

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 107/2016

[2017] SCSC 1003

**VICTORIA AUTO SERVICES
REPRESENTED BY MR PAUL LEON OF PROVIDENCE,
MAHE, SEYCHELLES**

**Plaintiff SOCIETE SEYCHELLOISE DE NAVIGATION (SSN)
REPRESENTED BY ITS DIRECTOR OF SHAM PENG TONG PLAZA,
VICTORIA, MAHE**

versus

Defendant

Heard:

Counsel: Mr Gabriel for plaintiff

Ms Wong for defendants

Delivered: 27 October 2017

RULING ON PLEA IN LIMINE LITIS

R. Govinden, J

[1] The Plaintiff in this matter has filed a Plaint dated the 08th of November 2016. In which he claims Rs 402,024,90 Seychelles Rupees from the Defendant. He avers that the Defendant was the shipping agent that was handling an importation of spare parts from Dubai on his behalf. He avers that as a result of a fire breaking out at the Land Marine storage area, all the goods that had been imported was damage. He had claim for a refund from the Defendant, however this has been to no avail. Therefore he makes the claim in his Plaint.

- [2] The Defendant in his statement of defence, on the other hand, denies that he ever imported any items for the Plaintiff. He admit that the Plaintiff's spare parts were imported into Seychelles but said that it was not done by the Defendant but by a third party, not suited in this case. The fact that a fire broke out at the material time is also admitted. As a result the Defendant claims that the Plaintiff should be dismissed with costs.
- [3] The Defendant also raised a Plea in limine litis in its Defence. In this Plea he avers that the Plaintiff discloses no reasonable cause of action and should be struck out under s 92 of the Seychelles Code of Civil Procedure.
- [4] S 92 of the Seychelles Code Of Civil Procedure is to the following effect; *“The Court may order any pleadings to be struck out, on the ground that it discloses no reasonable cause of action or answer, in such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed or may give judgment, on such terms as may be just”*.
- [5] In her submissions on the Plea in limine litis, Counsel for the Defendant submitted that there were four possible causes of actions that the Plaintiff could have raised, which are firstly, a breach of contract; secondly a faute; thirdly a breach of a quasi contract and lastly a quasi delit. Counsel submits that, contrary to s 92 of the Seychelles Code of Civil Procedure, nowhere in the Plaintiff are any causes of actions averred.
- [6] In his submission in reply to the Plea in limine litis, Mr Gabriel for the Plaintiff failed to reply to the submission of the Defendant. He does not at all address the issue of lack of particularization of the cause of action in the Plaintiff. Instead Counsel addressed substantial issues of evidence. He submitted that it was the Defendant who was the agent handling the container on behalf of the Plaintiff or its agent, as a result he

submitted that the Plea in limine raised by the Defendant is unfounded and without merits.

[7] I have scrutinized the pleadings filed in this case; I have carefully considered the submissions of Counsels in the light of the relevant legal provisions.

[8] As to the applicable law, I am firstly of the view that a motion for the striking out pleadings under s 92 of the Code of Civil Procedure is to be decided solely on the pleadings. Where the non-existence of a reasonable cause of action is not beyond doubt ex-facie the pleadings, the pleadings ought not to be struck out. Vide *Gerome vs AG* (1970) SLR p 57, *Albest vs Stravens* (1976) SLR p 158; *Ocean gate vs Monchoguy* (1984) p 111.

[9] I am further of the opinion that it is trite law that a court may not formulate a case for a party after listening to the evidence or grant relief not sought in the pleadings. A Judge cannot adjudicate on issues which have not been raised in the pleadings. Vide, *V vs Knowles* (SCA 41/98).

[10] I find that it is also established law that a litigant has to elect whether to claim in contract or in delict, if the facts give rise to a claim in both and where the Claimant pleads in contract and delict, the court will invite the Claimant to elect one of the cause of action. Vide *Pool vs Souris* (SCA 20/1995).

[11] Further, according to Section 26 the Seychelles Code of Civil Procedure, a plaint has to contain the following particulars;

(a) The court in which the action is brought.

(b) The name; description and place of residence of the Plaintiff and Defendant.

(c) A statement of the material facts and circumstances consisting the case.

(d) A description of the relief sought.

[12] Upon application of the law to the facts arising out of this plea, I am of the view that the Plaint fulfills the requirement of s 71 of the Seychelles Code of Civil

Procedure, especially given that it contains a concise statement of the circumstances constituting the cause of action and where it arose and of the material fact which are necessary to sustain the action.

[13] However, from the statement relied upon as circumstances constituting the cause of action it is difficult for this court to ascertain whether the Claimant is pleading in contract or delict or quasi delict. This makes the Plaint defective, but it is not fatal so as to call for it to be struck out.

[14] The Court would accordingly invite Counsel for the Plaintiff to elect as to what cause of action that he is going on. The court would grant to the plaintiff time to file an amended Plaint so as to reflect this Ruling.

[15] Signed, dated and delivered at Ile du Port on 27 October 2017

R. Govinden , J
Judge of the Supreme Court