

CIV/T/753/88

IN THE HIGH COURT OF LESOTHO

In the matter of:

LESOTHO SUN (PTY) Ltd..... Plaintiff

and

MAURICE GREEN Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 8th day of December, 1995.

Plaintiff herein filed, with the Registrar of the High Court, summons commencing an action in which it, inter alia, claimed against the defendant, payment of M43,637-88

The declarations to the summons, as amplified by further particulars, alleged that on 14th August, 1987 Plaintiff, a hotelier, and defendant entered into an agreement whereby the latter booked into the former's hotel, as a guest, and duly signed a guest registration card (annexure "A"). Consequently

defendant was accommodated at the hotel, supplied with food, beverages and telephone services.

It was a specific term of the agreement between the parties that the services rendered would be paid for by the defendant upon presentation of monthly statements from the plaintiff. Accordingly Plaintiff presented various monthly statements (annexure D) to the defendant who, however, failed, refused and/or neglected to pay, notwithstanding demand. The total amount owing was M43,637-88, Wherefor, plaintiff instituted the present proceedings for relief as claimed in the Summons.

Defendant intimated intention to defend the action and duly filed his plea in which he admitted that after he had signed annexure "A" he was accommodated in Plaintiff's hotel and supplied with the other services as alleged in the declarations to the summons. According to defendant, it was understood, upon his arrival at the hotel, that a certain Morrison E. Chamberlin, a United States citizen who had previously made a booking through an Agency known as "Travel agency" would be responsible for settling the bill. He denied, therefore, the allegation that he had agreed that he would pay for the services rendered to him by the Plaintiff.

Defendant conceded that the monthly statements or bills were presented to him by Plaintiff. He, however, alleged that the statements were presented to him only for their verification so that they could be transmitted to the Credit Card Account of Morrison E. Chamberlin for settlement and/or payment. Defendant conceded that the amount of M43,637-88 was still outstanding on his account. He, however, denied that he was, in law, liable to pay plaintiff as claimed in the summons and prayed, therefore, that plaintiff's action be dismissed with costs.

P.W.1, L. Callaway, testified on oath, in support of Plaintiff's case, and, briefly stated, told the court that she was employed as room division manager by the Plaintiff hotel since 1st October, 1984. As such she (P.W.1) was responsible for the reception and the billing office of the plaintiff hotel. She was therefore, familiar with the procedure followed when a guest checked in at the hotel.

A guest had to complete, at the reception desk, a guest registration card by which he furnished the hotel with his personal details, including the mode by which he proposed to settle his account. After he had completed and signed the guest registration card, the key to the room allocated to him would then be handed to the guest.

According to the records under her (P.W.1's) control, on arrival at the hotel, on 14th August, defendant did fill in and sign a quest registration card (Annexure "A") which was the standard card in all the hotels, including those in America. He proposed to settle his account in cash.

During defendant's stay at the hotel P.W.1 had, on several occasions, the opportunity to discuss with him the question of payment of his hotel bills. Defendant's response had always been an assurance that payment would be made and a gentleman by the name of Morrison Chamberlin would assist in that regard. Indeed, P.W.1 subsequently saw two telex messages, annexures "C1" and "C2", from Morrison Chamberlin and addressed to the attention of the Accounting Department of the Plaintiff hotel and the defendant, respectively. The messages were to the effect that defendant's hotel expenses should be billed to Morrison Chamberlin's American Express Card number and defendant was thereby authorised to sign the name of Morrison Chamberlin.

According to her, P.W.1 was personally unaware of arrangements (if any) which defendant might have made with Morrison Chamberlin regarding settlement of the hotel bills. As far as she was concerned, P.W.1 held the defendant as the person who had contracted with

Plaintiff for his stay at the hotel. Defendant, and not Morrison Chamberlin was, therefore, the person responsible for settlement of the hotel bills.

