

SUPREME COURT OF SEYCHELLES

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Reportable/ Not Reportable / Redact  
[2020] SCSC .....  
CS 53/2019

In the matter between:

**THEOLENE AUGUSTE**  
(rep. by *Anthony Derjacques*)

**Petitioner**

and

**SINGH CONSTRUCTION**  
(rep. by *Karen Domingue*)

**1<sup>st</sup> Defendant**

**THE ATTORNEY GENERAL**  
(rep. by *Corrine Rose*)

**2<sup>nd</sup> Defendant**

**THE TOWN AND PLANNING AUTHORITY**  
(rep. by *Corrine Rose*)

**3<sup>rd</sup> Defendant**

**RAYMOND RICHMOND**  
(rep. by *Nichol Gabriel*)

**4<sup>th</sup> Defendant**

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**Neutral Citation:** *Auguste v Singh Construction and Ors (CS 53/2019) [2020] SCSC..... (23<sup>rd</sup> October 2020)*

**Before:** Pillay J

**Summary:** Plea in limine – Proof of existence of a partnership

**Heard:** 23<sup>rd</sup> September 2020

**Delivered:** 23<sup>rd</sup> October 2020

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**ORDER**

The plea in limine succeeds and the Plaint is struck out against the first Defendant.

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**RULING**

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**PILLAY J**

- [1] Counsel for the first Defendant raised a plea in limine in that the first Defendant is not a partnership but merely a business name which cannot be sued and the Plaintiff must be struck out against it.
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- [2] The first Defendant is cited as Singh Construction (a partnership owned by Mr. Deep Singh and Mrs. Natasha Marie Singh of Port Glaud, Mahe, Seychelles).
- [3] Miss Domingue for Deep Singh and Natasha Singh submits that the law, namely Article 47 of the Commercial Code recognises only 4 kinds of legal persons. She submitted that she had in her possession a certificate of registration of business name on the name of Deep Singh and Natasha Singh. It was her submission that in order for a partnership to exist it had to comply with Articles 1832 to 1873 of the Civil Code.
- [4] It was her submission that it is trite law that if there is a partnership, the prerequisite is that it should be in writing and she has not been served with a partnership agreement. She therefore moved for the Court to strike out the first Defendant in these proceedings.
- [5] Mr. Derjacques for the Plaintiff submitted that the first Defendant is sued as Singh Construction a partnership owned by Deep Singh and Natasha Marie Singh. It was his submission that in accordance with Article 1832 there is a partnership which is “a contract whereby two or more persons have agreed to make a joint contribution for the purpose of sharing any benefit that may result therefrom.” He relied on the certificate of registration of business name as the agreement to form a partnership. He submitted that the registration of the business name effectively gives name to the joint effort against two persons.
- [6] The issues as I see it is whether or not the first Defendant has a legal status as a partnership with capacity to be sued in that manner.
- [7] Indeed as stated by Miss Domingue, Article 47 of the Commercial Code recognizes four kinds of legal persons:
- (1) a company formed and registered under the Companies Act
  - (2) an association, the object of which is not pecuniary gain to its members and registered under the Registration of Associations Act

- (3) a partnership under Articles 1832 to 1873 inclusive of the Civil Code
- (4) a commercial partnership of no more than 10 persons the object of which is the acquisition of gain. It shall be subject to the same rules as a partnership under the Civil Code to the extent that it is not contrary to the laws and usages of commerce or the provisions of this Code subject to Article 55 of this Code.
- [8] Clearly under Article 47 (3) above a partnership is a legal person capable of being sued and suing in its name.
- [9] The question therefore is whether the first Defendant is a partnership or not.
- [10] Mr. Derjacques relies on Article 1832 of the Civil Code which provides that “partnership is a contract whereby two or more persons agree to make a joint contribution for the purpose of sharing any benefit may result therefrom”, for this proposition that indeed the first Defendant is a partnership on the basis of their registration of a business name.
- [11] Mr. Domingue on the other hand relies on Article 1834 of the Civil Code which provides in part that “a partnership agreement must be drawn up in writing with the object exceeding the value of R5, 000/-.”
- [12] It is not in doubt that Article 1832 provides the definition of a partnership. It defines partnership as a contract with two or more persons agreeing to make joint contributions for the sharing of profits emanating from the partnership. Article 1834 then goes on to define the nature of that contract and agreement which has to be in writing.
- [13] In the case of Ernestine & Ors v Ernestine & Ors [1995] SLR 57 Allcar CJ declined to “subscribe to the view that the mere registration of the names of the parties to the suit under the Registration of Business Names Act 1972 or the registration of a company would be equivalent or tantamount to the formation of existence of a partnership which requires specific compliance with Article 1834 of the Civil Code of Seychelles.”
- [14] He relied on Article 1832 of the Civil Code of Seychelles which defines what is a partnership agreement –“Partnership is a contract whereby two or more persons agree to make a joint contribution for the purpose of sharing any benefit that may result therefrom”

as well as Article 1834 which spells out the requirement for the drawing up a partnership agreement – “(1) “a partnership agreement must be drawn up in writing with the object exceeding the value of R5, 000/-.”

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- [15] I find no reason to depart from the finding in Ernestine & Ors above. If anything the two persons registered a business name under which they traded. The Plaintiff has to show that in fact there was a partnership between the two persons and the manner in which that has to be shown in line with Article 1834 is to provide proof by way of an agreement in writing which the registration of a business name is not.
- [16] In the circumstances the plea in limine succeeds and the Plaint is struck out against the first Defendant.

Signed, dated and delivered at Ile du Port on 23<sup>rd</sup> October 2020

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Pillay J