment Impact Assessment Report was granted on 14 March 2003 from the Ministry of the Environment two months before the sub lease was executed. I shall return to this later.

The Share Transfer to Birchley

[22] The Plaintiff has contended that the First Defendant also breached clause 14 of the sub lease agreement. In this respect Mr. Curd testified that in an effort to finance the development, the Plaintiff sought investment by way of a share transfer from a third party, Birchley Investment Holdings Limited (hereinafter Birchley). He stated that clause 14 of the sub lease allowed the Plaintiff to make such a transfer and the First Defendant was bound not to unreasonably refuse it. In his opinion, the sanction conditions issued by the Second Defendant in respect of the share transfer also amounted to an unreasonable refusal.

[23] It must be noted that clause 14 of the contract provides in relevant part that:

"The Sublessee may during the Sub lease Period, subject to the Sublessor's prior consent but which consent the Sublessor shall not unreasonably refuse or withhold, further sub lease the Hotel to any third party or grant any or all right, interest and possession under this Sub lease to any third party by way of sale, assignment or transfer..."

[24] Mr. Curd's testimony is to the effect that the sanction conditions imposed by the Second Defendant to permit the transfer of shares were so stringent that they paralysed further work by the Plaintiff.

[25] The sanction conditions imposed were contained in a letter from the Principal Secretary of the Ministry of Land Use and Habitat, Mr. Patrick Lablache dated 19 March 2007 and can be summarised as follows:

1. Money for the purchase price and stamp duty was to be brought into Seychelles through the Central Bank in a convertible foreign currency and exchanged into Seychelles Rupees.

2. The Plaintiff was to apply for sanction each time it changed beneficial ownership of Birchley.

3. The airfield had to be completed and hard surfaced to the First Defendant's specifications on or before 30 September 2007.

4. Dredging works had to be completed by 30 June 2007.

5. An irrevocable bank guarantee from a local bank had to be provided in respect of the airfield and the dredging works and each guaranteed in the sum of USD400, 000 in favour of the First Defendant.

6. The Hotel had to be completed, operational and licensed by the latest 1 June 2008 failing which a penalty of USD100,000 would be payable per month of delay or part thereof, to the First Defendant and notwithstanding the consideration or forfeiture of the sub lease beyond a delay of 3 months after 1 June 2008.

7. No residential development project would be considered until the first project was completed and operational.

8. Issues pertaining to utilities, airfield, marina and essential services to be agreed with the First Defendant.

Dredging of channel to Poivre

[26] Insofar as other infrastructure is concerned it was also Mr. Curd's testimony as supported by Mr. Rees, Mr. Jivan and Mr. Barley that the Plaintiff was again obstructed in carrying out the work because of the unreasonable behaviour of Mr. Savy. In respect of the dredging works, the main contention was that staffing issues were encountered because of the lack of support of the First Defendant in obtaining necessary authorisations and hindering staff movement to the island. The Plaintiff raised the issue of the logistics of reaching Poivre and their dependence on the First Defendant in facilitating the movement of staff and goods and machinery from Mahé to Desroches (the island nearest Poivre in terms of air transport) and on to Poivre.

[27] Mr. Savy refuted these allegations. In his view, he assisted the Plaintiff's operations but difficulties arose over the Plaintiff not paying its sub-contractors and service providers, namely Mr. Luc Grandcourt, the owner of the vessels Praslin Hero and Praslin Wave for transportation of equipment (supported by Exhibit D14) but also the contractor for the dredging works, Southern Ocean Engineering. In this regard, Alan Klaassen the owner of Southern Ocean Engineering testified that he had been contracted by the Plaintiff through another of its companies, Whale Host, to do dredging works and excavations at Poivre. He stated that he worked on the main basin near the island but did not dredge the entrance channel. In terms of percentage of the total dredging done, he stated that about 40% of the works had been completed. This estimate was supported by Mr. Patrick Lablache who visited the island for an assessment.

Mr. Klaassen stated that the dredging works he carried out were worth South African Rand 2.5 million but he received payment totalling 500, 000 Rand in dribs and drabs from the Plaintiff. Finally all dredging work was suspended in 2004 and the dredger was

mothballed in situ but in any case eventually sank. Mr. Klasssen admitted that he then caused the Plaintiff to be blacklisted in South Africa.

