

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CC11/2015**

[2018] SCSC

702

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**VADIM SIMANOVICH**  
First Plaintiff

**SERGEY SHKARIN**  
Second Plaintiff

**KONSTANTIN VOLKOV**  
Third Plaintiff

**ROVS CORPORATION**  
Fourth Plaintiff

Versus

**MISSION INVESTMENT LIMITED**  
First Defendant

**Victoria UN Limited**  
Second Defendant

**IGOR LIKHACHEV**  
Third Defendant

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Heard:

Counsel: Mr Camille for plaintiffs

Mr Pardiwalla for defendants

Delivered: 11 July 2018

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**Ruling on submission of no case to answer**

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**Robinson J**

[1] Vadim Simanovich, the First Plaintiff, Sergey Shkarin, the Second Plaintiff, Konstantin Volkov, the Third Plaintiff and ROVS Corporation, the Fourth Plaintiff are collectively referred to as "*The Plaintiffs*".

[2] Mission Investment Limited, the First Defendant, Victoria Un Limited, the Second Defendant and Igor Likhachev, the Third Defendant are collectively referred to as "*The Defendants*".

**The case for The Plaintiffs**

[3] The Plaintiffs filed a plaint dated 26 January, 2015, in which they asked this court to —

"(i) [d]eclare that Defendants has been in breach of the agreement dated 11<sup>th</sup> January 2013 and enter judgment in the sum of US Dollars 178,000 and 100,000 against the Defendants in favour of Plaintiffs.

(ii) [o]rder specific performance of the agreement dated 11<sup>th</sup> January 2013, by directing the Defendants to allot and transfer onto 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs the entitlement of shares into the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' company.

(iii) [o]rder that the Defendants provide to Plaintiffs, a statement of account for all expenses made by Defendants to date.

(iv) [t]hat the Court be pleased to make any order it shall deems fit in the circumstances of the case.

(v) [t]he above with costs."

[4] Paragraph 2 of the plaint averred that an agreement was concluded in Moscow, Russia, in terms of which, Mr. Simanovich, Mr. Shkarin and Mr. Likhachev agreed, among other

things, to incorporate an investment company, Victoria Un Limited, to construct and develop a tourism related project to be called *Mission Lodge*.

- [5] The plaint further averred that in furtherance of the terms of the agreement, referred to in para [4] of this ruling, Mr. Simanovich and Mr. Shkarin through ROVS Corporation and its counterpart, EVANS TRADING S.A., transferred a total sum of United States Dollars (herein "*USD*") 328,990.00/- and Euro 27,045.00/- to Victoria Un Limited and Mr. Likhachev.
- [6] Paragraph 6 of the plaint averred that Mr. Likhachev did not conclude a "*rent agreement*" in relation to a plot of land to construct the *Mission Lodge*. Consequently, the *Mission Lodge* project was put on hold and construction of the *Waterfall* project was started.
- [7] Paragraph 7 of the plaint mentioned a "*shareholders resolution made on 11 January, 2013 and a written Protocol of the meeting also dated 11<sup>th</sup> January, 2013, between 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs and 3<sup>rd</sup> Defendant*". According to The Plaintiffs, pursuant to the "*shareholders resolution made on 11 January, 2013 and a written Protocol of the meeting also dated 11<sup>th</sup> January, 2013, between 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs and 3<sup>rd</sup> Defendant*", it was agreed by Mr. Simanovich, Mr. Shkarin, Mr. Volkov and Mr. Likhachev that "*the total investments sum paid by 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs to date were to be diverted into additional 17% of shares in the second project, namely the Waterfall project*".<sup>1</sup>
- [8] The plaint averred that with respect to the development of the *Waterfall* project, Mr. Likhachev was to incorporate a certain number of companies in Seychelles and "*re-execute the rent agreement for a plot of land and transfer the assets of the Project which previously belonged to Mission Limited to one of those companies*".<sup>2</sup>
- [9] Mr. Volkov averred, in paragraph 9 of the plaint that he was the owner of 10 percent shares in *Mission Limited* and "*he applies to the court to order his share in Waterfall project in the same amount*". The court mentions that no evidence was led in support of this allegation.

