

**THE REPUBLIC OF SEYCHELLES**

**IN THE SUPREME COURT OF SEYCHELLES HELD AT VICTORIA**

Commercial Case No. 08 of 2012

Get High (Pty) Ltd=====Plaintiff No.1

Eddie Westergreen=====Plaintiff No.2

versus

Steve Gerrad=====Defendant No.1

Rukiyah Savy=====Defendant No.2

Elvis Uzice=====Defendant No.3

Seychelles Licensing Authority=====Defendant No.4

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*Frank Elizabeth for the plaintiffs*

*Conrad Lablache for the defendants no.1 and 2*

*Serge Rouillon for defendant no.3*

*Roberts, State Counsel, for defendant no.4*

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**RULING**

**Egonda-Ntende CJ**

- 1) This ruling is in respect of a preliminary objection raised by defendant no.4 to the effect that the plaint does not disclose a reasonable cause of action against it and ought to be dismissed. Mr Roberts, State Counsel, appearing for the defendant no.4, submitted to this court it is contended for the plaintiffs that the defendant no.4 committed a faute in law when it transferred the vehicle the subject matter of this action on papers presented or signed by the defendant no.2, in the absence of a company resolution authorising such transaction. Mr Roberts submitted in light of sections 34 and 39 of the Companies Act, and schedule 3 thereof, an outsider dealing with directors of a proprietary company was protected from any internal deficiencies of the company. In the current case the defendant no.4 was protected from the allegations raised against it.
- 2) Mr Frank Elizabeth, learned counsel for the plaintiffs, in reply, stated that it was premature to rule at this stage on whether or not there was not cause of action against the defendant no.4 as the matters of fact referred to had not as yet been adduced in evidence. He therefore submitted that there would be no basis for making any such finding at this stage. He prayed that this preliminary objection be dismissed.
- 3) In determining whether or not a plaint or pleading discloses a cause of action it is the

obligation of the court to look only at pleadings and not evidence as such.

- 4) Section 92 of the Seychelles Code of Civil Procedure, hereinafter referred to as the SCCP, allows the court to strike out a pleading that discloses no reasonable cause of action and to dismiss the action. It provides,

‘92. The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleading 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) A cause of action is not defined in the SCCP but comparative case law is of persuasive value. In Auto Garage v Motokov [1971] E A 514 the Court of Appeal for East Africa considered the meaning of cause of action. After a review of a number of English decisions on the subject, Spry VP, defined it in the following words at page 519,

‘I would summarize the position as I see it by saying that if a plaintiff shows that the plaintiff enjoyed a right, that has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed.’

- 6) In the instant case it is alleged that the defendant no.4 on the plaint committed a 'faute' in law by registering a transfer that had been signed by a director of the company that owned the vehicle as it did not call for a company resolution before processing such transaction. If at law the defendant no.4 was obliged to have sight of a company resolution authorising the transaction before registering the same it would be clear that the defendant no.4 would have acted to the detriment of the plaintiffs' rights in the matter.

- 7) However, if defendant no.4 is protected by law from looking beyond the director of the company it was dealing with, it would appear that this objection is properly raised. The protection at law defeats any claim in that regard. There would be no right that the defendant would have violated to render him liable to a plaintiff. Although on the plaint a 'right' will have been asserted and claimed to have been violated for which the plaintiffs would be seeking relief it is clear that such a claim or cause of action cannot amount to a reasonable cause of action given its lack of substance at law.

- 8) It will be useful now to examine the plaint and what it alleges. In paragraph one it is, inter alia, stated, 'The 2<sup>nd</sup> Defendant is and was at all material times a director and shareholder of

the 1<sup>st</sup> Plaintiff.' The 4<sup>th</sup> Defendant is the authority in Seychelles that registers all transfers of ownership of motor vehicles.'

- 9) In paragraph 12 the plaintiff avers that the 2<sup>nd</sup> defendant sold the said motor vehicle S18544 to 3<sup>rd</sup> defendant at the price of SCR1,150,000.00. The cause of action against defendant no.4 is set out in paragraphs 17 to 19 of the plaintiff which I shall set out in full.

'17. The plaintiffs aver that the 4<sup>th</sup> Defendant caused the sale, transfer and registration of the said motor vehicle to be completed on the 3<sup>rd</sup> October 2011 without requesting a company resolution prior to effecting the registration of the said sale. 18.

The plaintiffs aver that at the time of the said sale, transfer and registration of the said motor vehicle, the 2<sup>nd</sup> Defendant did not have the necessary legal capacity and authority required to sign the transfer document effectively transferring ownership and title to the said motor vehicle registration number SI8544 from the 1<sup>st</sup> Plaintiff to the 3<sup>rd</sup> Defendant.

19. The plaintiffs aver that the 4<sup>th</sup> Defendant committed a 'faute' in law when they allowed the 2<sup>nd</sup> defendant to sign the transfer of ownership to the said motor vehicle to the 3<sup>rd</sup> defendant and registered the said sale and transfer in their records showing that the 3<sup>rd</sup> Defendant is the owner of the said motor vehicle and depriving the 1<sup>st</sup> Plaintiff of its main asset permanently.'

- 10) The plaintiff starts in paragraph one of the plaintiff by stating that at all material times the defendant no.2 was acting as a director and shareholder of the plaintiff no.1. If he or she was so acting then by virtue of Section 34(3) of the Companies Act, she had the authority, without more to sell company assets, regardless of what was provided in the memorandum and articles of association of the company. Secondly and perhaps more importantly third parties as defendant no.4 in this matter were protected by section 39 of the said Act, which provides,

'39.(1) A person who deals with the directors of a company, or **a director of a proprietary company**, or a managing director of any other company, shall not be affected by any irregularity of procedure in connection with the authorisation of the transaction by a general meeting or other meeting of shareholders, or by the directors or any committee of directors, or the non-fulfilment of any condition imposed by the memorandum or articles in connection with the transaction.'

- 11) If, as contended in the plaintiff, the defendant no.4 is accused of not seeking a company resolution, from defendant no.2, before registering a sale of the car in question, this cannot hold in light of section 39 (1) of the Companies Act, which gives protection to third parties

dealing with directors of the company from being held liable for internal irregularities in the running of the company affairs.

12) It is clear in my view that the actions that are complained of in relation to the defendant no.4 in the plaint cannot form the basis of any liability for which the defendant no.4 can be held liable, in so far as acting on a transfer signed by a director of the plaintiff no.1 is concerned. Though on the face of it the plaint does allege a right which it claims has been violated for which it would hold the defendant no.4 liable, viewed in light of applicable law, the plaintiffs cannot succeed on those contentions even if they were to be proved. Even if those contentions were to be accepted to be factual they would result in no liability against the defendant no.4., given the provisions of section 39(1) of the Companies Act.

13) Technically it could be accepted that the plaint has on its face articulated a right, and that such right has been violated for which it holds the defendant no.4 liable. However the facts so articulated, viewed against controlling law, cannot result in liability against the defendant no.4. In my view the plaint, in those circumstances, does not establish a reasonable cause of action. In the result I will uphold the preliminary objection. I find that this plaint does not disclose a reasonable cause of action against the defendant no.4. The action against the defendant no.4 is dismissed with costs.

Signed, dated and delivered at Victoria this 4<sup>th</sup> day of March 2013

FMS Egonda-Ntende  
**Chief Justice**