Construction of airfield

[28] The construction of the airfield was also big bone of contention between the parties. The Plaintiff accepted that the definition of Hotel in the sub lease agreement namely "buildings, installations, facilities…used for or associated with the extent of the operation and management of the Hotel" would include the airstrip. Mr. Curd and Mr. Jivan testified that the Plaintiff was hindered in meeting its contractual obligation in this respect as Mr. Savy for the First Defendant had not obtained the requisite permits from the Seychelles Civil Aviation Authority (SCAA).

[29] Refuting these allegations, Mr. Savy stated that the airstrip had been started by the Plaintiff who was unable to further undertake and complete the work. He was then approached to have the work subcontracted to the First Defendant. In this respect, he engaged a subcontractor, Patrick Rogan, to complete the clearing of the terrain and to undertake its levelling and compacting to permit planes to land. It soon became apparent that a grass airfield would not be viable as the fine sand in Poivre could not sustain the growth of grass. Although an islander aircraft did eventually attempt a successful landing there it confirmed his fears that the ground was too soft.

[30] On the issue of certificates from the SCAA, Mr. Savy testified that no certification was necessary for a private airfield. It was only when commercially paying passengers would be flown to the island that the airfield would have to be licensed by the SCAA. The only requisite permission at the initial stage was that from the Planning Department which he obtained on 22 December 2004 (see Exhibit D36).

[31] He stated that the airfield as completed by Mr. Rogan would have not have been licensed by the SCAA purely on compaction strength. Mr. Rogan also testified and corroborated much of the evidence of Mr. Savy in respect of the work carried out on the airfield.

[32] Mr. Savy further stated that the Plaintiff, having subcontracted the work for the airfield to the First Defendant, had no duty or right to contact the SCAA in respect of the

certification of the same. It was the obligation of the First Defendant to meet the standards when the time arose.

[33] As the grass airfield was no longer viable it was agreed that the Plaintiff would provide the paving blocks for a concrete runway and the construction would be done by the First Defendant. The price of the blocks was negotiated by the Second Defendant with United Concrete Products Seychelles and at the last hour, the Plaintiff refused to pay for them and insisted that a written contract would have to be but in place between itself and the First Defendant.

The Hotel Construction

[34] Both Mr. Curd and Mr. Jivan testified that the Plaintiff was thwarted in its efforts to construct the Hotel because it never obtained planning approval, did not have sufficient support from the First Defendant and because of its lack of funds compounded by the stringent sanction conditions which in its view was dictated to the Second Defendant by the First Defendant.

[35] In this regard, it produced a letter from the Secretary of the Planning Authority granting approval for the construction of the Hotel chalets, health spa and Community Centre subject to meeting the Environmental Authorisation conditions.

[36] It called Mr. Gerard Hoareau, at one point the Chief Executive Officer of the Planning Authority, who confirmed that no structural details were ever submitted by the Plaintiff. He explained that conditional planning permission does not allow structures to be constructed until a certificate of approval is issued. He stated that where permission is given subject to conditions, these conditions have to be fulfilled before the certificate of approval is issued. Where there is a registered lease, the lessee may apply for planning and the lessor’s authorisation is not sought by the Planning Department. No commencement notice was ever received by the Planning Department in respect of the Hotel.

[37] Mr. Savy testified that in the end no Hotel chalets were ever built. He stated that the contractors for the build kept changing: first it was to be a South African company, VG

Shop Fitters, then a Turkish company, and finally a Bali company but no Hotel ever materialised.

The Staff Accommodation

[38] The only construction that took place was in terms of three sample chalets for staff accommodation and a canteen. These were erected by a Turkish firm who complained about not being paid and did not complete the chalets. The chalets were not roofed and very quickly crumbled as they were exposed to the elements.

