

RWANDA / JUDGMENT

BELVEDERES LINES & HOTELS v. SAMEER HUSSEIN

RCOMA 0120/14/HCC

COURT

Commercial High Court

DECIDED

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BELVEDERES LINES & HOTELS v. SAMEER HUSSEIN [Rwanda COMMERCIAL HIGH COURT – RCOMA 0120/14/HCC (Kamere, P.J.,) January 24, 2014] Commercial procedure –The damages basing on non-respect of the contract –The reason of force majeure –The party may not deny to pay damages arguing that he has got the difficulties resulting from the financial crisis which made him/her not respecting the contract in case he/she reveals no evidence proving the effect it caused to him/her and be ignored in providing the damages. Commercial procedure – The interests resulting from damages for delay –The evidence proves that the money was paid after the hearing of the case may not be considered as if it was ignored; that slip does not reveal that the money was paid by the party to another party. Commercial procedure – The provisional execution –The evidence may not be considered as it proves the payment in case it does not prove that the one supposed to be paid it is the one to whom it was paid, The Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 212. Facts: Sameer Hussein has given to Belvedere lines & Hotels the debt of wheels on which it had to

pay the money amounting to 4,266,000 Frw, but Belvedere failed to pay that debt and made Sameer sue it before Nyarugenge Commercial Court. This court condemned Belvedere to pay to Sameer the money amounting to 5,916,000 Frw of the debt together with the diverse damages which result from it. Belvedere Lines was not satisfied with the decision of the court and appealed before the Commercial High Court. Belvedere Lines & Hotels argues that it would not have been condemned to pay damages since it has told to the court the unexpected difficulties it has experienced, the economy went wrong and it got bankruptcy. Sameer on its side says that the appeal of Belvedere may not be considered since it did not reveal to the previous court what it calls unexpected economic reason. The court realises that there is no evidence revealed by Belvedere lines of the ground beyond its control and force majeure that it revealed to the court and be ignored in charging the damages for not performing the contract. Belvedere says that the court has ordered the payment of the interests of delay on the damages for delaying the court proceedings while those damages have been already paid. Sameer requests this ground not to be considered since the bank slip it has submitted to the court as a proof of payment it did not reveal to the judge who decided the case in the first instance. In appeal, the judge says that Belvedere was charged the damages for delaying the court proceedings and the interests resulting from them, but since that hearing was not held on that date and be postponed on another date, and the judge has ordered that those damages would have been paid before the beginning of another hearing. The court realises that there is no evidence that Belvedere has revealed proving that it has paid those damages, the court again realises that the slip of Bank of Kigali it reveals as evidence that it has paid which make it not to be charged the interests of delaying to pay damages, may not be considered as an evidence proving that it

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has paid to Sameer the damages amounting to 300,000 Frw since this slip reveals nothing in relation to the execution of what have been ordered by the judge. Belvedere says it criticizes the fact that the court of first instance has ordered the provisional execution while it had the will of paying. Sameer argues that the court has provided this execution basing on the law of CPCCSA article 212. Held: 1. The party has to be held liable for damages of not performing the contract in case it revealed no evidence to the court to prove the specialty of the global economic problems crisis which had negative impact to him it has got to be analysed.

2. The slip that the party reveals before the court cannot be taken as an evidence proving the payment in case it proves nowhere it is related to the execution of what the judge has ordered,. since it is evident that the money has been paid at the bank at three post medium while the hearing was held in the morning of the same day, that money has been paid by another person who is not the party to the case, and it was also paid to another person who is not the party to the case. It cannot be considered as evidence disregarded during the hearing in case the invoice demonstrated that there is a sum of money paid after hearing.

3. The fact that the defendant admits the debt; it is enough for the court to order the provisional execution. The manifestation of his will to pay cannot constitute the cause to stop the order for provisional execution of the judgment. Appeal has been admitted. Cross appeal has been admitted. Court fees to the appellant. Statutes and statutory instruments referred to: Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure No Cases referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Both parties to the case admit that Sameer Hussein has given to BELVEDERE LINES & HOTEL the debt of wheels which it had to pay 4,266,000 Frw, but in case Sameer Hussein proves that no money has been paid on that debt, BELVEDERE LINES & HOTEL proves that it has paid on it 1,250,000 and it got difficulties resulting from the financial crisis which made it to get a considerable loss and fails to pay to Sameer Hussein that's why it has been sued before Nyarugenge Commercial Court. [2] In deciding the judgment RCOM 1073/13/TC/NYGE on 24/01/2014 where Sameer Hussein claimed the debt of 4,266,000 Frw and diverse damages amounting to 3,045,000 Frw, Nyarugenge Commercial Court has condemned BELVEDERE LINES & HOTEL to pay to Sameer Hussein the total amount of 5,916,000 Frw encompassing 4,266,000 Frw for the debt of

