

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC ...
CA02/2023

In the matter between:

Tony Lablache
(*rep. by Mr. Frank Elizabeth*)

1st Appellant

And

Philina Lablache
(*rep. by Mr Frank Elizabeth*)

2nd Appellant

Versus

Josianne Vitale
(*rep. by Mr. Divino Sabino*)

Respondent

Neutral Citation: *Lablache & Anor v. Vital* (CA02/2023) [2023] SCSC (14th August 2023)
Before: A. Madeleine, J
Summary: Appeal from Rent Board
Heard: Written submissions
Delivered: 14th August 2023

ORDER

Appeal is dismissed.

JUDGMENT

MADELEINE, J

Background

Parties

[1.] The 2nd Appellant and the Respondent are daughter and mother. The 1st Appellant is the husband of the 2nd Appellant and the son in law of the Respondent.

[2.] At the outset, I must state that it is very unfortunate that the parties herein could not reach a compromise solution to the matters giving rise to this appeal given their close familial relationship. I can only sympathise with both sides in the circumstances.

Premises

[3.] On 1st August 2017, the parties signed a “Building and Rental Agreement” in respect of the unfinished attic floor of a dwelling house situated on land parcel V3319 at Basin Blue, La Louise (hereinafter referred to as the “Premises”). At the time, the Premises were solely owned by the Respondent’s husband, Mr Philippe Vital. Though mentioned as a party to the Building and Rental Agreement, Mr Philippe Vital did not sign the said agreement. It is not disputed that at the time of signing of the agreement by the parties, Mr Philippe Vital was ill, and he passed away over a month later, on the 13th of September 2017.

[4.] Mr Philippe Vital died testate and bequeathed all his properties to the Respondent pursuant to his last Will and Testament dated 24th February 2014 and registered on 27th December 2017. The Respondent was also confirmed as executrix to the estate of her late husband by order of the court on 15th November 2017.

[5.] All properties of the late Mr Philippe Vital including land parcel V3319, on which the Premises are located, and another parcel namely V18209 were transmitted to the Respondent by Affidavit on Transmission by Death dated 17th April 2018 and registered on 26th June 2018.

Building and Rental Agreement

[6.] The Building and Rental Agreement stems from the 2nd Appellant’s offer to her parents that she is granted permission to complete the unfinished attic floor of the dwelling house

on land parcel V3319 so that she could be closer to the family. The offer was accepted by her parents subject to conditions and was then reduced to writing.

- [7.] By the Building and Rental Agreement dated 1st August 2017 (hereinafter referred to as the “Agreement”), the parties agreed that the Appellants will complete the construction of the Premises at their own expenses and once the Premises are completed, to lease the same at a monthly rent of SCR5000/-. Receipts of all expenses incurred by the Appellants were to be given to the Respondent as proof thereof and for the purpose of setting-off against rental due.
- [8.] It was agreed that the lease of the Premises would endure for an indefinite period commencing on the date of completion of construction works unless otherwise terminated under the Agreement. The monthly rent of SCR5000/- was to be paid in advance on the last day of the preceding month starting on the set-off of all expenses incurred by the Appellants in completing the Premises.

Post Agreement

- [9.] The Appellants financed and completed the Premises. They provided the receipts of all their expenses to the Respondent and started occupying the Premises on 2nd December 2018.
- [10.] On 7th October 2020 (almost two years after occupation), Respondent’s Attorney wrote to the Appellants informing them that the total agreed amount of their expenses incurred on the Premises was SR180,377.40/- which translated to 36 months of rent at SR5,000/- per month. Appellants were further informed that unless they opted to vacate the Premises on or before 2nd December 2021, the monthly rental of SCR5000/- would become due and payable as of the said date.

