

IN THE SUPREME COURT OF SEYCHELLES

NORMAN'S CAR HIRE & TRAVEL SERVICES LTD
(Herein rep. by its Director Mr. Keven Parcou)

PLAINTIFF

VERSUS

THE SEYCHELLES INDUSTRIAL DEVELOPMENT Corporation (herein rep by its Managing Director Mr. Maxwell Julie

DEFENDANT

Civil Side No 278 of 2001

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Mr. S.Rouillon for the Plaintiff
Mr. F.Ally for the Defendant

JUDGMENT

B.Renaud



The Plaintiff is an enterprise established, inter-alia, for carrying out a car hire and tourism business and is also the Lessee of a plot of land Title V6774 situate at Providence, Mahe, with the Defendant as Lessor, by virtue of a lease agreement with the Plaintiff's predecessor in title dated 22nd November, 1990. Pursuant to the said lease the Plaintiff paid a monthly rent of SR1,795.00 and continuing.

Mr. Keven Parcou, a Director of the Plaintiff testified that the Plaintiff obtained a plot of land at Providence, Title V6774 from the Defendant by virtue on a Lease Agreement which was originally signed between the Defendant and E H Westergreen Company on 22nd November, 1990. He produced a copy of the said agreement which was admitted and marked as Exhibit P1. By a Transfer Deed dated 28th July, 1994, the original Lessee, with the consent of the Defendant, transferred its lease to the Plaintiff. The Transfer Deed was admitted and marked as Exhibit P2. The purpose of the lease was for the Lessee to build an office

and garage. The Plaintiff as at present has not build or set up anything on the site because it has not got planning permission to develop the place. It has done preliminary works in that it hired an Architect to make the drawings and the planning permission was refused on the ground that there was a road development. It applied for the second time after the completing of the road and the Planning Authority again refused on the ground that a bridge was to be built. Until now it has not been able to do anything on the leased property. The Plaintiff wrote several letters to the Defendant including one dated 22nd August, 2001, Exhibit P3, and another one dated 24th October, 2001 Exhibit P4, to discuss the possibility of an alternative and the Defendant has not responded. The matter is now before Court because the Plaintiff did not get any response from the Defendant. The Plaintiff testified that it hired Architect twice, the second Architect was paid on February, 1997 per Exhibit P5. The second Architect, "*Locus Architect*" wrote two letter on 6th August, 2000 and 10th August, 2001, admitted as Exhibit P6. The Plaintiff is claiming 11 years rent at SR1,795.00 per month, interest to SR130,317.00; fees of Architect "*Hughes and Polkinghorne*" - SR50,000.00; Planning fees at SR3,248.00; fees for Locus Architect - SR30,000.00; Survey fees SR10,000.00; Legal fees SR6,000.00; Filing fees SR2,330.00; all amounting to SR468,835.00.

When cross-examined, the witness admitted being a Director of E H Westergreen at the time the original lease was entered into with the Defendant. It was in 1997 that application was lodged with Planning Authority. The lease agreement stipulates a time limit within which the Plaintiff had to develop the leased land. It was the Planning Authority that is stopping the Plaintiff from developing its property. The Plaintiff admitted that it has the option to surrender the lease but preferred to develop it. Plaintiff admitted that he is not conversant with Clause 6(b)(ii) at page 5 of the Lease Agreement which states -

"hereof the rent payable in respect of the demised premises shall be paid with effect from the first day of the thirteenth calendar month after the date hereof or from the first day of the seventh calendar month after date of issue of the Completion Certificate by the Planning Authority in respect of the building, structure or works to be erected upon the premises in pursuance of the provisions contained in Clause 5 of the lease, whichever is the earlier"

Likewise he testified that he not aware of Clause 5 of the Lease Agreement which states-

"The Lessee shall, subject to Planning Permission and the necessary Building Licences being obtained, be permitted to erect a building, structure or works on the land hereby demised PROVIDED THAT the said building, structure or works shall have received prior approval of the Lessor given in writing and PROVIDED FURTHER THAT at the termination or sooner determination of this lease the said building, structure or works shall remain the property of the Lessor without claim of compensation in respect thereof by the Lessee".

The witness testified that it was the previous Lessee who was aware of the contents of the Lease Agreement and he has not personally read it. He is aware of the contents of the Transfer Deed only. When Planning permission was refused for the building of showroom, he did not change his plan and up to now he has not submitted any amended building plan to the Planning Authority. He was a shareholder and Director of E H Westergreen though not actually running the Company.

He has not considered surrendering the lease to SIDEC so as to mitigate his losses. He learned from his Architect that a bridge was to be built.

Testifying on behalf of the Defendant, Mrs Celine Rose-May Hoti who works as Finance Manager of the Defendant SIDEC, said that she has been working with Defendant since June, 1991, and was/is particularly involved in the management of rent and ensuring that the property of SIDEC situate at Providence is well take care of. E H Westergreen had leased a property title V6774 situated at Providence from SIDEC, the lease of which property was thereafter transferred to Norman's Car Hire with the consent of the Defendant. The property was leased for the purpose of the Lessee developing that property. No development has taken place thereon to date. The defendant had never by agreement or otherwise, promised the Plaintiff an alternative plot of land as a result of the refusal from the Government for planning permission.

The Defendant submitted that the failure to obtain Planning permission to build on the property is not attributed to the Defendant SIDEC but it is attributable to another Government Authority.

A proviso to paragraph 7(9)(b) of the Lease Agreement states –

“PROVIDED ALWAYS THAT the Lessee takes the demise premises as they are without any warranty or guarantee on the part of the Lessor of the suitability of the demise premises for any purpose or use for which the lessee intends to put to use or of any other particulars purpose or use”.

The Defendant had never promised or agreed verbally or in writing to the Plaintiff that it will give an alternative plot. The Defendant is

under no obligation whatsoever to the Plaintiff to give it an alternative plot. The proper procedure would have been for the Plaintiff to surrender the Lease once planning permission was refused, so as to mitigate its losses. The other alternative opened to the Defendant would have been for it to amend its building plan to meet the requirements of the Planning Authority and thereafter proceed with its investment which the Plaintiff chose not to do.

I have meticulously considered the evidence place before the Court by both the Plaintiff and the Defendant, including the Lease Agreement in issue, and I reached the conclusion that the Plaintiff has not, on the balance of probabilities, made out a case against the present Defendant, hence I dismissed the plaint with costs.



B.RENAUD

JUDGE

Dated this 8th day of June 2004