However, at the request of the defendant, P.W.1 prepared a voucher with the details of Morrison Chamberlin's American Express Card number. She submitted the voucher to the American Express for payment after the defendant had, as authorised, signed the name of Morrison thereon. However, the American Express paid only a portion of the bill. It refused to pay the bill from 15th November, 1987 to 26th December, 1987. P.W.1 then wrote, again at the request of the defendant, to Morrison Chamberlin who replied per his letter of 22nd February, 1988. The letter reads in part:

"Dear Mr. Callaway,

Thank you for your message of 17 Feb 1988 concerning Mr. Maurice Green's Dec 1987 bill at the Lesotho Sun Hotel in the amount of 13,658.89 Rand. Please be assured that the bill will be properly resolved once I receive clarification from American Express.

I have discussed this bill with American Express on many occasions since Mr. Green brought this matter to my attention. Also, I have asked that you forward a copy of the bill to me each time that I have spoken to Mr. Green. Thank you for your assistance. American Express has, upon each inquiry, advised me that they have paid all of Mr. Green's bills through Dec 1987. I have asked American Express to send me information verifying that statement. The last request was made on 12 Feb 88. As of

this date, I am still waiting. Another request will be made. May I again ask that you assist me by forwarding to me a line by line itemized statement for each month of Mr. Green's stay. Such a statement would help me in discussing the billing with American Express. Immediately upon receipt of the information from you and American Express, I will communicate with you.

Let me again assure you that Mr. Green's charges will be paid. Thank you for your cooperation. I await your reply and billing data. (Please provide a copy of this message to Mr. Green.)

Respectfully,

Morrison E. Chamberlin"

Plaintiff continued to accommodated defendant at the hotel with the hope that the hotel bills would be settled. However, only the bills for the period from 27th December, 1987 up to the end of February 1988 were settled, through the American Express. The bills for the period from March, 1988 onwards plus the bill which the American Express had refused to settle i.e. for the period from 15th November, 1987 to 26th December, 1987 were never settled.

Attempts to call the defendant before the general manager of the Plaintiff so that the question of payments of his hotel bills could be discussed proved fruitless as defendant was avoiding speaking to the manager. On 21st September, 1988 defendant's room was double locked so that he could go to the office of the general manager and discuss payment of his hotel bills

before going into the room. Defendant then bilked from Plaintiff's hotel leaving an outstanding balance of M43,637-88. Hence the institution of the present proceedings for relief as claimed in summons.

In his defence the defendant testified on oath and told the court that he was a citizen of the United States of America and a business consultant. He was employed by Morrison Chamberlin, who had an agency agreement with Nair Chemicals company, to negotiate with the Government of Lesotho the terms and viability of establishing a cement plant in Lesotho. Morrison Chamberlin was to give him cash for his personal needs whilst in Lesotho. In the event of his being successful in the negotiations defendant and Morrison Chamberlin were to share on equal basis, the profits that would accrue.

According to him defendant left home for Lesotho on 12th August, 1987. On arrival in Lesotho he was to report at Plaintiff hotel where Morrison Chamberlin had made reservations for him. He personally did not know what arrangements Morrison Chamberlin had made with the Plaintiff hotel concerning the settlement of the hotel bills. However, on his arrival in Lesotho on 14th August, 1987 defendant did report himself at the reception desk of the plaintiff hotel where he was given a guest registration card (annexure "A") to

complete and sign. He did fill in and sign annexure "A" after which he was given a key to the room allocated to him.

According to him, defendant was, on arrival at the hotel, very exhausted and did not, before signing it, read the small print on annexure "A" which was retained at the reception desk. Nor did he remember how he had ticked the boxes indicating how his hotel account would be settled. His intention was, however, to indicate that the account would be settled by credit card.

In the contention of the defendant there was no contract of lodging concluded between him and the Plaintiff hotel. The contract was concluded between the Plaintiff and Morrison Chamberlin. Morrison Chamberlin, and not him (defendant), was, therefore, the person responsible for settlement of the hotel account.

It is to be observed that it is not really disputed that on his arrival at the Plaintiff hotel, on 14th August, 1987, the defendant and not Morrison Chamberlin was the person who completed and signed the guest registration card, annexure "A", on which he clearly ticked the box indicating that his hotel account would be settled in cash. That granted, the

defendant and not Morrison Chamberlin, was, in my finding, the person who had contracted with the Plaintiff hotel.

It is significant that annexure "A" incorporates the following condition written, in small print, on its face:

"This account remains the responsibility of the quest until payment in full is received, notwithstanding the fact that the quest may have incurred the charges on this account in the course and scope of his employment or service to any company, business or person."