- [11.] The Appellants failed and/or refused to pay any rent to the Respondent for their occupation of the Premises as from December 2021, and they were served with notice of termination of the tenancy on 19th January 2022.
- [12.] By letter dated 8th March 2022, the Appellants' Attorney responded to the notice of termination of tenancy stating that the Appellants will neither pay rent nor vacate the Premises. For the first time since the signing of the Agreement and the passing of Mr. Philippe Vital, the Appellants justified non-payment of rent on the grounds that the Agreement is invalid, null and void ab initio as the Respondent did not have the capacity to enter into the agreement on behalf of the late Mr. Philippe Vital. The Appellants also maintained that the last Will and Testament of the late Mr. Philippe Vital was null and void and, that an application was being filed in court to cancel and invalidate the said Will.

Rent Board

- [13.] By application dated 3rd May 2022 in case *RB14/2022 Josianne Vital v Tony Lablache & Philina Lablache* the Respondent sought an order of ejectment against the Appellants from the Rent Board on the ground that rent lawfully due from the Appellants under a written agreement had not been paid.
- [14.] The Application was resisted by the Appellants on points of law. Namely, that the Respondent had no locus standi to bring the application and that the tenancy agreement relied upon by the Respondent to base her application for eviction is invalid in law. In the alternative, that the Appellants have acquired a droit de superficie on the property and cannot be evicted without compensation.
- [15.] On 10th February 2023, the Rent Board found that it was just and fair to allow the Appellants one last opportunity to settle the arrears of rent and continue with their occupation of the Premises. Should they fail to comply, they should be ejected from the

premises. Further, that the Appellants were in arrears of rent in the sum of SR50,000/- as at the date of hearing on 7th October 2022.

[16.] The Rent Board made the following orders:

“

- (i) *The Respondents (now Appellants) are to continue their occupation of the leased premises on the condition that they effect payment of rent on the first day of every month without default;*
- (ii) *The Respondents (now Appellants) are further directed to settle arrears of rent in the sum of SR50,000/- and continuing to be owed no later than on 1st May 2023;*
- (iii) *If the Respondents (now Appellants) default in their monthly payment of rent or fail to settle all the arrears of rent as continuing to be owed by the stipulated date, they shall vacate the leased premises on the deadline of 1st May 2023.”*

The Appeal

[17.] Aggrieved by the decision and orders of the Rent Board, the Appellants appealed to this Court by filing Notice and Memorandum of Appeal in the Registry of the Supreme Court on 14th February 2023. The appeal rests on the following grounds –

- (i) the chairman of the Rent Board erred in law when he failed to uphold the plea in limine litis of the Appellants that the lease agreement upon which the respondent relied to bring her action for eviction against the Appellants was invalid in law;
- (ii) the chairman of the Rent Board erred in law when he failed to dismiss the application for eviction of the Appellants based on the invalidity of the lease agreement as the Respondent did not bring the action in her capacity as executrix of the estate of her late husband;

(iii) the chairman of the Rent Board erred in law when he failed to appreciate that the Respondent had brought the action for eviction of the Appellants in her personal capacity and could not therefore rely on the lease agreement unlawfully signed by the Respondent to base her action for eviction;

[18.] The parties agreed to proceed with the hearing of this appeal by way of written submissions. Respective written submissions have been filed and considered by the court, although they are not reproduced in full herein.

Grounds of Appeal

Grounds 1, 2 and 3 – Invalidity of lease agreement for lack of capacity and absence of locus standi to seek eviction of the Appellants on the basis of the invalidity of the lease agreement

[19.] The 3 grounds of appeal are related and are considered together. In sum, they argue that –

(1) The lease agreement is invalid ‘*void ab initio*’ and could not have formed the basis for the Respondent’s application filed in the Rent Board for the eviction of the Appellants from the Premises as she did not have capacity to enter into the agreement; and

(2) By reason of the invalidity of the lease agreement, the Respondent did not have locus standi to bring the application for the eviction of the Appellants before the Rent Board.

