

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 340/2015  
(arising in CC32/2015)**

**[2016] SCSC 490**

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**MECHANISATION DEVELOPMENT MANAGER**

Applicant

versus

**YANGTZE CONSTRUCTION COMPANY (PROPRIETARY) LIMITED**

Respondent

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Heard: 23 March 2016  
Counsel: Bernard Georges for applicant  
Natasha Burian for respondent  
Delivered: 6 July 2016

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**RULING ON MOTION**

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**Robinson J**

- [1] Plaintiff is Mechanisation Development Manager.
- [2] Defendant is Yangtze Construction Company (Proprietary) Limited.
- [3] The suit arose out of an acknowledgement of debt. The plaintiff filed on 3 June, 2015, alleges that a breach of promise has been committed by Defendant.

- [4] The plaint is entitled, "*Mechanisation Development Manager of MECOM Building, G.R.N.W, Mauritius, electing domicile in the Chambers of Georges and Co, Eden Island, Eden Plaza Plaintiff v. Yangtze Construction Company (Proprietary) Limited, of 1<sup>st</sup> Floor, Olivier Maradan Building, Victoria, Mahe Defendant*". The plaint begins with an averment in the usual form that, "*at all material times the Plaintiff was a company involved in the selling of machinery and the Defendant was a construction company registered in Seychelles*". Then, with regards to the breach of the promise alleged to have been committed by Defendant the material paragraphs are those numbered 2 and 3. Paragraph 2 alleges that, "*[o]n 28<sup>th</sup> January 2015 the Defendant signed an Acknowledgement of Debt in the sum of USD 65, 000.00, payable no later than the 15<sup>th</sup> of April 2015 to the Plaintiff as full and final settlement of the remainder of the outstanding purchase price of a generator JCB G330QX. A copy of the Acknowledgment of Debt attached hereto*". Paragraph 3 states that, "*[t]o date the Defendant has failed to settle the said sum in part or at all in breach of the said promise*". In the plaint, Plaintiff is praying for a judgment against Defendant in the sum of USD 65, 000.00/- with interest at the commercial rate with effect from 15April, 2015, and costs.
- [5] A defence has been filed in the suit. Defendant denied the claim of Plaintiff, and put Plaintiff to the strict proof thereof.
- [6] On 30 October, 2015, the suit came on for hearing before the court. Mr. Georges examined Mr. Zihai Yang on personal answers. Mr. Zihai Yang stated that he signed an acknowledgment of debt in question. After hearing evidence in chief from Isabelle Adam, the representative of Plaintiff, learned counsel made oral application for leave to amend the plaint. Mrs. Burian, on behalf of Defendant, objected to the application, and requested for time to consider the amendments. In light of the objections, Mr. Georges informed the court that Plaintiff would file the necessary papers. The court adjourned the suit for that purpose.
- [7] On 9 December, 2015, Plaintiff filed notice of motion, supported by an affidavit dated 30 October, 2015, for leave to amend at the trial. The intended amendments have been specified in an, *Amended Plaint* annexed to the notice of motion. The *Amended Plaint* is

entitled, "Mechanisation Company Limited, of MECOM Building, G.R.N.W, Mauritius, electing domicile in the Chambers of Georges and Co, Eden Island, Eden Plaza Plaintiff v. 1. Yangtze Construction Company (Proprietary) Limited, of 1<sup>st</sup> Floor, Olivier Maradan Building, Victoria, Mahe 2. Zihai Yang, of 1<sup>st</sup> Floor, Olivier Maradan Building, Victoria, Mahe Defendants". The Amended Complaint proceeds to allege as follows —

- "1. At all material times the Plaintiff was a company involved in the selling of machinery, the first Defendant was a construction company registered in Seychelles and the second Defendant was the Managing Director of the First Defendant.
2. On 28<sup>th</sup> January 2015 the second Defendant signed an acknowledgement of debt in the sum of USD 65, 000.00, payable no later than the 15<sup>th</sup> of April 2015 to the Plaintiff as full and final settlement of the remainder of the outstanding purchase price of a generator JCB G330QX by the first Defendant. A copy of Acknowledgment of Debt is attached hereto.
3. To date the Defendants have failed to settle the said sum in part or at all in breach of the said promise.

WHEREFORE the Plaintiff prays to this Honourable Court to enter judgment against the Defendants jointly and severally in the sum of USD 65, 000.00 with costs, and interest at the commercial rate. [...]."

[8] In sum, Plaintiff is seeking (1) to correct the name of Plaintiff; and (2) to add Mr. Zihai Yang as a new defendant.

