SUPREME COURT OF SEYCHELLES

Reportable
CS18/ 2024

In the matter of –

ROY KJELLERUP **APPLICANT**
(rep.by Ms Parmantier)

Versus

MARTIN HOAREAU **RESPONDENT**
(rep. by Mr Boniface)

Neutral Citation: *Kjellerup vs Hoareau (CS18 of 2024)* [2025] (04th April 2025)
Before: A. Madeleine, J
Summary: Acknowledgement of Debt
Heard: 24th September 2024
Delivered: 4th April 2025

ORDER

Judgment is entered in favour of the Plaintiff in the sum of Great British Pounds One Hundred and Seventy-One Thousand and Eleven and Forty-eight pence (GBP171,011.48/-) only at the legal rate with costs of these proceedings

---

JUDGMENT

A. MADELEINE, J

[1] The Plaintiff brought this action against the Defendant based on a Deed of Acknowledgment of Debt.

[2] In his plaint, the Plaintiff avers that by virtue of an acknowledgment of debt dated the 29th May 2023, the Defendant acknowledged being indebted to the Plaintiff in the sum of GBP78,384.33/- in respect of a loan facility advanced to the Defendant by the Plaintiff,

and which continues to bear a monthly interest of 5% and a sum of SCR16,083/- for the legal fees for the drafting of the deed and all relevant security documents.

[3] The Plaintiff also avers that the Defendant undertook to repay the Plaintiff by way of one lump sum of GBP25,000/- within one year of signing the document, monthly instalments of GBP300/- starting from the end of May 2023, and thereafter before the end of each succeeding month until the end of October 2023. As from end of November 2023 until final repayment of the debt, by monthly instalments of GBP500/-.

[4] It is also averred that the Defendant further undertook and promised that any proceeds that he inherits from his late mother's estate shall be paid to the Plaintiff to clear any outstanding debt still due at the time of the inheritance being due to him.

[5] It was a further term of the deed that, should the Defendant fail to pay one instalment on the due date and/or if the Defendant fails to pay any proceeds inherited from his late mother's estate to the creditor, the debtor agrees that the debt or the balance of his debt then outstanding shall become due and payable immediately without further notice.

[6] In breach of the deed, the Defendant has failed to make any payments to the Plaintiff, since the signing of the deed, and as a result the Plaintiff has suffered loss and damage.

[7] According to the particulars of loss and damage, the Plaintiff claimed a total SR.1,934,631.51/- made up of SCR1,898,548.51/- as debt inclusive of 5% monthly interest, SR16,083/- as legal fees for drafting of the deed and security documents and SR.20,000/- for moral damages.

[8] Despite the Plaintiff's repeated requests, and the Defendant's repeated undertakings to pay the Plaintiff the debt acknowledged, the Defendant failed to pay the Plaintiff any of the debt.

[9] The Plaintiff prays the court for Judgment in the total sum of SR.1,934,631.51 with interests at the monthly court rate and costs.

[10] On 24th September 2024, leave was granted to the Plaintiff to amend the Particulars of loss and damage and the prayer of the Plaint as follows –

"(i) Debt in the sum of (inclusive of 5% monthly interest)		***£171,011.48***
(ii) Legal fees for drafting of deed and security documents	*SR.*	*16,083.00*
(iii) Moral Damage	*SR.*	*20,000.00"*

*"**WHEREFORE** the Plaintiff prays this Honourable Court for a judgment ordering the Defendant to pay to the Plaintiff the sum of **£171,011.48 and SR36,083.00** with monthly interest at the court rate, and costs."*

[11] The Plaint was served on the Defendant. Mr Leslie Boniface appeared in Court on 15th May 2024 seeking time to get full instructions from the Defendant. The matter was mentioned several times for a statement of defence, but no defence had been filed by 29th July 2024 whereupon the Court granted the Plaintiff's application for ex-parte hearing with notice on the Defendant.