Invalidity of Lease Agreement

[20.] The Appellants’ submitted that the Agreement was null and void in law as the sole owner of the property, Mr Philippe Vital, never signed the lease agreement and the Respondent lacked the legal capacity to sign the agreement on his behalf. Thus, the Respondent’s action before the Rent Board was based on an invalid document. The Rent Board’ failure

to uphold the plea in limine litis that the said Agreement was invalid was therefore erroneous. Further, the Rent Board's finding that the 1st Appellant had not raised any challenge to her mother's capacity to sign the impugned agreement as a party or to institute the instant action was clearly wrong because the Appellants are lay persons, and they could not be expected to testify about the legal capacity of the Respondent. The fact that the Appellants benefitted from the agreement cannot detract from the fact that the Agreement is invalid in law. Thus, the only consideration for the Rent Board was whether the Respondent was properly vested with legal capacity to enter into the agreement.

- [21.] Appellants relied on Article 1108 of the Civil Code of Seychelles to submit that one of the four essential conditions for the validity of an agreement was absent, namely the Respondent's capacity to enter into the Agreement. Appellants referred the Court to the case of *Monthy v. Buron (SCA 6 of 2013) [2015] SCCA 15 (17 April 2015)* wherein the Court of Appeal refused to endorse an agreement on the ground that it was contrary to public policy. The Appellants invited the Court to find, as in *Monthy (supra)*, that the Agreement involved in the present appeal is also null and void for lack of capacity.
- [22.] According to the Respondent's submission, the essence of the appeal is capacity to enter into the Agreement and to file a case before the Rent Board. The tenancy between the parties is created under the Agreement and, at the very least, is to be inferred from the definition of lease, lessee and lessor under section 2 of the Control of Rent and Tenancy Agreements Act as has rightly been found by the Rent Board.
- [23.] The Respondent also emphasised that despite repudiating the Agreement, the Appellants have acted in line with it until the rental payment set off period ended, and rent became due and payable under the Agreement. They complied with the process to calculate the rental set off period by providing receipts of their expenses, confirming the amount that they paid and confirming that this amounted to 36 months of rent. They provided the receipts for this to be calculated and no objections were taken, and this affirms their acceptance of the terms of the 1st of August 2017 agreement.

[24.] In determining whether the respondent had legal capacity to bring proceedings before the Rent Board, the Court should have regard to the powers and jurisdiction of the Rent Board.

[25.] The facts of the case indicate that at the very least the Respondent was a lessor as per the definition section of the Control of Rent and Tenancy Agreements Act in that she allowed the Appellants to use the occupation of the dwelling house. In the alternative, that she derived title from the late Mr Philip Vital. In the same way, the Appellants are lessees by the mere fact that they enjoy the use and occupation of the dwelling house.

Law and Analysis

[26.] The Civil Code of Seychelles Act, 2020 (hereinafter referred to as the “Civil Code”) stipulates that a valid contract must fulfil 4 essential conditions. Thus, Article 1108 of the Civil Code provides that —

“1108. Four conditions are required for a contract to be valid —

(a)The consent of the party who binds him or herself,

(b)His or her capacity to enter into a contract,

(c)A definite object (objet certain) which forms part of the contract, and

(d)The contract must not be against the law or public policy.”

[27.] It follows that valid contracts create binding obligations for the parties and produce effects in accordance with Articles 1134 and 1135 of the Civil Code. The said articles provide that —

“Effect of obligations

1134. (1) Contracts lawfully concluded have the force of law for those who have entered into them.

(2) Contracts cannot be revoked except by mutual consent or for reasons authorised by legislation.

(3) Contracts must be performed in good faith.

1135. A contract binds the parties not only in respect of what is expressed in the contract, but also to all the consequences of the contract which are implied by equity (équité), practice, or legislation.”

(Emphasis added)

[28.] A contract that does not fulfil one or more of the essential conditions for its validity, is liable to be annulled. If annulled, obligations thereby created are discharged by operation of Article 1234(g)¹ of the Civil Code.

[29.] The following extracts quoted from *Droit Civil, Yvaine Buffelan-Lanore*² on nullity of contracts are relevant to the question of validity of the Agreement raised in this appeal:

« *Nullité* : Un contrat est annulable quand il ne peut produire d’effets par volonté du législateur, en raison d’un vice *contemporain de sa formation*. La nullité est rétroactive. C’est la sanction d’une irrégularité lors de la formation du contrat.

