

SUPREME COURT OF SEYCHELLES

Reportable
CS 21/2024

In the matter between:

YAO ZHENG WU
(rep. by Mr Basil Hoareau)

Plaintiff

and

VLADIMIR BORISENKO
(Unrepresented)

Defendant

Neutral Citation: *Zheng Wu v Borisenko* (CS 21/2024) (28 March 2025)

Before: A. Madeleine J

Summary: *Acknowledgment of Debt*

Heard: 29th August 2024

Delivered: 28th March 2025

ORDER

I therefore enter Judgment in terms of the plaint and order the Defendant to pay the Plaintiff the following

- a) The sum of United States Dollars (USD)2,310,000/- and by way of continuing monthly interests at the rate of 10%, from 8th February 2024 until full payment of the sum of United States Dollars (USD)420,000;
- b) Interest at the legal rate of 4% on the amount set out above, along with costs to the Plaintiff.

JUDGMENT

A. Madeleine, J

Introduction

- [1] The Plaintiff – Yao Zheng Wu – brought action against the Defendant – Vladimir Borisenko – demanding payment of the sum of USD. 420,000/- as debt owed to the Plaintiff

and interests at the penal rate of 10% from 7th February 2020 to 7th February 2024 in the sum USD. 1,890,000/- and continuing from 8th February 2024 until payment of the debt.

- [2] Plaintiff's action is based on Defendant's written acknowledgment of debt executed on 4th May 2020, and in the alternative on a breach of the contract contained in the document entitled 'acknowledgement of debt' or for which the said document consists in the beginning of proof in writing of the existence of an oral contract between the parties.
- [3] On application by the Plaintiff, summons was issued for service on the Defendant outside the jurisdiction by DHL courier service. The Defendant refused to accept service as per return filed, whereupon this matter was set for ex-parte hearing.

Pleading and Evidence

- [4] In his plaint, the Plaintiff alleges that he is a Seychellois national, and that on 4th May 2020, the Defendant executed a written acknowledgment of debt which, inter alia contains the following conditions. The Defendant acknowledged owing a debt to the Plaintiff in the sum of USD420,000/- and agreed to repay the debt to the Plaintiff on or before 6th May 2020. In the event of the Defendant failing to pay the debt by 6th May 2020, the Defendant was to pay a monthly penal interest of 10% on the unpaid sum, and the debt was to be repaid in Seychelles.
- [5] The Plaintiff alleges that in breach of the acknowledgment of debt, by 6th May 2020, the Defendant had failed to pay any payment towards the debt, and that the debt along with penal interests are still wholly due and payable by the Defendant to the Plaintiff.
- [6] The Defendant is liable to pay the Plaintiff the following sums of money or damages: (a) the debt owed to the Plaintiff in the sum of USD420,000/-; and (b) penal interest at the monthly rate of 10% from 7th May 2020 to 7th May 2024 in the sum of USD 1,890,000/- and continuing to run at the rate of 10% from 8th February 2024 until payment of the sum of USD420,000/-.
- [7] The Plaintiff also avers that further and in the alternative to the above, the document entitled 'acknowledgement of debt' executed by the Defendant on the 4th May 2020, is a

contract or is a commencement of proof in writing of the existence of an oral contract, between the Plaintiff and the Defendant, that the Plaintiff had lent the sum of USD420,000/- to the Defendant subject to the following conditions. The Defendant agreed to repay the debt to the Plaintiff on or before 6th May 2020. In the event of the Defendant failing to pay the debt by 6th May 2020, the Defendant was to pay a monthly penal interest of 10% on the unpaid sum, and the debt was to be repaid in Seychelles.