The Communal Facilities for Poivre Village

[39] One of the sanction conditions was the payment of USD 400,000 by the Plaintiff to the First Defendant. It was the Plaintiff's contention that the payment was also unreasonable and that it was not used for communal facilities. Mr. Savy stated that that condition was one reasonably imposed by the Second Defendant and that in any case the money was not paid in one go. The Plaintiff had to be requested on several occasions to meet that condition. He accepted that it had not rebuilt the village as the First Defendant had instead been engaged in building the runway on behalf of the Plaintiff. There was in any case no formal contract in terms of what the money was to be used for. Some of it was used for a desalination plant for the island.

The Residential Villa Project

[40] It was also the Plaintiff's case that it became quickly aware that the Hotel development on its own would not be viable and that it also needed to build private villas for sale on the island. It was its case that after floating the idea, it was appropriated by Mr. Savy for the use of the First Defendant and that subsequently all efforts to get permissions for the construction of the villas was undermined by the First Defendant.

[41] Mr. Savy testified that the idea for private villas for Poivre was not an innovation of the Plaintiff. The first experiment was at Desroches after the First Defendant got the idea from the Eden Island Development. A residential villa development was also conceived by the First Defendant for other islands such as Alphonse, Providence and Farquhar.

[42] Mr. Savy rejected the idea it would have been a breach of the sub lease agreement for the First Plaintiff to build villas. These would not qualify as being hospitality business in competition with the Hotel. In any case, it was felt that since the Plaintiff could not even build the Hotel it would have been premature and unwise to consider allowing it a second phase project such as the residential villas which in Mr. Savy's opinion was an attempt to source capital for the building of the Hotel.

Sabotaging of Investment opportunities

[43] It was also the case for the Plaintiff that the First Defendant by communicating with its existing and potential funders sabotaged its investment opportunities, thus causing the funding for the Hotel construction to dry up. They supported this by evidence that Mr. Savy had contacted Ms. Martin Alter, Lancaster Company Ltd and Mr. Artur Shtroserer, all potential funders who had subsequently pulled out of the funding of the Plaintiff's project. Mr. Savy stated that the contact to the First Defendant had been made by the funders themselves and that he told them the facts as they were.

The Application of the Law and Discussion of the Evidence

[44] The disagreement between the parties is largely over the interpretation of Clause 16 of the sub lease which provides:

> *"The Sublessee shall: (a) start and complete the construction of the Hotel in accordance with approved plan thereof within 24 months after the grant of the planning permission by the Planning Authority or 30 months after the Commencement Date whichever occurs last."*

[45] In terms of the termination of the contract, the law to be examined relates to the interpretation of contacts. Article 1156 of the Civil Code of Seychelles provides that :

> *"In the interpretation of contracts, the common intention of the contracting parties shall be sought rather than the literal meaning of the words.*

> *However, in the absence of clear evidence, the Court shall be entitled to assume that the parties have used the words in the sense in which they are reasonably understood."*

[46] The first part of Article 1156 is of no assistance whatsoever in the present matter. The Plaintiff and the First Defendant have very little common ground insofar as the interpretation of clause 16 of the sub lease is concerned. I have therefore construed the sub lease agreement in the most objective way as is reasonably possible.

[47] Whilst the parties may not agree as to whether the Plaintiff was or was not supported or should have been supported by the First Defendant in its endeavours to obtain planning permission, clause 16 gives the latest date of completion of the Hotel as 30 months after the Commencement Date. The Commencement Date is defined in the agreement as the "the date that this sub lease shall commence, namely on the 1st day of December 2003." This would have meant that the Hotel would have had to be completed on or before the 1 day of June 2006.

[48] This breach by the Plaintiff was forgiven as the completion date was modified by the new sanction conditions granted on 27 March 2007 which permitted Birchley to purchase 99 shares in the Plaintiff company. The letter of sanction at paragraph 5 states in relevant part

> *"The Hotel must be completed, operational and licensed by the latest 1 June 2008…"*

[49] This gave the Plaintiff an extra two years to meet its contractual obligations. The Plaintiff has submitted however, that first of all, the sanction letter was issued to Birchley and not the Plaintiff and therefore was not binding on the latter. Secondly, conditional planning permission was only granted to the Plaintiff on 25 July 2007 and in line with clause 16(a) of the contract, the deadline to complete the Hotel would have been in July 2009. Hence the termination letter issued by the First Defendant in August 2008 was premature.