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<sup>1</sup> Paragraph 6 of the plaint.

<sup>2</sup> Paragraph 8 of the plaint.

[10] This court reproduces paragraphs 10, 11, 12,13, 14, 15 and 16 of the plaint —

"10. Plaintiffs further aver that it was a further term of the agreement reached in the Protocol referred in Paragraph 6 above, that in order to complete Waterfall project 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs were to pay to 1<sup>st</sup> defendant 700,000 USD. The shares of all the companies involved in Waterfall project were to be allocated as follows:

1<sup>st</sup> Plaintiff - 57 % (40%+17%)

2<sup>nd</sup> Plaintiff - 10%

3<sup>rd</sup> Plaintiff - 10%

3<sup>rd</sup> Plaintiff - 23%

11. Plaintiff aver that in the process of development the Waterfall project 4<sup>th</sup> Plaintiff and its counterparty Evans Trading S.A. paid to the Defendants a sum of 737,046 USD and 26,905 euro instead of 700,000 USD in the Protocol date 11 January 2013.

12. Due to improper management of Waterfall project by 3<sup>rd</sup> Defendant 1<sup>st</sup> Plaintiff had to pay additional amount of 650,000 USD to 1<sup>st</sup> Defendant under the loan agreement dated 27<sup>th</sup> September, 2013, but Waterfall project is not complete and the obligations of 3<sup>rd</sup> Defendant are not fulfilled. [...].

13. Plaintiffs aver that in breach of the agreement aforesaid, Defendants has failed and/or refused to remit, allot and/or transfer the shares to Plaintiffs or at all.

14. Plaintiffs further aver that in further breach of the agreement aforesaid, Defendants have failed to provide an account of all expenses made thus far by Defendants and have further failed to provide accounts of total investment made by the Plaintiffs in both the Mission Lodge project and the Waterfall project.

15. Plaintiffs aver that as a result of the said breach, Plaintiffs have suffered loss and damages which Defendants are jointly and severally liable to make good to them [...].

16. Plaintiffs seek for the specific performance of the agreement aforesaid against Defendants."

[11] The Defendants denied the claims of The Plaintiffs and moved this court to dismiss The Plaintiffs claims with costs.

[12] At the close of The Plaintiffs case, Mr. Pardiwalla submitted that The Defendants had no case to answer. This court put Mr. Pardiwalla to his election, who elected to call no evidence. Because Mr. Pardiwalla has elected to call no evidence, he is bound.<sup>3</sup>

#### **The evidence for The Plaintiffs**

[13] Briefly summarised below are the relevant facts presented in the testimony of Mr. Simanovich, on his behalf and on behalf of Mr. Shkarin, Mr. Volkov and ROVS Corporation, pursuant to powers of attorney. Miss Larisa Semeina also testified in support of The Plaintiffs case.

[14] *The evidence of Mr. Simanovich.* Mr Simanovich testified that Mission Investment Limited was incorporated, in 2014, under the written laws of Seychelles, to complete construction of some buildings at the waterfall site and following the completion of construction, to operate the business. Mr. Simanovich and Mr. Shkarin held 50 percent shares in Victoria Un Limited through ROVS Corporation.

[15] Mr. Simanovich met Mr. Likhachev, in Moscow, in 2012, through his old friend Mr. Shkarin. Having met, they had a meeting, wherein Mr. Likhachev told him that he has two projects to develop in Seychelles, namely, the *Mission Lodge* project and the *Waterfall* project. Following that meeting they agreed to come to Seychelles to see the site, where construction was to take place. At the end of April, or May, 2012, Mr. Simanovich and Mr.