<u>Evidence</u>

[12] At the ex-parte hearing, the Plaintiff testified in terms of the Plaint and produced a copy of a loan agreement entered between Plaintiff, Defendant and Defendant's wife at the time – Kellie Allen-Hoarau. According to the loan agreement, the Plaintiff loaned a sum of GBP50,000/- to the Defendant and his ex-wife. The loan was to be repaid by GBP833/- per month over 5 years starting on 25th September 2014 until 25th August 2019 plus 5% interest of GBP499.80/- payable yearly at the end of each term. The loan agreement had been signed by the Defendant and his ex-wife on 4th April 2014 and by the Plaintiff on 6th April, 2014. The Defendant did not honour the terms of the agreement. The Plaintiff has not received

any payments from the Defendant. The Plaintiff had to chase the Defendant for payment and despite his excuses, the Defendant has not made a single payment to the Plaintiff.

[13] In 2023, the Defendant entered a '*deed*' of acknowledgment of debt which the Plaintiff produced to the Court. The acknowledgment of debt is reproduced below –

"DEED OF ACKNOWLEDGMENT OF DEBT

*Before me, **Manuella M Parmantier, NOTARY** of **Michel Building, Victoria Mahe, Seychelles,** appeared on this 29th day of May, in the year two thousand and twenty-three (2003), **Martin Hoareau of Glacis, Mahe, Seychelles,** (N.I.N: 964-0858-1-1-95) (hereinafter referred to as the "Debtor") who by these presents acknowledge owing to Roy Kjellerup of Kongensgade, 20.3 DK-6700, Esbjerg, Denmark, Passport Number 214229526 (hereinafter referred to as the "Creditor"), the sum of:*

i. ***British Pound Sterling Seventy-eight thousand three hundred and forty-two and thirty-three cents (£78,342.33),*** *in respect of a loan facility advanced to the Debtor, which continues to bear a monthly interest of 5%; and*

ii. ***Seychelles Rupees sixteen thousand and eighty-three (SR16'083/-),*** *for the legal fees for the drafting of this document and the drafting of all relevant security documents.*

(hereinafter "the Debt") which the Debtor agrees, undertakes and promises to repay to the Creditor by way of:

i. One lump sum of British Pound Sterling twenty-five thousand (£25,000/-) within one year of the signing of this document;

ii. Monthly instalments of British Pound Sterling three hundred (£300/-) starting from the end of May, 2023, and thereafter become payable before the end of each succeeding month until the end of each succeeding month until the end of October 2023; and

iii. *As from the end of November 2023, until the full repayment of the debt, monthly instalments of British Pound Sterling five hundred (£500/-), until the full repayment of Debt.*

The Debtor agrees, undertakes and promises that any proceeds that he is to inherit from his late mother's estate shall be paid to the creditor to clear any outstanding debt still due at the time of the inheritance being received by him.

Should the Debtor fail to pay an instalment on the due date and/or if the Debtor fails to pay any proceeds inherited from his late mother's estate to the Creditor, the Debtor agrees that the debt or the balance of the then outstanding shall become due and payable immediately without further notice.

The Debtor shall bear the cost of all the travel fees and legal fees which the Creditor may incur in the process of recovering the Debt owing by way of further legal action, of any means.

***IN WITNESS WHEREOF** the appearer has set his hands to these present in duplicate originals and I have appended my seal of office on the date and year first above written."*

[14] Plaintiff confirmed that upon the date of signature of the acknowledgment of debt the total outstanding amount at the time was GBP78,342.33/-. That the Defendant agreed to that and further agreed that the sum would bear a monthly interest of 5%. That the Defendant also agreed that he would bear the cost for the drafting of the acknowledgment of debt and *'other security documents'* which includes legal fees for the sum of SR.16,083/-.

[15] Plaintiff stated that the Defendant agreed and undertook to pay Plaintiff a lump sum of GBP25,000/- by the 29th of May 2024 but this was not done. That Defendant agreed to pay an instalment of GBP300/- monthly towards his debt starting May 2023 and thereafter that sum would be payable before the end of each succeeding month until month until October 2023. This term was never honoured and respected by the Defendant. Defendant further undertook to pay a monthly sum of GBP500/- as from the end of November 2023 until the full repayment of the debt but this also was not respected.