As it has been stated earlier, defendant told the court that he signed annexure "A" without reading the small print thereon because he was, on his arrival at the hotel, very exhausted. For that reason he considered himself not bound by the condition incorporated in annexure "A".

The question whether or not a person who has signed a document, such as annexure "A", can claim that he is not bound by it, simply because he did not read what he signed was authoritatively answered by Innes, C.J. in the decision of Burger v. Central

S.A.R. 1903 T.S. 571 where the learned Chief Justice had this to say at page 578:

"Can a man who has signed a document in the form of the one now before court claim that he is not bound by it, simply because he did not read what he signed and did not know what the document referred to? Had the regulations alluded to in the consignment note been annexed to it or printed upon it there could surely have been no doubt as to the signatory being bound."

In the present case the condition that the account remained the responsibility of the defendant, as a quest of the Plaintiff hotel, until payment in full had been received was printed, in small print, on the face of annexure "A" and the defendant's eyes could not have escaped to notice it. On the authority of the above cited passage from burger's case there can be no doubt that the defendant who admittedly completed and signed annexure "A" is bound. The fact that, for the reasons he has stated, the defendant did not read the condition on the face of annexure "A" is immaterial. As Christie put it at page 203 of his work The Law of Contract (2nd Ed.) the attitude of the defendant is understood to have been: "I haven't read this document but I'm signing it because I'm prepared to be bound by it without reading it".

Be that as it may, defendant went on to testify that, during his stay at the Plaintiff hotel, P.W.1

did discuss with him the question of his outstanding hotel account. He asked P.W.1 to get in touch with Morrison Chamberlin about the matter. Defendant conceded, therefore, the evidence of P.W.1 that it was on his request that she addressed, to Morrison Chamberlin, the letter whose reply, dated 22nd February, 1988 was quoted earlier in this judgment.

Following that reply, Morrison Chamberlin and an associate of his by the name of Dr. Drees who, to the recollection of the defendant, arrived in Lesotho on 10th July, 1988, settled some of the hotel bills. Defendant did not, however, dispute that when he was double locked out of Plaintiff hotel in September, 1988, an amount of M43,637-88 was still outstanding on his account and, therefore, owing at the time summons was issued in this matter.

In the contention of the defendant, Morrison Chamberlin had, on the basis of his reply letter dated 22nd February, 1988, been substituted as the debtor and, therefore, the person responsible for settling the hotel account. If Morrison chamberlin subsequently defaulted, Plaintiff could not properly turn to him (defendant) for settlement of the outstanding account.

It is to be borne in mind that in her evidence P.W.1 told the court that plaintiff never considered the reply letter dated 22nd February, 1988 to substitute Morrison Chamberlin for the defendant as the debtor or the person responsible for settlement of the hotel account. As far as P.W.1 was concerned, the account remained, in terms of the condition incorporated in annexure "A", the responsibility of the defendant, as the guest of the hotel, until payment in full had been received by the Plaintiff hotel. She denied, therefore, defendant's contention that Morrison Chamberlin had, on the basis of his reply letter dated 22nd February, 1988, been substituted as the debtor and, therefore, the person responsible to settle the hotel account.

Assuming, for the sake of argument, that Morrison Chamberlin's reply letter, dated 22nd February, 1988, was intended to substitute him for the defendant as the person responsible to settle the hotel account, it is significant to observe that there is, on the evidence, no proof that Plaintiff had consented to the substitution. Morrison Chamberlin could not, in my view, be substituted for the defendant as the debtor or the person responsible for settlement of the defendant's hotel account without the consent of the plaintiff. I am fortified in this view by the decision in Rolfes Nebel & Co. v. Zweigenhaft 1903

T.S. 185 of which the headnote clearly reads:

"By Roman-Dutch law a debtor cannot get rid of his obligation to his creditor without the consent of the latter."

From the foregoing, I have no alternative but to come to the conclusion that Plaintiff has, on a balance of probabilities, proved its case. Consequently I would give judgment for the Plaintiff with costs.

B.K. MOLAI

JUDGE

8th December, 1995.

For the Plaintiff : Mr. Harley

For Respondent : Mr. Peete.