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<sup>3</sup> *Victor v Azemia No. 42 1977 SLR at p 196.*

Shkarin came to Seychelles. In Seychelles Mr. Likhachev showed them a lease agreement for the *Mission Lodge* project. He and Mr. Shkarin visited the *Mission* and *Waterfall* sites and a store, where some building materials were being stored. He later came to understand that the lease agreement for the *Mission Lodge* project, showed to him, had not been executed.

[16] Later in the proceedings Mr. Camille asked Mr. Simanovich "*Q: And then what happened sir?*" He answered "*[a]fter that we decide to go ahead and Mr Likhachev has to order the architectural project for their Mission*". Then he was asked "*Q. And at this stage did you agree?*"

[17] This court interposes to state that Mr. Pardiwalla objected strongly to evidence being led about the purported agreement concluded in Moscow. Mr. Pardiwalla explained that paragraph 7 of the plaint referred to a "*shareholders resolution*", dated the 11 January, 2013, which is the only agreement pleaded. Mr. Camille contended, in his submissions in reply, that two agreements are pleaded in the plaint. According to Mr Pardiwalla The Plaintiffs' position is not correct in view of their "*REPLY TO REQUEST FOR FURTHER AND BETTER PARTICULARS*", wherein paragraph 1 reads "*OF PARAGRAPH 2 OF THE PLAINT: The agreement is dated 11 January, 2013, a copy of which is attached*". The attached document referred to a "*Shareholders meeting protocol*", which is dated 11 January, 2013. Mr. Camille's response is that the reply "*will not purport to show clearly what has been averred in the plaint*".<sup>4</sup> Thereafter, Mr. Camille informed this court without more that he had made a mistake in the "*REPLY TO REQUEST FOR FURTHER AND BETTER PARTICULARS*". Following the objection, Mr Camille asked Mr. Simanovich "*Q Now Mr Simanovich before you came down to Seychelles and that time that Mr. Likhachev was with you Mr. Shkarin both in Moscow, can you confirm to the Court whether at that point when you were in Moscow any agreement was reached between you Mr. Shkarin and Mr. Igor Likhachev?*" He answered "*A: Yes we had an agreement but it is like preliminary*

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<sup>4</sup> Proceedings of 30 January, 2017, at 10 a.m., p 17 of 28.

*agreement, we have to visit and see the place by ourselves and after get the final agreement<sup>5</sup>."*

[18] At the trial The Plaintiffs did not tender the "*Shareholders meeting protocol*" as evidence in this suit. Having considered the testimony of Mr. Simanovich in light of the plaint and the "*REPLY TO REQUEST FOR FURTHER AND BETTER PARTICULARS*", this court is satisfied that the agreement alleged in paragraph 2 of the plaint has not been established by The Plaintiffs.

[19] Mr. Simanovich went on to say that following their visit to Seychelles he [Mr. Simanovich] started to finance "*this project*"<sup>6</sup> at the request of Mr. Likhachev. He transferred money a few times, at the request of Mr. Likhachev, which paid for an architect, Mr. Likhachev's salary and that of his staff and a car. He sent a total sum of USD 335,000.00/- to Mr. Likhachev. In 2012, he sent a financial director at the request of Mr. Likhachev. The financial director sent him some reports of spending.

[20] Mr. Simanovich testified that the meeting relating to the *Minutes of the Meeting of Shareholders* was held on 11 January, 2013. Present at that meeting were himself, Mr. Volkov and Mr. Likhachev. He represented Mr. Shkarin pursuant to a power of attorney. At that meeting he learned that they had wasted USD335,000.00/- on the *Mission Park* project because Mr. Likhachev did not obtain a lease agreement. Since they did not want to sour their relationship with Mr. Likhachev, they agreed to put on hold the *Mission Park* project and work on the *Waterfall* project because some work had already been done at that site. He explained that ownership of the *Waterfall* project was supposed to be shared as follows — fifty percent was supposed to belong to Mr. Likhachev and Mr. Volkov and the other fifty percent was supposed to belong to him and Mr. Shkarin. It was also agreed that all money spent on the *Mission* project, by the end of 2012, will count towards their investment in the *Waterfall* project. In terms of the agreement they were supposed to receive an additional seventeen percent ownership in the *Waterfall* project. Mr. Likhachev and Mr. Volkov were to receive thirty three percent ownership in the *Waterfall* project.