- Il s’agit de *nullité absolue* l’orsque il y a atteinte à un intérêt général car le contrat a été passé en violation d’une prescription de la loi quant au fond ou quant à la forme (ex. contrat contraire aux bonnes mœurs ou à l’ordre public, contrat solennel passé en la forme de sous seing privé): à ces cas, on ajoute souvent les cas dits d’inexistence.

- It s’agit de *nullité relative* lorsqu’il faut protéger l’un de contractants soit parce que la manifestation de sa volonté est imparfaite (vices du consentement) soit parce qu’il est incapable (mineur, personne atteinte d’insanité d’esprit) »³

« 3. *EFFETS DU JUGEMENT D’ANNULATION*

¹ “Obligations are discharged by — (g) nullity or rescission;”

² 4e Édition, Deuxième année – MASSON Paris Barcelone Milan Bonn 1991

³ Ibid., p.93

168- La nullité des lors qu'elle est constatée, est encourue de plein droit, c'est-à-dire que le juges doivent annuler le contrat.

L'annulation, qu'il s'agisse d'une nullité absolue ou relative, est toujours rétroactive. Le contrat est complètement anéanti, il est considéré comme n'ayant jamais existé et les parties doivent être remises dans l'état ou elles se trouvaient avant sa conclusion, c'est qui entraîne deux conséquences : la nécessité d'opérer le restitutions et l'irresponsabilité contractuelle des parties.

169- Toutefois, certains contrats ne peuvent être rétroactivement anéantis : ce sont les contrats à exécution successive (contrat de bail, contrat de travail, par exemple), L'annulation pour eux, n'agira que pour l'avenir. Mais le règlement de la situation de fait découlant de l'annulation du contrat se fera selon des réglés différentes, par ex: indemnité d'occupation au lieu de loyer, par ex. encore règlement entre associés proportionnels aux apports de chacun et non selon les règles fixées dans le pacte social entache de nullités. On considère ici qu'il y a application de la théorie de l'enrichissement sans cause (no. 1296) »⁴

[30.] Article 1338 of the Civil Code recognizes that obligations that are voidable on grounds of nullity or rescission may be confirmed or ratified. It stipulates that —

“1338. (1) A document of confirmation or ratification of an obligation which is, by law, subject to an action for nullity or rescission shall only be valid if that document contains the substance of that obligation, a reference to the cause of the action for rescission and the intention to rectify the defect upon which that action is founded.

(2) In the absence of a document of confirmation or ratification, it shall be sufficient if the obligation is performed voluntarily subsequent to the period during which the obligation was capable of being validly confirmed or ratified.

(3) The confirmation, ratification, or voluntary performance in the form of, and during the period determined by, the law carries with it the waiver of the defences and denials which could be pleaded against that document, without prejudice, however, to the rights of third parties.

⁴ Ibid, nos.168-169, pp.85-86

(4) The respective rights of the parties as under paragraph 1 of this article shall not be affected by the fact that a bill of exchange is drawn or indorsed by a minor or a corporation.”

(Emphasis added)

[31.] It follows from the above citations that if a ground of nullity exists in a contract, the said contract is merely voidable. Nullity must be declared by the court. Where a contract is declared to be null, it is void *ab initio (retroactively)* in its entirety. It is as if the contract never existed, and the parties are thereby returned to their respective status quo at the time of the agreement. If the contract is subject to “*exécution successive*” such as the rental component of the Agreement signed by the parties to the present appeal, annulment operates for the future.

[32.] The Appellants argue that the Agreement was not valid at the time that it was entered into as one the essential elements of a valid contract was absent namely the capacity of the Respondent to bind the late Mr Philippe Vital by the Agreement. As the sole owner of the land on which the Premises are located, only Mr Philippe Vital could have validly signed the Agreement.

[33.] I agree that on 1st of August 2017, the Respondent alone could not have validly concluded the Agreement with the Appellants, that she did not have the capacity to conclude the said agreement as she was neither the owner of the Premises nor the agent of the owner - her husband. The Rent Board came to the same conclusion in its Ruling:

“24. An examination of exhibit A1 tendered in evidence indeed reveals that parcel V3319 on which the leased premises stands was solely owned by the late Philip Vital at the time of the execution of the agreement of 1st August 2017. The Applicant therefore had no legal capacity at the time to sign the impugned agreement on the aforesaid date.”

