

## **IN THE SUPREME COURT OF SEYCHELLES**

**LOTUS CAR HIRE (PTY) LTD**

Herein rep by its Director Charles Mellie

**PLAINTIFF**

**VERSUS**

**JUDE DENOUSSE**

**DEFENDANT**

Civil Side No 379 of 2008

Mr. C. Lucas for the Plaintiff

### **JUDGMENT**

#### **B. Renaud J**

On 19<sup>th</sup> December, 2008<sup>7</sup> the Plaintiff entered a Plaint claiming the sum of SR39,600.00 with interest at 20% per annum plus costs. The claim allegedly arose out of a breach by the Defendant of a car hire contract he entered into with the Plaintiff. The Plaintiff particularized his claim as follows:

- |  |                      |
|--|----------------------|
| • Refund of sum misappropriated  | - SR30,000.00        |
| • Loss of profit   | - SR 6,000.00        |
| • Loss of interest at 12% per annum<br>from December 2007 and continuing | - <u>SR 3,600.00</u> |
|  | - <u>SR39,600.00</u> |

The Defendant was duly served with summons and Plaint on 5<sup>th</sup> February, 2009 to appear in Court on 24<sup>th</sup> February, 2009. There is no record as to what happened on that date but the record shows that it was adjourned for mention to 12<sup>th</sup> June, 2009. Learned Counsel was informed by letter dated 2<sup>nd</sup> June, 2009 and a fresh summons was issued on 3<sup>rd</sup> June,

2009 to be served on the Defendant. The Defendant did not appear in Court and did not file any Statement of Defence and the matter was fixed for ex-parte hearing 1<sup>st</sup> October, 2009.

At all material times the Plaintiff was the owner of motor vehicles S1259; S1261; S1275 and S17153 and he carried on the business of car hire operator. The Defendant is a Fireman by profession and was in December 2007 he was a part-time Salesman for the Plaintiff. In the execution of his services with the Plaintiff, the Defendant was entrusted with the duties to hire out cars to the clients of the Plaintiff, deliver and collect such cars, secure signatures of the drivers on the Plaintiff's standard contracts and collect payments due for the car rentals from the clients. The Defendant was under the obligation to report and remit to the Plaintiff the proceeds he collected for the rentals of the cars.

In breach of his obligation as the car hire salesman of the Plaintiff, the Defendant failed to account for and remit payment for the following:

|     |          |        |                     |                   |                    |
|-----|----------|--------|---------------------|-------------------|--------------------|
| (a) | 10.12.07 | S1275  | To Sey Gulf         | Contract No. 0277 | SR 2,700.00        |
| (b) | 13.12.07 | S1261  | To Steve Malcouzane | Contract No. 0278 | SR 1,275.00        |
| (c) | 17.12.07 | S1259  | To Jemie Cecile     | Contract No. 0279 | SR 7,975.00        |
| (d) | 17.12.07 | S1261  | To Wilson Laurence  | Contract No. 0281 | SR 6,750.00        |
| (e) | 20.12.07 | S1275  | To Wilson Laurence  | Contract No. 0282 | SR 4,400.00        |
| (f) | 28.12.07 | S17153 | To Sey Gulf         | Contract No. 0283 | <u>SR 7,000.00</u> |
|     |          |        |                     | Total             | <b>SR30,000.00</b> |

The Plaintiff admitted that the Defendant paid SR1,200.00 towards that sum.

Despite a letter of demand dated 4<sup>th</sup> April, 2008 from the Plaintiff to the Defendant for the latter to pay the sum due, the Defendant failed to take any steps and indeed neglected payment altogether.

The Plaintiff in evidence altered his claim for interest to 12% per annum.

On the basis of the uncontroverted evidence of the Plaintiff, I am satisfied that the Plaintiff has substantiated and prove his claim on the balance of probabilities and I enter judgment in favour of the Plaintiff in the sum of SR39,600.00 with interest at 12% per annum from the date of filing the Plaint and continuing.

Having awarded interest at the commercial rate I dismiss the Plaintiff's claim for loss of profit.

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B. RENAUD

**JUDGE**

Dated this 29<sup>th</sup> day of October 2010