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<sup>5</sup> Proceedings of 30 January, 2017, at 10 a.m., p 15 of 28.

<sup>6</sup> Proceedings of 30 January, 2017, at 10 a.m., p 19 of 28.

Three companies were to be created for the *Waterfall* project, in which they were supposed to be allocated sixty seven percent shares in each of them. However, the only company created was Mission Investment Limited, in which they were not allocated any shares, as agreed.

- [21] At the meeting held on 11 January, 2013, they agreed to invest USD700,000.00/- in the *Waterfall* project. Towards the end of January, 2013, he started to finance the *Waterfall project* through two companies - ROVS Corporation and one *Evan's Trading*. Pursuant to a loan agreement, he transferred the sum of USD 660,000.00/-. Money was transferred to the account of Victoria Un Limited. He transferred money to the account of Mission Investment Limited, when it was created. At the request of Mr. Likhachev they were sending money to Dubai, New Delhi and Seychelles to buy equipment, cars and other necessary things requested by Mr. Likhachev. He got some formal reports about the "*project work*". Exhibits P7 to P22 (a) and (b) showed various transfer of funds made.
- [22] Mr. Simanovich testified that after all payments had been made, Mr. Likhachev did not comply with the *Minutes of the Meeting of Shareholders*. He requested for an account of expenses made by The Defendants from Mr. Likhachev, which he has not received. The Plaintiffs are asking The Defendants to comply with the agreement.
- [23] Mr. Simanovich attempted to produce the *Minutes of the Meeting of Shareholders* on the ground that it contained the agreement reached by the parties. Mr. Pardiwalla objected to the production of the *Minutes of the Meeting of Shareholders* mainly on the ground that it is not an agreement in law. Upon the joint consent of The Plaintiffs and The Defendants, through Counsel, the *Minutes of the Meeting of Shareholders*<sup>7</sup> was admitted as an exhibit, subject to The Plaintiffs and The Defendants agreed stipulation that this court should address the issue of the admissibility of the exhibit in light of the submissions of both Counsel, at the time of judgment.
- [24] Mr. Pardiwalla also objected to the evidence of Mr. Simanovich, a non-Seychellois, who, according to him, was seeking to obtain the transfer of shares "*in what he said is the*

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<sup>7</sup> The English translation of the *Minutes of the Meeting of Shareholders* is before the court as Exhibit P5 (c).



*Waterfall project, which involves the lease of a property in Seychelles*". The said objection also applied to Mr. Shkarin, Mr. Volkov and ROVS Corporation and is reiterated in The Defendants submissions of no case to answer.

[25] When cross-examined about the alleged agreement that The Plaintiffs are relying upon, Mr. Simanovich replied "*A: ... we did not have the written agreement as agreement ... A: ... Yes we did not have another form of agreement but we had discussed that Mr. Likhachev will prepare it.*".

[26] He confirmed his evidence-in-chief that he was an investor in the *Mission Lodge* project; and that the money he sent was spent on architectural and engineering drawings, transportation and other necessary infrastructure required to get the project going. The money was mostly transferred to the bank account of Victoria Un Limited. Victoria Un Limited was created to take care of the *Mission Lodge* project; and that through ROV's Corporation he had a share in Victoria Un Limited. He denied that Mr. Likhachev had invested money in the *Mission Lodge* project. Paragraph 5 of Exhibit P5 (c) stated that Mr. Volkov and Mr. Likhachev had already invested USD787,000.00/- in the *Waterfall* project. He and Mr. Shkarin were obliged to invest an equal sum<sup>8</sup> in the *Waterfall* project.