[9] Defendant has filed, "affidavit in reply to motion to amend Plaintiff's name and to join a new Defendant". Mr. Zihai Yang, a director of Defendant of Brilliant, Mahe, Seychelles, did not object to the intended amendment to correct the name of Plaintiff. Mr. Zihai Yang took issue with the allegations in the *Amended Complaint* relating to him in his personal capacity. In support of the said objection, Mr. Zihai Yang avers —

- "6. That both Yangtze Construction (Pty) Limited and Yangtze International Group Limited are limited liability companies which means that the companies directors and

*shareholders cannot be held personally liable for the debts of the company.*

7. *That the acknowledgment of debt relied upon by the Applicant was signed by Mr. Zihai Yang, acting in his capacity as a Director of Yangtze International Group Limited and not in his personal capacity.*
8. *That as the acknowledgment of debt was signed by Mr. Zihai Yang in his capacity as a Director only and therefore should not be joined as a Defendant to the principle suit."*

[10] Oral submissions were confined to the question of whether or not Plaintiff should be allowed to amend the plaint at trial by adding a new defendant.

[11] The position of Plaintiff is that the amendments ought to be made for the purpose of determining the real questions in controversy between Plaintiff, the original Defendant and the new defendant. In furtherance of the argument, learned counsel submitted that the amendments would not convert the suit into one of substantially different character that would otherwise be more conveniently the subject of a new suit.

[12] Addressing whether or not there is a possible cause of action, the new defendant claims that he signed the acknowledgement of debt in his position as the director of Yangtze International Group Limited.

[13] Sections 112 and 113 of the Seychelles Code of Civil Procedure (herein "SCCP") stand in relation to parties as section 146 of the SCCP stands in relation to the amendments of pleadings. Sections 112 and 113 of the SCCP address amendments that contemplate adding a party to the suit as follows —

*"Misjoinder, adding of parties, etc*

112. *No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.*

*The court may at any stage of the proceedings, either upon or without the application of either party, and on such*

terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.

113. *No person shall be added as a plaintiff without his consent in writing thereto.*"

(the underlining is mine)

Sections 112 and 113 of the SCCP replicate most of the provisions of R. S. C. 1965 O. 15, r. 6, paras. (1) and (2), which had been taken from R. S. C. (Rev.), 1962, O. 15, r. 6, which had been taken as to paras. (1) and (2) from the former O. 16, rr. 2, 5, 8, 11 and 39, the provisions of which have been knit together but without any material change in substance; para. (3) was new but embodied the same practice. The material provisions of R. S. C. 1965 O. 15, r. 6 read as follows—

"6. — (1) *No cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.*

(2) *At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —*

(a) *order any party who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;*

(b) *order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon be added as a party;*

*but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.*

(3) [...].”.

(the underlining is mine).

- [14] The object of R. S. C. 1965, O. 15, r. 6 is to bring all parties to disputes, with respect to one subject-matter, before the court at the same time so that the disputes may be determined without the delay, inconvenience and expense of separate suits; (see Montgomery v. Fay, [1895] 2 Q. B. 321; McCheane v. Gyles (No. 2), [1902] 1 Ch. 911; Bentley Motors v. Lagonda (1945), 114 L. J. Ch. 208).
- [15] The court will consider the question raised in the application on the basis of section 112 of the SCCP. The question raised in the suit is whether or not there has been a breach of promise (see paras. [1], [2], [3] of the *Amended Plaintiff* above), and the question whether or not the new defendant is a party to it, is involved. The affidavit in support of the application to amend and the *Amended Plaintiff* allege a claim against the new defendant personally, namely, that he signed the acknowledgement of debt in question. Observed that the new defendant knows what it is that Plaintiff alleges he did that gives rise to his liability to Plaintiff. The prayer for relief asks this court, "*to enter judgment against the Defendants jointly and severally in the sum of USD 65, 000.00 with costs, and interest at the commercial rate. [...].*". Further, as rightly pointed out by Mr. Georges, Plaintiff is not required at this stage to establish that it will be able to prove the allegations in support of the case, and the court should not embark upon a weighing of the evidence in support of the claim, except to the limited extent of determining whether or not the presence of the new defendant before the court is necessary for the determination of the question in controversy.
- [16] In light of the above, I grant leave to Plaintiff to correct the name of Plaintiff, and by virtue of my discretion under section 112 of the SCCP, I order that Mr. Zihai Yang be put in cause.
- [17] I direct that the plaint shall be amended in terms of the *Amended Plaintiff* and a summons with a copy of the amended plaint attached shall be served on the new defendant. I order that a copy of the amended plaint shall also be served on the original Defendant.

[18] Plaintiff shall bear the costs of these proceedings.

Signed, dated and delivered at Ile du Port on 6 July 2016

F Robinson  
**Judge of the Supreme Court**