- [8] The Plaintiff further avers that the Defendant in breach of the contract has failed to pay and payment towards the debt, and the debt along with the penal interest are still wholly due and payable by the Defendant to the Plaintiff.
- [9] The Defendant is liable to pay the Plaintiff the following sums of money or damages: (a) the debt owed to the Plaintiff in the sum of USD420,000/-; and (b) penal interest at the monthly rate of 10% from 7th May 2020 to 7th May 2024 in the sum of USD 1,890,000/- and continuing to run at the rate of 10% from 8th February 2024 until payment of the sum of USD420,000/-.
- [10] The Plaintiff asks this Court to order the Defendant to pay the Plaintiff damages in the sum of USD2,310,000/- and by way of continuing interests at the rate of 10% until 8th February 2024 until full payment of the sum of USD420,000/-, interest at the legal rate of 4% along with costs and for any further order that the court considers just and necessary in the circumstances.
- [11] At the hearing, Mr. Frank Elizabeth, an Attorney-At-Law of Glacis, Mahe produced the original notarized acknowledgment of debt dated 4th May 2020. He testified that on the said date he attested the signature of the Defendant on the acknowledgment of debt, and he also signed and affixed his notary seal thereon. He also testified that he knew the Defendant casually before the 4th May 2020. The acknowledgment of debt was made at his office and the Defendant signed before him in acceptance of the conditions. According to Mr. Elizabeth, the Defendant signed the acknowledgment of debt willingly and wrote the words “good in the sum of USD420,000/- only) thereon in his presence.

- [12] The Plaintiff testified that he lives on Eden Island, Mahe and he knows the Defendant. The Defendant signed an acknowledgment before notary Mr. Frank Elizabeth. By the document, the Defendant acknowledged being indebted to him in the sum of USD420,000/- . He testified that he had lent the said sum of money to the Defendant around 2016 – 2017 and the Defendant has failed to pay him back. By the Acknowledgement of Debt, the Defendant acknowledged that he owed the Plaintiff and undertook to repay the sum by the 6th May 2020. The Defendant also agreed to pay 10% interest for each month of delay in repayment. At the time of signing the Acknowledgement of Debt, Defendant owed USD 420,000/- and at the time of filing the Plaint, Plaintiff owed USD1,890,000/-. Plaintiff further testified that he is also claiming interests at the penal rate of 10%.

Analysis

- [13] The Acknowledgment of debt is reproduced below –

“ACKNOWLEDGEMENT OF DEBT

ARTICLE 1326 OF THE CIVIL CODE

I, Vladimir Borisenko of Eden Island, Mahe, Seychelles (hereinafter

*Referred to as the “Debtor”) hereby acknowledge owing Yao Zang Wu of Eden Island , Mahe, Seychelles the sum of **United States Dollars Four Hundred and Twenty Thousand (USD420,000.00)** (hereinafter referred to as the principal sum) only.*

I hereby undertake to pay the said sum in full on or before the 6th May 2020.

*Notwithstanding anything stated above, **in the event of any default by the debtor in the payment of principal sum when due** or in the event of the insolvency, death, assignment for the benefit of the creditor, adjudication of bankruptcy or appointment of a receiver, of or against the debtor, **the unpaid balance of the principal sum shall at the option of the Creditor immediately become due and payable along with the penal interest at the rate of ten percent (10%) per month.***

In the event of the death of the debtor, and/or successor/s and/or heir/s who may become liable for the payment hereof shall, severally waive demand, presentment, protest, notice of dishonor or non-payment, notice of protest and any and all lack of diligence or delays in collection which may occur and expressly consent and agree to each extension or

postponement of time of payment hereof from time to time at or after maturity or other indulgence and waive all notice thereof.

This acknowledgement of debt is made and executed under and is in all respects governed by the laws of Seychelles and supersedes the Promissory Note dated the 2nd December 2019.

Dated this 4th May 2020.

(Sd)

Debtor

(Sd) and notary seal

FRANK

ELIZABETH

“Signed by the said Vladimir Borisenko who is known to me in my presence on the date here above written.”

(Emphasis added)

[14] This is followed by the following formula handwritten by the debtor –

“good in the sum of USD 420,000 only” (Emphasis added)

[15] The Acknowledgment of debt is made under Article 1326 as preserved by the new Civil Code of Seychelles Act, 2020 (the “Civil Code”).