[27] He admitted that he saw an agreement in April, 2012, but denied the suggestion of Mr. Pardiwalla that what he had seen was a memorandum of understanding for the *Mission Lodge* project. When pressed further by Mr Pardiwalla that he had in fact seen a memorandum of understanding in respect of a joint project between Mr. Likhachev and the National Heritage of Seychelles, his response was "*probably yes*". Then Mr. Pardiwalla put to him that the lease agreement was not executed because the Government had changed its position at the last minute. His response was that Mr. Likhachev had told him that the lease agreement had already been signed. He added that he invested his money on the basis of what he had been told by Mr. Likhachev. He was not asking Mr. Likhachev to return to him the sum of USD335,000.00/- in relation to the *Mission Lodge* project. He was not

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<sup>8</sup> Paragraph 5 of Exhibit 5 (c).

asking for any damages from The Defendants. He did not blame Mr. Likhachev for the failure of the *Mission Lodge* project.

[28] Then Mr. Pardiwalla questioned Mr. Simanovich about a loan agreement made between him and Mission Investment Limited on 27 September, 2013. He did not dispute that such an agreement was reached by him and Mission Investment Limited. But he was adamant that he was not concerned about the loan agreement. He emphasised that he invested funds in the *Waterfall* project to finance the building project and other matters in terms of paragraph 5 of the *Minutes of the Meeting of Shareholders*. He is asking Mr. Likhachev to comply with the *Minutes of the Meeting of Shareholders*. In the view of Mr. Pardiwalla "*as far as Mission Investment Ltd is concerned, he cannot get his shares that he wants, it is a loan. As far as Victoria Unlimited is concerned, he may asked for his shares but that is up to the court to decide eventually whether he is entitled to them or not*"<sup>9</sup>. His response is that "*I am not agreeing because the project waterfall belongs to now two companies because the buildings and all the legal documents are on Mission Ltd. The Mission Investment Ltd was building this project implement on all materials being brought in the name of Mission Investment Ltd so we transferred the money there and even before we signed and made the loan agreement, before that I already transferred the full amount by document P5, in the amount of Seven Hundred Eighty Thousand Dollars before we even signed the extra loan agreement.*"

[29] Mr. Simanovich added that Victoria Un Limited will not "*pass a resolution*" to give him sixty seven percent shares in it because it has nothing to do with the *Waterfall* project. Victoria Un Limited is concerned only with the *Mission Lodge* project. Therefore, he is asking for sixty seven percent shares in Mission Investment Limited, Mission Ltd and "*maybe too other companies...<sup>10</sup>*". He denied the suggestion of Mr. Pardiwalla that the only company concerned with the *Waterfall* project is Mission Ltd.

[30] Regarding which company owned the waterfall project he had this to say "*A: At the time when I was signing this agreement, the company who was owning that project was*

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<sup>9</sup> Proceedings of Wednesday 26 April, 2017, at 1:30 p.m. at p. 26 of 31.

<sup>10</sup> Proceedings of Wednesday 26 April, 2017, at 1:30 p.m. at p. 28 of 31.

*company Mission Limited. After that Mission Investment Company was created. Later on, I do not know maybe Mr. Likhachev create any other companies under which name. He was buying some equipment and so on. That is why in my request, I will like to get 67 of shares of all companies which are involved in the waterfall project<sup>11</sup>."*

- [31] *The evidence of Miss Larisa Semeina.* Miss Semeina, who is 54 years old, lives in Moscow city. She has been a financial director and general accountant for over thirty years. In August, 2012, she worked in Seychelles as a financial director for Victoria Un Limited and left in March, 2013. She stated that she did not attend any meeting in Russia among the shareholders and was not present at the shareholders meeting in Seychelles. She prepared Exhibits P5 (a), P5 (b) and P5 (c).

### **The submissions and analysis**

- [32] This court has considered the evidence on record and the submissions of Mr. Pardiwalla. Mr. Camille did not file written submissions. This court had some difficulty to understand the position of The Plaintiffs mainly because the plaint is infelicitously drafted.

