

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CC14/2016**

**[2016] SCSC**

---

**PHILIP RATH**

Plaintiff

versus

**ROBIN RICHMOND**

Defendant

---

Heard:

Counsel: Frank Elizabeth for plaintiff

Alexandra Benoiton for defendant

Delivered: 25 May 2017

---

**RULING**

---

**Robinson J**

[1] Plaintiff is Philip Rath. Defendant is Robin Richmond. As will be seen from a reading of the plaint Plaintiff and Defendant and one Franky Jean were "*partners*".

[2] Plaintiff's plaint alleges that:

*"Defendant mismanaged the business and as a result the second consignment of beer expired whilst held up in a bond which resulted in the end of the business venture."*

[3] Plaintiff asks this court to order Defendant:

*"[t]o return to the Plaintiff his investment in the total sum of SR150,000/- and US\$13,740/- with continuing interest at the legal rate (i.e. 4%) from the 27<sup>th</sup> February 2015, uptill the date of payment of the judgment debt and interest in full."*

[4] Defendant raises two pleas in *limine litis*. Defendant contends, in *limine litis*, that the plaint discloses no reasonable cause of action against him and that the action should be dismissed as it was time-barred.

[5] *Plaint discloses no reasonable cause of action*

[6] Section 92 of the Seychelles Code of Civil Procedure concerns the discretion of the court to strike out any pleading where on the face of the pleading it discloses no reasonable cause of action or answer. Where this is the only ground on which the application is made, evidence is not admitted: see *A – G. of Duchy of Lancaster v. L. & N. W. Ry.*, [1892] 3 Ch. 278; *Republic of Peru v. Peruvian Guano Co.* (1887), 36 Ch. D. 489, 498). On that ground the court retains the discretion to stay or dismiss the proceedings or may give judgment on terms as may be just.

[7] What does the term reasonable cause of action mean? The court reads from O. 18/19/5, Rules of the Supreme Court, Pleadings, (Supreme Court Practice 1979 1 Part 1 Orders 1-114):

*"No Reasonable Cause of Action or Defence.— "There is some difficulty in affixing a precise meaning to" this term. "In point of law, ... every cause of action is a reasonable one" (per Chitty, J., Rep. of Peru v. Peruvian Guano Co., 35 Ch. D. p. 495). A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). But the practice is clear. So long as the statement of claim or the particulars (Davey v Bentinck [1893] 1 Q. B. 185) disclose some cause of action, or raise some questions fit to be decided by a Judge or jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson, 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 ALL E.R. 871, C.A.)"*

The court is mindful that pleadings should only be struck out in plain and obvious cases.

- [8] The term cause of action comprise, according to English authorities, every fact which is material to be proved to enable a plaintiff to succeed; in other words, every fact which, if traversed, the plaintiff must prove to obtain judgment, so that a plaint which will not aver all material facts, would therefore, not disclose a reasonable cause of action [*Cooke v Gill*, L.R. 8 C.P. p. 116 *Buckley v Hann*, 5 Exch. 43; *Read v Brown*, 22 Q. B. D. p. 131, C.A].
- [9] The court considers the plaint. What has in fact been averred against Defendant is very scant. At paragraph 2, Plaintiff avers a contractual relationship between he [Plaintiff] and Defendant as follows: "*[t]he business venture was established by an oral agreement on or prior to July 2010, which agreement was confirmed in writing by a document dated 3<sup>rd</sup> January 2011, signed by the Defendant. A copy of which is attached to this Plaint.*". It is to be noted that the document dated 3 January, 2011, refers to "*Minutes of Meeting regarding sales of Taiwan beer Held on 3<sup>rd</sup> day of January 2011*". Plaintiff pleads the oral agreement, at paragraph 1, as follows: "*[i]n or around the month of July 2010, the Plaintiff, Mr. Frank Jean and the Defendant, started a business venture whereby it was agreed that they would together import Taiwanese Beer from Great Kankan Enterprise INT and share the profits of the sale equally amongst themselves. (the Agreement).*". Then at paragraph 8, there is a vague allegation that "*Defendant mismanaged the business and as a result the second consignment of beer expired whilst held up in a bond which resulted in the end of the business venture.*". Finally, at paragraph 10, it is averred that "*[b]y reason of matters aforesaid the Plaintiff has suffered loss and damage in the sum of SCR 150, 000/- and US\$ 13, 740/- and continuing as follows:- **Particulars of Loss and Damage** – Initial Investment into the partnership SR150, 000/- Additional investment US\$ 13, 740/-.*
- [10] In answer to the averment in the plea in *limine litis* that the plaint discloses no reasonable cause of action against Defendant, learned counsel for Plaintiff states, during the course of submissions on the plea in *limine litis*:

***"Mrs. Burian ... [i]n regards to my learned friend's second point in regards to the fact that the plaint discloses no reasonable***

***cause of action I would humbly disagree. It is clear that what the plaintiff is claiming here is loss and damages as a result of an action of the defendant. Which he stated as the mismanagement of the business which resulted in the second consignment of beer expired whilst being held on bond and resulting in the end of the business venture."***

During the course of submissions learned counsel was requested, by the court, to make clear what she was stating in relation to the issue of the cause of action. Learned counsel asserts that Plaintiff's cause of action is as follows:

***"Court: What is the cause of action for the record?"***

***Mrs. Burian: It is faute.***

***Court: You are alleging faute?"***

***Mrs. Burian: Yes.***

***Court: Where do you state it?"***

***Mrs Burian: Paragraph 8 as a result of mismanagement of the business which has resulted in the business collapsing, he is then claiming loss and damages under paragraph 10 of the plaint my Lady."***

- [11] According to learned counsel the cause of action is one for "faute". It is to be noted that no actual "faute" under Article 1382 has actually been averred. Furthermore, has Plaintiff averred sufficient material facts to form the basis of such a cause of action? "The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad" (per Scott, L.J., in *Bruce v. Odhams Press Ltd.* [1936] 3 All E.R. at p. 294). According to learned counsel the "faute" complained of against Defendant is that he has "mismanaged the business ...". What are those material facts on which Plaintiff means to rely at the hearing? It is not clear to the court. It is to be noted that no particulars are set out in the plaint. It is the opinion of the court that those facts must be alleged which must amount to a cause of action.

[12] In light of the above, the court rules that the plaintiff discloses no reasonable cause of action and upholds the plea in *limine litis*. Accordingly it is not necessary for the court to consider the plea in *limine litis* that the action is time-barred.

[13] In view of the court's above conclusion, the court dismisses the plaintiff. With costs.

Signed, dated and delivered at Ile du Port on 25 May 2017

F Robinson  
**Judge of the Supreme Court**