[50] The first part of this submission cannot be sustained. Birchley became a shareholder of the Plaintiff and therefore became part and parcel of the Plaintiff company. The Plaintiff

therefore cannot be viewed as a third party to the sanction condition imposed by the Second Defendant on Birchley.

[51] The second part of the argument is ingenious but fails to take into account the fact that the planning approval granted in 2007 relates to supplementary drawings and not planning permission for the Hotel which had been granted since 29 April 2005. It was the Plaintiff's own tardive submission of detailed plans in relation to many aspects of its project which necessitated further intervention and slowed down the work on the Hotel.

[52] I have throughout the examination of the evidence tried to understand the case being made in terms of the alleged breaches of contract by the Defendants. Although not expressed in so many words it appears that the Plaintiff is pleading *exceptio non adimpleti contractus*, more commonly known in France and Seychelles as *l'exception d'inexécution*.

[53] The articulation of this concept begins in article 1134 of the Civil Code of Seychelles which provides that:

> *"Agreements lawfully concluded shall have the force of law for those who have entered into them.*
> *They shall not be revoked except by mutual consent or for causes which the law authorises.*
> *They shall be performed in good faith."*

[54] In a synallagmatic contract, parties are bound to each other by their interdependent, contractual and reciprocal obligations at the point of execution of the contract. Hence, as it has been expressed, "No performance is due to one who has not himself performed" (K. W Ryan, An Introduction to The Civil Law, Sydney: The Law Book Co. of Australia, 1962, pages 82-83).If one of the parties does not execute one of its essential obligations, the principle of *l'exception d'inexécution* can be invoked by the other party as a means of pressuring the party at fault or as a defence with a view of exonerating itself from the execution of its contractual obligations or to constrain the other party to execute its own obligations. Although the exception is granted in very specific cases in the Civil Code, namely in delivery of goods (Articles 1612 and 1651), in contracts of exchange (Article 1704) and in contracts relating to deposits (Article 1948) jurisprudence has extended the exception to all synallagmatic contracts (see Soc mai 156, Bull. civ. IV, no 503, p. 37).

[55] In the present case, all the parties had concurrent duties - the Plaintiff had to pay the sum of USD 20, 000 dollars annually and to construct, develop and operate a Hotel. The First Defendant's duties expressed negatively in the sub lease were: not to carry out hospitality developments which would unreasonably and adversely affect the use of the Hotel by the Plaintiff and not to take any action that might hinder the Plaintiff from obtaining approvals and licences for the Hotel. It was also under an obligation to assist the Plaintiff in procuring these approvals and licences. It is also the Plaintiff's submission that outside the lease agreement but allied to it, the Second Defendant was under an obligation to grant sanction reasonably for any transfers in the leasehold or interest in the leasehold.

[56] The Plaintiff's case is that since the Defendants did not meet their obligations it could not execute the contract.

[57] However it must be noted that *l'exception d'inexécution* is permitted in very limited circumstances. In *Jumeau v Sinon* (1977) SLR 78 a case which also involved a lease agreement where rent had not been paid by the Defendant on the grounds that the Plaintiff had illegally interfered with his peaceful use and enjoyment of the property and that the Plaintiff had resumed possession of the leased premise, Sauzier J stated, first, the exception can only be raised in good faith and not as a mere dilatory measure. Second, the breaches by the lessor of his obligations must not bear on secondary or subordinate matters but must be sufficiently grave to justify non-execution.

[58] In *Peters v Bazen* (1975) SLR175, Sauzier J stated that a contracting party may refuse to perform his part of the agreement if the other party has failed to fulfil a substantial part of the agreement. In *Hoareau v A2B (Pty) Ltd* [2014] SCCA 13 Domah J stated that:

> "[*L'exception d'inexécution*] is not available for every kind of breach. In general in such cases the Courts try to strike a balance between the competing obligations of parties bearing in mind the essential obligation in the agreement."

[59] In order for the Plaintiff's breach of the sub lease conditions to be excepted it must be able to show that the Defendants' breaches were substantial and essential to the object of the sub lease.

