

In the Supreme Court of Seychelles

Gilbert Esparon & ors

VS

Larry Moustache & ors

Civil Side No: 108 of 2009

M. W. Lucas for the Plaintiffs
Mr. Chetty for the 1st defendant
Mr. Chang Sam for the 7th defendant

RULING

Seven Plaintiffs entered a Plaint on 29th April, 2009 suing three Defendants for damages arising out of a motor vehicle collision claiming the total sum of SR528,600.00.

The Process Server made a return of service on 22nd September, 2009 indicating that the 1st Defendant could not be found and had received information that he had since left Seychelles for good. He was therefore not served with summons and Plaint. Learned Counsel appearing for the Plaintiffs prayed the Court to adjourn the case against the 1st Defendant sine die and to proceed against the 2nd and 3rd Defendants.

The 3rd Defendant duly entered its Statement of Defence on 18th September, 2009 denying all the material averments of the Plaintiff.

On 20th October 2009 Learned Counsel for the 2nd Defendant entered a Statement of Defence including a plea in *limine litis* that there is no cause of action against the 2nd Defendant.

The matter was fixed for hearing on 24th and 28th November, 2011 and in the meantime the 1st Defendant was to be accordingly served.

On 13th October, 2011, Learned Counsel for the Plaintiffs having established that the 1st Defendant is on overseas training moved the Court to adjourn the case sine die with liberty to restore. The application was granted without objection.

On 15th February, 2012 Learned Counsel for the Plaintiffs entered an "Application for Reinstatement of Case and Leave to Amend Plaintiff". This Application was supported by an Affidavit sworn by the Plaintiffs' Counsel. Paragraphs 6 and 7 of the Affidavit state as follows:

"6. That all the Plaintiffs were casualties resulted from the accident caused by the 1st Defendant which is the subject matter of the Plaintiff.

7. That the Plaintiffs have reconsidered the case and decided to pursue the claim against the owner of the vehicle who is the 2nd Defendant in term of vicarious

liability which gives rise to this application to substitute the original Plaint by an amended Plaint”.

A copy of the proposed Amended Plaint was also attached to the Application.

Procedural objection was raised by Learned Counsel for the 3rd Defendant in that there were two distinct matters contained in the Application of the Plaintiff. One is an application for re-instatement and the other is an application for amendment of the Plaint. The Court brought the point raised to the attention of Plaintiffs’ Counsel as that was an obvious procedural flaw and directed Plaintiffs’ Counsel to have this rectified before this Court can entertain the Application.

Learned Counsel for the Plaintiff accordingly filed separate application for leave to amend the Plaint and supported the Application by an Affidavit sworn by Counsel repeating similar paragraphs 6 and 7 as earlier quoted above.

At the sitting of the Court on 13th June, 2012 Learned Counsel for the 3rd Defendant objected to the Application itself and paragraph 7 of the Affidavit in particular. He submitted that the Plaintiff has to reconsider and decided whether to pursue the matter unless the Deponent allows a non-existent entity. He added that the Seychelles Marketing Board was dissolved on 30th December, 2009 by Act 22 of 2009, so the Deponent could not have got in touch with somebody who does not exist. There was a winding-up and there is nothing to do with the case in Court.

Learned Counsel for the 2nd Defendant repeated the point raised and the argument in support as advanced by Learned Counsel for the 3rd Defendant.

Learned Counsel for the Plaintiffs conceded that there has indeed been a technical error on his part as the process of winding-up is still on going with a Mr. Dias as the Liquidator and that he will undertake to do the necessary in order to amend the Plaint and substitute the correct Plaintiff.

I have verified Act 22 of 2009 dated 16th December, 2009 which repealed the Seychelles Marketing Board (SMB) Act Cap 218. That effectively caused the SMB to become a non-existent legal entity as of that date and as such it cannot sue and be sued in its own name. The Act made provision for the continued existence of SMB only for the purpose of winding-up.

Learned Counsel deponed to an Affidavit on 9th April 2012 containing averment that:

“That all the Plaintiffs were casualties resulted from the accident caused by the 1st Defendant which is the subject matter of the Plaint.

That the Plaintiffs have reconsidered the case and decided to pursue the claim against the owner of the vehicle who is the 2nd Defendant in term of vicarious liability which gives rise to this application to substitute the original Plaint by an amended Plaint”.

These averments cannot stand as the 7th Plaintiff stated in the Complaint is Seychelles Marketing Board, a legal entity that had since become non-existent since 16th December, 2009.

I find that the Affidavit in support of the Application for leave to amend the Complaint contains matters that are substantially and overtly not factual thus rendering the Affidavit lacking in substance and thus cannot support the Application. Consequentially, the Application being not supported by an Affidavit renders it ineffective for consideration by the Court. The end result is that there is no Application for leave to amend a Complaint before this Court. The suit remained adjourned *sine die with liberty to restore*.

I award cost to the 2nd and 3rd Defendants.

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B. RENAUD
JUDGE

Dated this 3 July, 2012 at Victoria, Mahe, Seychelles