#### *Prayer (i) Claim for damages*

- [33] The Plaintiffs have dropped their claim for damages against The Defendants at the trial, and, therefore, The Defendants have no case to answer.

#### *Prayer (ii) Specific performance of the agreement dated 11 January, 2013*

- [34] This court considers the *Minutes of the Meeting of Shareholders*, which The Plaintiffs contended embodied the agreement reached by Mr. Simanovich, Mr. Shkarin, Mr. Volkov and Mr. Likhachev.<sup>12</sup> Having considered the *Minutes of the Meeting of Shareholders*, this court is satisfied that it embodied an agreement reached by Mr. Simanovich, Mr. Shkarin, Mr. Volkov and Mr. Likhachev in relation to the implementation of the *Park Mission* and *Waterfall* project. Mr. Pardiwalla contended in his written submissions that the *Minutes of the Meeting of Shareholders* could not be classified as a document, which contains a

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<sup>11</sup> Proceedings of Wednesday 26 April, 2017, at 1:30 p.m. at p. 14 of 31.

<sup>12</sup> Paragraph 6 of the plaint

bilateral contract because it does not comply with the requirements relating to documents under private signature under Article 1325 of the Civil Code of Seychelles Act (hereinafter referred to as the "Code").

[35] This court has to determine whether the document (*Minutes of the Meeting of Shareholders*) is valid under Article 1325 of the Code? Article 1325 of the Code provides

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"1325 Documents under private signature which contain bilateral contracts shall only be valid if they were drawn up in as many originals as there are parties having a separate interest.

One original shall be sufficient for all the persons who have the same interest.

Each original shall mention the number of originals in which it was drawn up. Nevertheless, failure to mention that there are two, three etc., originals shall not be pleaded by a person who has performed, on his part, the agreement contained in the document."

Having considered this submission, this court is satisfied that the document does not comply with Article 1325 of the Code and finds that the document is not valid.

[36] Because the formalities prescribed by Article 1325 of the Code has not been fulfilled, how should the existence of the agreement be established? This court reads from DALLOZ CODES ANNOTÉS NOUVEAU CODE CIVIL III ART. 1168 À 1581 [C. CIV. – Art.1347.] LIV. III, TIT. III. – CONTRATS OU OBLIGATIONS CONVENTIONNELLES. at note 331 —

"331. – II. – L'acte sous seing privé qui contient une convention synallagmatique, et qui n'a pas été fait en double ou qui ne porte pas mention de l'accomplissement de la formalité (art. 1325), peut-il servir de commencement de preuve par écrit, s'il est signé de la partie à laquelle on l'oppose? [...].

332. D'après un premier système, un tel acte ne peut servir de commencement de preuve par écrit, attendu que la convention qu'il constate n'a été consentie par les parties que sous a condition que cette acte serait rédigé en double, afin de fournir

ainsi à chaque partie une preuve préconstituée complète : cette condition n'ayant pas été remplie, l'acte doit tomber tout entier, emportant dans sa nullité, la convention don't il devait fournir également la preuve pour chaque partie. [...].

333. Jugé en ce sens qu'un acte sous seing privé synallagmatique, non fait double, ne peut valoir comme commencement de preuve par écrit. – Bruxelles, 13 août 1811, J. G. Obligat., 4760. – Colmar, 6 mars 1813, J. G. eod. v<sup>o</sup>, 4055-2<sup>o</sup>. – Bourges, 29 mars 1821, J. G. ibid. – Bastia, 11 juill. 1838, J. G. eod. v<sup>o</sup>, 4055-2<sup>o</sup>.

334. Suivant une autre opinion, plus généralement admise, l'acte non fait double, peut, suivant les circonstances, être considéré comme formant un commencement de preuve par écrit : d'une part, l'acte en question émane de la partie contre laquelle la prétention est formée, puisqu'il porte sa signature, et d'autre part, il peut rendre vraisemblable le fait allégué. [...].