[16] In terms of Article 1326 (1) of the Civil Code –

“(1) A note or promise under private signature whereby only one party undertakes an obligation towards another to pay him a sum of money or something of value shall be written in full, in the hand of a person who signs it; or at least it shall be necessary that apart from his signature he adds in his own hand the formula "valid for" or "approved for" followed by the amount in letters or the quantity of the thing.” (Emphasis added)

[17] The Acknowledgment of debt herein is not written in full in the hand of the Defendant who signed it but it contains the following words and figures written in the hand of the Defendant: “good in the sum of USD 420,000 only”.

[18] In the case of *Ernesta v Petrousse*¹ Robinson J (as she then was) considered the scope of Article 1326 of the Civil Code and held that two conditions are necessary for the application of the said Article, namely –

“(a) that the undertaking must be unilateral; and

(b) that the undertaking should contain an obligation towards another to pay a sum of money or something of value (de choses appreciables).”

(Emphasis added)

[19] In *Ernesta* (supra), the defendant had signed two acknowledgments of debt wherein he acknowledged owing the plaintiff sums of money and undertook to pay interest in case of delayed performance. In holding that the acknowledgments of debt fulfilled the requirements of Article 1326 of the Civil Code, the court considered that –

“The undertakings were not written in full in the hand of the defendant, however, this court is satisfied that apart from the signature of the defendant, the defendant has added in his own hand the formula “Good for the sum of” followed by the amount in letters and figures. With respect to the “forme”, this Court holds that the words “Good for the sum of” are words equivalent to the words “valid for” or the words “approved for”.”

(Emphasis added)

[20] I am satisfied on a balance on probabilities that the acknowledgment of debt executed on 4th May 2020 contains a unilateral undertaking by the Defendant towards the Plaintiff to pay the sum of USD420,000 on or before the 6th May 2020 and in default of payment

¹ (CC 35/2014) [2016] SCSC 303 (29 April 2016) SLR 151

thereof the Defendant agreed to pay penal interest on the principal sum at the rate of 10% per month.

[21] I am also satisfied on a balance of probabilities that (1) the Defendant signed the acknowledgment of debt in the presence of notary Frank Elizabeth who testified and produced the original notarised document, and (2) that the document contains the formula “*good in the sum of*” which was been accepted by the Court in *Ernesta* (supra) as the equivalent to the words “*valid for*” or the words “*approved for*” under Article 1326 of the Civil Code.

[22] However, I note that in the Defendant’s handwriting, the sum has been referred to in figures only. I also consider that the document of acknowledgement of debt as signed by the Defendant refers to the sum in both words and figures and is further notarized by notary Frank Elizabeth.

[23] Based on the above, I am satisfied that despite the absence of the sum in words in the Defendant’s handwriting, the Plaintiff has made complete proof of the unilateral undertaking by the Defendant, and is valid. The Defendant is therefore bound by it.

[24] I am further satisfied that the sum of USD420,000/- became due and payable to the Plaintiff on 6th May 2020 and on the basis of Plaintiff’s evidence, the said sum has not been paid. Furthermore, as evidenced by the document, interests at the rate of 10% per month are also due since 7th May 2020 to 7th February 2024 in the sum of USD1,890,000/- and continuing to run at the same rate from 8th February 2024 until payment of the sum of USD420,000/-

[25] The existence of a contract between the parties was pleaded as an alternative. In view of my finding above, it is not necessary to consider the alternative claims.

Order

[26] I therefore enter Judgment in terms of the plaint and order the Defendant to pay the Plaintiff the following –

- a) The sum of United States Dollars (USD) 2,310,000 and by way of continuing monthly interests at the rate of 10%, from 8th February 2024 until full payment of the sum of United States Dollars (USD) 420,000;
- b) Interests at the legal rate of 4% on the amount set out above, along with costs to the Plaintiff.

[27] A copy of this Judgment is to be served on the Defendant.

Signed, dated and delivered at Ile Du Port, Mahe on this 28th day of March 2025.



Madeleine, J.