- [34.] In the same way that the Appellants invoke nullity of the Agreement in defence to their eviction from the Premises for non-payment of rent, the annulment of the Agreement will not justify the Appellant's occupation of the Premises from 2nd December 2021 for free. If the Respondent could not have validly leased the Premises to the Appellants on 1st August 2017, she also could not have validly given permission to the Appellants to complete the construction of the Premises and to have their expenses set-off under the building component of the Agreement.
- [35.] The Respondent's lack of capacity to bind her husband by the Agreement on 1st August 2017 was known to the Appellants at the time of signature of the said Agreement and at the most a little over one month later when the Respondent's husband passed away. Appellants have not disputed their knowledge of these facts at the material time and of the fact that subsequently, all of Mr. Philippe Vital's properties including the land on which the Premises are located were transmitted to the Respondent in terms of his unchallenged last Will and Testament. According to the 2nd Appellant's own testimony she had always known that her deceased father was the owner of the property although her mother was in control of everything.
- [36.] The Appellants' conduct upon the death of Mr. Philip Vital and upon the Respondent becoming the owner of the Premises speaks volume as to their intention and is consistent with a tacit confirmation or ratification of the Agreement.
- [37.] Further, the Appellants proceeded with execution of the Agreement voluntarily. They financed and completed the Premises, and as they did so, they furnished the receipts of their expenses to the Respondent in accordance with the Agreement which they now seek to repudiate. They occupied the Premises upon its completion on 2nd December 2018 as per the Agreement and enjoyed 36 months' rent free as rental due were being set off against their expenses.
- [38.] Furthermore, on 7th October 2020, when the Respondent's Attorney wrote to the Appellants informing them of their set off period and the fact that rent will be due by

December 2021, the Appellants did not challenge the validity of the Agreement nor the capacity of the Respondent. These were only raised in 2022 upon being served with Notice of Termination of Tenancy.

[39.] By their acts of adhering to the terms of the Agreement voluntarily, the Appellants have tacitly confirmed the said Agreement. They are deemed to have waived their right of action or to raise the defence of nullity. At any rate, by the time that the Appellants occupied the Premises in December 2018 and subsequently when rental became due from the Appellants for their occupation of the Premises after the setting-off period in December 2021, the Respondent was the sole owner of the Premises.

[40.] The Appellants' compliance with the terms of the Agreement after the demise of Mr. Philip Vital's demise upon the Respondent becoming the owner of the Premises were duly considered by the Rent Board:

“24 [.....] A month later however, Mr. Vital died and left all his properties to his wife, the Applicant. By an order of the Supreme Court dated 15th November 2017, Mrs Vital was appointed as executor of the estate of Mr. Vital and duly executed the property transfer as per her late husband's Will. She became the sole beneficiary of his estate.

25. In furtherance of the agreement of 1st August 2017, the Applicant allowed the Respondents to continue with the construction completion of the leased premises and their subsequent occupancy. She gave notice to the Respondents of her intent to charge rent at a sum of SR 5,000 monthly by way of letter through her counsel dated 7th October 2020. This was on the basis of the August 2017 agreement. By that time she was legally entitled to do so.”

[41.] The Rent Board also considered the existence of a landlord and tenant relationship between the parties other than under the Agreement. The Respondent argued that the existence of a tenancy between the parties can, at the very least, be inferred from the definition of lease, lessee and lessor under the Control of Rent and Tenancy Agreement Act.