335. La jurisprudence est aujourd'hui constante dans le sens de cette dernière opinion. – Req. 14 frim. An 14 J. G. Obligat., 4056. – Bordeaux, 3 mars 1826, J. G. ibid. – Besançon, 12 juin 1828, J. G. ibid. – Bordeaux, 28 Mai 1834, sous Req. 25 févr. 1835, J. G. eod. v<sup>o</sup>, 4070-1<sup>o</sup>. – Poitiers, 3 janv. 1844, J. G. eod. v<sup>o</sup>, 4056. [...]. "

[37] Having considered French jurisprudence on the question in issue, this court is persuaded by the jurisprudence, which provides that "*l'acte non fait double, peut, suivant les circonstances, être considéré comme formant un commencement de preuve par écrit*".

[38] Article 1347 of the Code provides —

"1347 The aforementioned rules shall apply if there is writing providing initial proof.

The term described every writing which emanates from a person against whom the claim is made, or from a person whom he represents, and which renders the facts alleged likely."

[39] In the present case it is not disputed that the document emanated from Mr. Likhachev, who signed it. However, it is pertinent to note that Mission Investment Limited and Victoria Un

Limited are not mentioned in the *Minutes of the Meeting of Shareholders* and are not parties to the agreement. It is, therefore, not clear to this court on which basis The Plaintiffs are seeking to obtain shares in Mission Investment Limited and Victoria Un Limited. Moreover, Mr. Simanovich has stated that Victoria Un Limited is not concerned with the *Waterfall* project; and that The Plaintiffs are not asking this court to allocate to them any shares in Victoria Un Limited. It follows that this court is satisfied that The Defendants have no case to answer as the orders sought by The Plaintiffs against The Defendants cannot be granted by this court.

[40] This court also agrees with Mr. Pardiwalla that even if this court finds that the agreement is valid, The Defendants still have no case to answer as the orders sought by The Plaintiffs cannot be granted by this court. The *Minutes of the Meeting of Shareholders* mentioned "*Mission Limited*" and not any other company. Mission Limited is not a defendant in this case. Paragraph 4 of the *Minutes of the Meeting of Shareholders* states "[i]t was approved that the new Company for "*Waterfall*" project implementation will be opened in accordance with the legislation of the Seychelles and with due consideration of further smooth performance of clause 7 hereof.". Mission Investment Limited and Victoria Un Limited are not mentioned in the *Minutes of the Meeting of Shareholders*.

[41] Further, the pleadings contained in the plaint do not contain all the material facts, which are necessary to sustain the action. The Plaintiffs have averred in prayer (ii) of their plaint that they are entitled to be allotted shares in Mission Investment Limited and Victoria Unlimited without setting out in the plaint the facts, which, in their opinion, give them that entitlement, pursuant to section 71 (d) of the Seychelles Code of Civil Procedure, which provides "71 The plaint must contain the following particulars:- "(d) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material<sup>13</sup> facts which are necessary to sustain the action;".

Prayer (iii) The Plaintiffs to be provided with a statement of account of expenses

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<sup>13</sup> "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)."

[42] Paragraph 14 of the plaint pleaded an agreement reached by The Plaintiffs and The Defendants in relation to the matters prayed for in prayer (iii). Having considered the evidence in this case, this court is satisfied that The Plaintiffs have not established any such agreement.

Miscellaneous

[43] Mr. Pardiwalla made the additional point that The Plaintiffs are non-Seychellois; and that it appears that they seek to obtain the transfer of shares in what they say is the *Waterfall* project, which involves the lease of a property in Seychelles. This court is alive to the provisions of the Immovable Property Transfer Restriction Act Cap 95. However, there is no evidence on record in support of the allegation that there is such a lease involved.

**The Decision**

[44] This court finds on the basis of the evidence put forward by The Plaintiffs, that The Plaintiffs case has no real prospect of success. This court rules that the submission of no case to answer succeeds.

Signed, dated and delivered at Ile du Port on 11 July 2018



F Robinson  
**sitting as a Judge of the Supreme Court**