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the wheels it admits that they were sold on debt and it failed to reveal the evidence of their payments, 1,000,000 Frw for the damages for the money it has spent a long time without paying while they are for commerce, 300,000 Frw for the procedural and lawyer's fees, 300,000 Frw for delaying the court proceedings which were charged to BELVEDERE LINES & HOTEL when the hearing of 30/12/2013 was postponed on 14/01/2014 and the interests on those damages amounting to 50,000 Frw calculated on 5,000 Frw per day for the period of 10 days counted from 14th /01/2014 until 24th /01/2014 which is the day of the decision. [3] BELVEDERE LINES & HOTEL was not satisfied with that decision of the court and appealed before the Commercial High Court on 24/02/2014, and the claim was registered under RCOMA 0120/14/HCC, the case was heard and it was closed on 17/03/2014, the appellant was assisted by Gakwaya Sandra the counsel while the respondent in the cross appeal was assisted by Nishimwe Claudine the counsel; the date of the decision was set to be held on 27/03/2014. [4] In this case, the court will analyse the following issues: - The issue of knowing whether there are laws or evidence which were revealed by BELVEDERE LINES & HOTEL and were ignored by the previous court in providing the damages with Sameer Hussein; - The issue of knowing whether BELVEDERE LINES & HOTEL has paid on the time the damages it was charged for delaying the court proceedings and the previous court ignored it and charged with the interests of delaying to pay those damages; - The issue of knowing whether there is something that the previous court has not respected in ordering the provisional execution on the debt that BELVEDERE LINES & HOTEL it admits that it owes to Sameer Hussein; - The issue of the damages and the lawyer's fees in the appeal which are claimed in the cross appeal of Sameer Hussein. II. THE ANALYSIS OF THE LEGAL ISSUES OF THE CASE

The issue relating to knowing the basis of the damages that BELVEDERE LINES & HOTEL has been condemned to pay to Sameer Hussein [5] The counsel for BELVEDERE LINES & HOTEL says that the judge of the first instance ignored the article 46 of the CCB III which provides for that no damages are paid in case the failure to perform the contract was caused by the force majeure, thus BELVEDERE LINES & HOTEL would not have been charged the damages since it has revealed to the court that it got unforeseeable difficulties and its economy got wrong. [6] With regard to this ground of appeal, the one pleading for Sameer Hussein argues saying that it may not be considered because BELVEDERE LINES & HOTEL it did not reveal to the

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previous court what it called the unforeseeable financial reason, and if it was a good client it would take the first step to explain to Sameer Hussein the difficulties it has got which made it not paying, though on 20/09/2013 Sameer Hussein sent the letter to it of reminding to it the debt, BELVEDERE LINES & HOTEL did not even respond. [7] The court realises that no evidence revealed by BELVEDERE LINES & HOTEL of the reason beyond its control and unforeseen to the judge of the first instance and ignore it in charging the damages for non-performance of the contract it appealed against. The court realises the fact of only saying that there has been the financial crisis which made BELVEDERE LINES & HOTEL to breach the contract, does not prove any speciality those difficulties had on it and left out Sameer Hussein which was to be paid while both perform their commerce on that earth, the one pleading on behalf of BELVEDERE LINES & HOTEL says that it was affected with the financial difficulties. Thus the court agrees with the previous court on the explanations of the damages it has provided because the non-performance of the contract as demonstrated in the paragraph 10 on page 5 of the judgment appealed against. The issue of knowing whether BELVEDERE LINES & HOTEL has paid on time the damages it has been charge of delaying the court proceedings and the court ignored it and charged it with the interests of not paying those damages on time. [8] The counsel for BELVEDERE LINES & HOTEL says that on page 6 of the copy of the judgment appealed against in paragraph 11 the previous court has ordered the payment of the interests of delaying the court proceedings while those damages have been already paid. Those interests amounting to 50,000 Frw calculated on 5,000 Frw per day per day for the period of 10 days counted from 14th /01/2014 until 24th /01/2014 which is the day of the decision. [9] In his defense on this ground of the appeal, the one pleading on behalf of SAMEER HUSSEIN requests that it may not be considered since the slip it reveals to the court in the appeal instance as an evidence of that it has paid it did not revealed it to the judge who tried the case in the first instance and analyse it before deciding the case. [10] In this appeal, the court realises that this issue of the damages for delaying the court proceedings and the interests resulting from them has been analysed it in such a way it accepts in the paragraph 11 on page 6 of the judgment appealed against. In that paragraph, the judge has reminded that that BELVEDERE LINES & HOTEL has been condemned to pay 300,000 Frw in the hearing which would have been held on 30/12/2013 and it did not take place due to the faults of BELVEDERE LINES & HOTEL, this made it to be postponed it on 14/01/2014 and the judge has held that BELVEDERE LINES & HOTEL had to have paid them to Sameer Hussein before that hearing