[42.] Section 2 of the Control of Rent and Tenancy Agreement Act defines the terms “lease,” “lessee”, “lessor” and “rent” as follows –

“lease” includes the use and occupation of a dwelling house and sub lease and letting have a corresponding meaning;

“lessee” includes a sub lessee and a widow of a lessee or sub lessee, as the case may be, who was residing with him at the time of his death, or, where the lessee or sub lessee leaves no such widow or is a woman, such member of the lessee's or sub lessee's family so residing as aforesaid as may be decided, in default of agreement, by the Board, and also includes any person enjoying the use and occupation of a dwelling house for which an indemnity is payable or not;

“Lessor” means any person who receives or is entitled to receive rent in respect of the letting or sub letting, as the case may be, of a dwelling house, and also includes any persons who allows another person to enjoy the use and occupation of a dwelling house for which an indemnity is payable or not, a sub lessor and any person deriving title from the original lessor;

“Rent” means any money paid or received in consequence of the letting of a dwelling house and shall include any sum paid for the use or hire of furniture.”

[43.] Having found that the Appellants have confirmed the Agreement by their voluntary execution of all obligations up to setting-off of expenses under Agreement, the Rent Board’s finding that there was a valid landlord and tenant relationship between the parties in terms of section 2 of the Control of Rent and Tenancy Agreements Act only enhances the Appellants’ obligation to pay rent to the Respondent. As rightly concluded by the Rent Board at paragraph 28 of its Ruling –

“[...] the Respondents (now Appellants) have always understood that they will have to pay rent for their occupation of the leased premises and the Applicant has always expected to receive rent in the sum of SR 5,000 monthly.[...] It is our view that the

Respondent (now Appellant) ought to have started paying rent in the sum of SR 5,000 as at December 2021, and we so conclude.

Locus Standi

[44.] On the question of locus standi, the Appellants submitted that the Respondent's application filed in the Rent Board disclose that Respondent had no right over the property throughout. The Respondent lacked the legal capacity to seek an order of eviction against the Appellants.

[45.] The Respondent submitted that at the very least, the existence of a tenancy can be inferred from the definition of "lease", "lessee" and "lessor" under the Control of Rent and Tenancy Agreements Act. It follows from the Respondent's submissions that if she could be assimilated to the "lessor" of the Premises, then she could bring an action for the eviction of the Appellants from the Premises.

[46.] At paragraph 28 of its Ruling, the Rent Board concluded that –

"28. From the circumstances of this case, it is our position that the Respondents (now Appellants) have always understood that they will have to pay rent for their occupation of the leased premises and the Applicant (now Respondent) has always expected to receive rent in the sum of SR 5,000 monthly. We do not find this sum exaggerated. In addition, we cannot find any valid justification to deny the existence of a valid landlord and tenants relationship between the parties. It is our view that the Respondents ought to have started paying rent in the sum of SR 5,000 as at December 2021, and we so conclude"

(Emphasis added)

[47.] The Respondent is the sole owner of land parcel V3319 on which the Premises are located. She became the sole owner of the said property following the death of her husband and upon registration of the said property in her sole name in June 2018. At the time of claiming rent from the Appellants, service of notice of termination of tenancy and filing of the application for eviction before the Rent Board, the Respondent was the sole owner of the Premises. She does not require any other capacities to bring an action in relation to her property.

Conclusion

[48.] The tenancy created under the Agreement is valid. The Agreement has been confirmed by the Appellants after the demise of the late Mr Philip Vital and upon the Respondent becoming the sole owner of the Premises. The Appellants voluntarily executed the obligations to finance and complete the construction of the Premises, occupied the Premises upon completion of works and furnished Respondent with the receipts of all their expenses incurred in accordance with the terms of the Agreement. In consequence of performance of these obligations, the Appellants enjoyed 36 months' rent-free occupation of the Premises.

[49.] Having decided that there is a valid landlord tenant relationship between the parties and considering that at the time that the ejectment case was filed before the Rent Board the Respondent was the sole owner of the land on which the Premises are located, I hold that she had locus standi to bring the application for ejectment.

[50.] Therefore, the Rent Board was not wrong in not upholding the Appellants plea in limine litis and in not dismissing the application for eviction.

Order

[51.] Based on the above findings, the orders of the Rent Board are hereby affirmed, and the appeal is dismissed.

Signed dated and delivered at Ile du Port on 14th August 2023.

A. Madeleine, J