[60] I have previously referred to the Environmental Impact conditions granted on 14 March 2003 (Exhibit P 18), that is, nearly two months before the sub lease was executed. There has been no attempt by the Plaintiff to explain why these were never met apart from its referral to the lack of support by Mr. Savy in supporting a vacuum sewage system. I note that in that letter the attention of the Plaintiff was already drawn to the type of sewerage treatment process acceptable in Seychelles. The letter states in relevant part:

> *"[R]eference is made to the South African standards which does not relate to the standards set by the Seychelles authorities. As such the information should be revised to reflect the established standards for the usual parameters as set out by the Seychelles Environment Protection (Standards) Regulation 1995."*

[61] These Regulations specify that the standard utilised by Seychelles for sampling is in accordance with British Standards 6068 (see section 3 of the Regulations). I cannot accept that Mr. Savy was being obstructive in this regard.

[62] The submissions of the Plaintiff on what it sees as the unreasonable and stringent conditions of the sanction given by the Second Defendant in 2007 to permit the share transfer is also not tenable. Government does not have to grant sanction for any purchase of interest in immoveable property in Seychelles. When it does grant permission it can impose any sanction conditions it so wishes. The applicant can walk away from those conditions if it so wishes and not effect the purchase. That cannot be viewed by the Court as a breach of the sub lease, substantial or otherwise.

[63] The sanction conditions imposed were in any case accepted by the Plaintiff in a letter dated 29 March 2007 (see Exhibit D1) in which it thanked the government for the grant of sanction and expressed its intention to "complet[e] the Poivre project successfully."The sanction conditions in any case had no bearing on the Plaintiff's duties under the sub lease. It undertook to construct the Hotel. If it had underestimated the money and work involved for the realisation of such a project, especially on a remote island, the fault lay entirely at its feet. If anything the Defendants tried to facilitate it in obtaining requisite funds so as to complete the project which was at this stage in any cases way behind schedule.

[64] I am also not able to accept the suggestion that the First Defendant unreasonably withheld its support for any part of the work relating to the dredging, the construction of the airport and the Hotel. The evidence adduced by the Plaintiff even on a balance of probability does not pass muster. It is quite incomprehensible that a project which was first granted permission in 2003 did not materialise in even one Hotel chalet getting off the ground when the lease was terminated eventually in 2008.

[65] In the present case, I am unable to conclude on the evidence that the Defendants failed in any way to perform essential or substantial obligations under the agreement. As was rightly pointed out by the First Defendant it was not the agent of the Plaintiff. There was no onus contractually placed on the First Defendant to obtain approvals or licences for the Plaintiff. This is in fact expressly stated in clause 31of the sub lease agreement.

[66] It appears that the Plaintiff's *laches* in fulfilling his obligations under the contract is being projected onto the Defendants. This is clearly not maintainable in the light of the evidence adduced by the Plaintiff which fall woefully short of proving its case. Similarly, the attempts to show that the refusal of the Second Defendant to grant permission for the construction of villas and of the alleged sabotage by the First Defendant of the funding opportunities of the Plaintiff resulting in the breach of the Plaintiff's obligations does not come up to standard.

[67] I am also not convinced that the reason for the non-performance of the Plaintiff's obligations is raised in good faith and does not amount to delay tactics. I say this based on the extensions given to the Plaintiff for completion of the work. For these reasons, the exception cannot be set up to excuse the non-performance of the Plaintiff's obligations.

My decision

[68] I find in the circumstances that the termination of the lease by the Defendants was lawful and in accordance with the terms of the sub lease agreement.

[69] I therefore ORDER that the Plaintiff's case be dismissed with costs.

[70] I have to add that none of the Parties are to blame for the delay in the conduct of this case. I am aware that the Plaintiff's prayers were, inter alia for an injunction, which is a

remedy that must be granted swiftly. In the event this case took nearly six years to complete. For this I tender the Court's unreserved apology. No other prayers were made and no amendments to the pleadings were sought and I have therefore limited my decision to the pleadings and prayers before me.

Signed, dated and delivered at Ile du Port on 30 January 2017.

M. TWOMEY
Chief Justice