

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2020] SCSC : 787
CS 55/2017

In the matter between:

MONIQUE HERMITTE
(rep. by Anthony Derjacques)

Petitioner

and

EUGENE ALBERT
(rep. by Clifford Andre)

Respondent

Neutral Citation:	<i>Hermitte v Albert (CS 55/2017) [2020] SCSC 787 (21st October 2020)</i>
Before:	Pillay J
Summary:	Plea in limine
Heard:	26 th August 2020
Delivered:	21 st October 2020

ORDER

In the circumstances the plea in limine is upheld on the basis that the Plaintiff has no legal right to sue the Defendant.

The Plaintiff is accordingly dismissed

RULING

PILLAY J

[1] By way of an amended defence the Defendant raised two points in limine.

- [2] Firstly that “the Plaintiff never had any agreement with the defendant and therefore the Plaintiff has no legal right to sue the defendant.”
- [3] Secondly that “the Defendant pleads prescription pursuant to Article 2270. If the courts finds that an agreement existed, the Defendant states that as per paragraph 2 of the plaint, the agreement was dated January 2012 and the prescription period ended in January 2017. It is also stated that the plaint was filed 14th June 2017. This is 5 months after the prescription period, therefore barring any action of that basis.”
- [4] Counsel for the Plaintiff relied on Article 2271 of the Civil Code for his submission that on the face of the Plaint the action was filed within time. He submitted that the Plaint was filed on 14th June 2017 whereas the products were imported and delivered to the Plaintiff in November 2012.
- [5] Counsel further relied on the evidence of the Plaintiff that she acted as a natural person and not as a representative of the company, in that as a result of the power of attorney dated 2nd December 2013 all her acts were for herself and her husband and their company, that she met constantly with the Defendant personally and that the proforma invoice addressed to the Defendant cited the buyer as Monique Hermitte, and that the email correspondence was addressed to her personally.
- [6] It is noted that the Plaintiff testified that she met with the Defendant sometime in 2011 and formally agreed in January 2012 for the Defendant to import aluminium doors and windows, shutters and burglars bars for Hermitte Heirs Pty Ltd.
- [7] She testified that she entered into a contract with the Defendant on the authority of the partners of Hermitte Heirs Pty Ltd. The Defendant was paid from the account of Hermitte Heirs Pty Ltd.
- [8] The Plaintiff produced a power of attorney which she testified gave her powers to deal with the affairs of Hermitte Heirs Pty Ltd. In fact the power of attorney granted to her by Paul Hermitte appointed her to deal with his interests in parcels C186 and C502.

- [9] She maintained in cross examination that she had majority shares in the business and she had the authorisation to represent the company.
- [10] In re-examination she insisted that she had come in her personal capacity. She was not before the Court as Hermitte Heirs Pty Ltd but in her personal capacity.
- [11] In contrast however the emails counsel refers to were not to her email address personally but to ermitheirs@gmail.com. Furthermore the proforma counsel refers to, in as much as it refers to the Plaintiff as the buyer, the corresponding invoice dated 18th January 2012 is addressed to "ERMITHEIRS".
- [12] In as much as the Plaintiff may have had authority to act on behalf of the company Hermitte Heirs she was doing just that, acting as representative of the company. In that context there was no agreement between the Plaintiff and the Defendant but between Ermitheirs Pty Ltd and the Defendant, and as such the proper person to be cited as Plaintiff would be Ermitheirs Pty Ltd.
- [13] With regard to the plea that the action is prescribed, Article 2271 of the Civil Code of Seychelles provides as follows:
- (1) All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.*
- (2) Provided that in the case of a judgment debt, the period of prescription shall be ten years.*
- [14] In the case of **Attorney-General v Voysey SCA, 1 March 1996** the Court found that a cause of action accrues when the essential facts manifest themselves.
- [15] In terms of contract, prescription then would run from the time of breach. Hence in the instant case prescription would start from the date the faulty equipment was delivered to the Plaintiff which according to the Plaint was February 2013 meaning that the Plaintiff would have been within the prescriptive period but for the fact that she is the wrong Plaintiff cited and has no standing to sue the Defendant.

[16] In the circumstances the plea in limine is upheld on the basis that the Plaintiff has no legal right to sue the Defendant.

[17] The Plaintiff is accordingly dismissed.

Signed, dated and delivered at Ile du Port on 21st October 2020



Pillay J