[16] Plaintiff also confirmed that it was another term of the agreement that should Defendant fail to make one monthly payment of any sort or fail to pay sums which he received from his late mother's estate, the whole sum will become due. Further, Defendant also agreed to pay all the Plaintiff's travel and legal fees which he may incur in the process of readdressing the acknowledgment of debt.

[17] Plaintiff confirmed that at the time of the filing of the plaint, the sum owed was one million nine hundred and thirty-four thousand six hundred and thirty-one rupees and fifty-one cents but that there has been a change in the figures due to interest accruing over time. Plaintiff the produced a spreadsheet calculation of interest accruing on the debt from 31st May 2023 up to 31st December 2025.

<u>Law and Analysis</u>

[18] Based on the evidence, the court must determine whether the Plaintiff has established on a balance of probabilities that the Defendant had acknowledged being indebted to the said Plaintiff in the sums claimed and undertook to repay the said sums in accordance with the agreed terms and conditions.

[19] The acknowledgement of debt is contained in a deed drawn up by notary M. Parmentier. According to the 'Deed of Acknowledgment of Debt' produced in evidence, on 29th May 2023, the Defendant appeared before the said notary and acknowledged that he owed the Plaintiff the sums of GBP78,342.23/- and SR.16,083/-.

[20] In terms of Section 22 of the Notaries Act –

> "*A deed drawn up by a notary in accordance with this Act is <u>an authentic document</u> in terms of the Civil Code.*" (Emphasis added)

[21] The Schedule to the Notaries Act regulates, inter alia, the contents of deeds. Pursuant to clause 1(1)(a), (b) and (c) of the said Schedule *"every deed drawn up by a notary shall contain—*

> *(a)the full name and address of the place of business of the notary drawing up the deed;*
> *(b)the full names, national identity number or, where a party is not a Seychellois or resident in Seychelles, the nationality and the number, place and year of issue of the passport or other document of identity, and the address of the place of residence of every party and witness to the deed;*
> *(c)the subject matter of every transaction embodied in the deed;"*

(Emphasis added)

[22] Ex facie, I am satisfied that the Deed of Acknowledgment of Debt has been drawn up in accordance with the Notaries Act.

[23] I now consider Articles 1317, 1318 and 1319 of the Civil Code of Seychelles Act (the "Civil Code") which deal with authentic documents as follows –

> *"**1317**. An authentic document is a document received by a public official entitled to draw up the same where the document is drafted and in accordance with the prescribed forms.*
> ***1318**. A document that is not authentic owing to the lack of powers or capacity of the official or owing to a defect of form has the effect of a private document if signed by the parties."*
> ***1319**. An authentic document shall be accepted as proof of the agreement that it contains between the contracting parties and their heirs or assigns."*
> (Emphasis added)

[24] In the present case, it is uncontroverted that the notarial deed contains a unilateral undertaking by the Defendant to pay the Plaintiff the sum of GBP78,342.333/- subject to agreed interests. The sum outstanding now stands at GBP171,011.48/-. The Court is satisfied that the Plaintiff has established its claim against the Defendant for the sum of GBP171,011.48/-, on a balance of probabilities.

[25] The Plaintiff also claimed legal fees in the sum of SCR16, 083/- for drafting of the deed and other security documents by Plaintiff's notary. It is noted that the notary was acting on the instructions of the Plaintiff in drawing up the Acknowledgement of Debt and proof of the other security documents have not been made. The legal fee is properly chargeable between the notary and the Plaintiff. I make no award under this head for obvious reasons.

[26] The Plaintiff further claimed for moral damages in the sum of SCR20,000/- for non-payment of the debt. It is my considered view that the Plaintiff has failed to prove moral damages suffered by reason of Plaintiff's failure to repay the loan on a balance of probabilities, and I make no order under this head.

[27] Judgment is entered in favour of the Plaintiff in the sum of Great British Pounds One Hundred and Seventy-One Thousand and Eleven and Forty-eight pence (GBP171,011.48/-) only at the legal rate with costs of these proceedings.

[28] A copy of this exparte Judgment is to be served upon the Defendant forthwith.

Signed, dated, and delivered at Ile Du Port, Mahe on this 4th day of April 2025.

Alexandra Madeleine
SUPREME COURT
SEYCHELLES
Supreme Court Judge

Madeleine, J