begins on 14/01/2014. [11] This court realises that on 14/01/2014 BELVEDERE LINES & HOTEL revealed no evidence to the judge of that it did paid to Sameer Hussein those damages as he has ordered it in the previous hearing. The court realises again that the bank slip that the appellant brought before in the appeal as an evidence of that he had paid and the judge of the first instance ignored it, may not be considered as proving the reality of the arguments of the appellant since that slip demonstrates that the money therein mentioned which was paid in Bank of Kigali at three past twenty five minutes and fifty seven seconds (15:25:57 p.m) of 14/01/2014 while the hearing in

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which this evidence would be presented had been closed in the morning of the very day; therefore, the judge cannot ignore an evidence which has not existed yet when he closed the hearing. [12] Except the fact that this slip of Bank of Kigali (see cote 9 of the file in the appeal instance) mentioned in the previous paragraph does not constitute for BELVEDERE LINES & HOTEL as an evidence which may prevent it from being condemned to pay the interests of delaying to pay the damages it was charged, this court realises that it may not even be considered as an evidence proving that the party BELVEDERE LINES & HOTEL has paid to the party Sameer Hussein the damages amounting to 300,000 Frw ordered by the judge of the previous court since he has ordered that those damages be paid to Sameer Hussein basing on the article 358 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, while this document that BELVEDERE LINES & HOTEL reveals as an evidence of payment has no relation with the execution of what the judge has ordered since it only demonstrates that there is a taxpayer called Rukerikibaye Raphael whose TIN 1195980064494019 who paid 300,000 Frw, and paid to RRA (where it is written "RRA/NON FISCAL REVENU-RDB OFFI") through its account 00040-0315129-09 Number in Bank of Kigali. [13] The evidence does not therefore proves how the money which were paid by another person who was not party to the case and be paid to another person who was not part to the case will reach to Sameer Hussein whom the court has decided that it is the one to whom BELVEDERE LINES & HOTEL had to paid the damages amounting to 300,000 Frw for delaying the court proceedings. The issue of the basis of the provisional execution on the debt that BELVEDERE LINES & HOTEL it owes to Sameer Hussein [14] The counsel on behalf of BELVEDERE LINES & HOTEL criticizes of the previous court the fact that it has ordered that there has to be the provisional execution while though her client admits the debt has revealed to the court that it is willing to pay but it requests the period for paying. The one pleading for Sameer Hussein says that the previous court has ordered this provisional execution of the judgment basing on the article 212 of PCCSA. [15] This court realises this ground of appeal may not be considered, in the paragraph 12 on page 6 of the judgment appealed against, the previous court clearly explained that it orders the provisional execution basing on article 212 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure since the defendant admits the debt that it owes to the plaintiff and the court realises even in the appeal BELVEDERE LINES & HOTEL goes on admitting that debt and it does not delay on the part of that debt it starts saying that it has paid since it has revealed

no evidence of payment. The fact that the defendant admits the debt to the court; it is enough for the court to order the provisional execution.

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The issue of the damages which are claimed by the plaintiff in the cross appeal [16] The court realises in case the appeal of BELVEDERE LINES & HOTEL is baseless, the cross appeal of Sameer Hussein based up that of BELVEDERE LINES & HOTEL has to be considered with regard to the damages it claims for the loss it has suffered and the procedural and lawyer's fees in this appeal it has been involved by BELVEDERE LINES & HOTEL which refused to withdraw after losing the case in the previous court, and it started again the case in the appeal and which again it loses. This is based on the article 258 which provides for that any person who causes damages, has to repair it. The court in its discretionary power realises that the damages of 500.000 Frw that Sameer Hussein claims are necessary and are not excessive. III. THE DECISION OF THE COURT [17] The Commercial High Court: [18] Decides to admit the appeal lodged by BELVEDERE LINES & HOTEL since it came through the legal procedure but it is baseless; [19] Decides to admit the cross appeal lodged by Sameer Hussein and that it has basis with regard to the damages claimed for the procedural and lawyer's fees in the appeal instance. [20] Decides BELVEDERE LINES & HOTEL to pay to Sameer Hussein 500,000 Frw encompassing the damages for the procedural and lawyer's fees in this appeal, they have to be added on what it was condemned in the judgment appealed against; [21] Orders that 75,000 Frw of the court fees deposited by BELVEDERE LINES & HOTEL when it lodged the claim of the appeal is equal to the court fees and be added to the one it was charged in the judgment appealed against; [22] Decides that for other grounds, the judgment RCOM 1073/13/TC/NYGE rendered on 24/01/2014 by the Nyarugenge Commercial Court

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