

SUPREME COURT OF SEYCHELLES

Reportable

CC78/2025

ERIC WEIFFENBACH

(represented by Ms. Salina Sinon)

Plaintiff

and

ALAIN PERCY ADRIENNE

(represented by Mr. Basil Hoareau)

Defendant

Neutral Citation: *Weiffenbach v Adrienne* (CC 78/2025) 23rd January 2026

Before: N. Burian, Judge

Summary: Prescription-acknowledgment of debt

Delivered: 23rd January 2026

SUMMARY

The plea in limine litis is upheld only to the extent that instalments falling due outside the relevant prescriptive period are barred, but the action is not prescribed in its entirety.

RULING ON PLEA IN LIMINE

N. BURIAN, JUDGE

BACKGROUND FACTS:

- [1] Eric Weiffenbach (“the Plaintiff”) has instituted proceedings against Alan Percy Adrienne (“the Defendant”) based on an alleged Acknowledgment of debt dated 31 October 2017. In that document, the Defendant is said to have acknowledged owing the Plaintiff the sum of Seychelles Rupees One Million (SCR 1,000,000/-) and to have undertaken to repay the amount by consecutive monthly instalments of Seychelles Rupees Five Thousand (SR 5,000/-), commencing on 1 December 2017, until the debt was fully discharged.

- [2] It is alleged that the Defendant has failed to make any payments in accordance with the terms of the acknowledgment of debt and is consequently indebted to the Plaintiff in the sum of SR 1,000,000/-. The Plaintiff therefore seeks judgment against the Defendant for the said sum, together with interest at the legal rate and the costs of the suit.
- [3] Counsel for the Defendant has now raised a *plea in limine litis* that the cause of action on which the suit is based is prescribed in accordance with Article 2271(1) of the Civil Code of Seychelles 2020 because the suit has been instituted more than five (5) years after the alleged cause of action, and/or the right to institute the suit arose.

SUBMISSIONS OF THE PLAINTIFF:

- [4] The Plaintiff draws the Court's attention to the fact that the Acknowledgment of debt executed on 31 October 2017 provided for repayment of the sum of SCR 1,000,000/- by monthly instalments of SR 5,000/- commencing on 1 December 2017. On that basis, the debt would have been fully discharged over 200 monthly instalments, with the final payment falling due on or about 1 July 2034. The present action was instituted on 13 August 2025 and thus it is therefore conceded that given the long-term nature of the repayment schedule, part of the claim is in fact prescribed. Specifically, the instalments falling due between 1 December 2017 and 1 August 2020 are said to be time-barred, amounting to a total of SR 165,000/-.
- [5] However, it is submitted that the balance of the debt, being SR 835,000/- and comprising instalments falling due from 1 September 2020 onwards, is not subject to prescription.
- [6] This argument is founded on the principles articulated in *General Insurance Company of Seychelles v Bonte* (1995) SCCA 12. In that case, the claim concerned salary payments due annually over a period from the years 1982 to 1992. A plea of prescription was raised, and the Supreme Court held that each annual salary constituted a separate and distinct obligation, each subject to its own prescriptive period. Consequently, the claimant was entitled only to recover amounts due within the five years preceding the filing of the action. That reasoning was upheld on appeal by the Seychelles Court of Appeal.

- [7] Applying those principles to the present case, the Plaintiff submits that prescription operates only in respect of instalments that fell due more than five years prior to the institution of the proceedings, and not in respect of the remaining balance of the debt. It is further argued that each instalment payable pursuant to the acknowledgment of debt is subject to prescription individually, as the obligation was structured to be discharged over time rather than in a single lump sum. Accordingly, each monthly instalment gave rise to a separate and distinct obligation.
- [8] On this basis, while a cause of action arose in December 2017 when the first instalment fell due and was not paid, that cause of action related only to the December 2017 instalment. The prescriptive period in respect of that instalment therefore began to run from its due date. It is submitted that a fresh cause of action arose with each subsequent default, and that the prescriptive period ran independently from the date on which each instalment became due.

SUBMISSIONS OF THE DEFENCE:

- [9] Counsel for the Defence does not accept the arguments advanced by counsel for the Plaintiff. He draws the Court's attention to the case of *General Insurance Company of Seychelles v Bonte* (supra), which he submits is distinguishable from the present matter. Counsel argues that the ratio decidendi in that case arose in the context of a 'continuous contract' of employment. It is submitted that, in *Bonte*, the Court's determination turned on the fact that the appellant's claim related to an ongoing employment relationship. The Court of Appeal held that the claim in respect of the appellant's employment was entirely prescribed, whereas the claim arising from his directorship was not prescribed, as he had continued to hold office as a director for a defined period. The distinction lay in the continuity of the contractual relationship and the subsistence of the office held by the appellant. Counsel therefore argues that the reasoning in *Bonte* is not applicable to the present case.
- [10] It is further submitted that the Acknowledgment of debt in issue does not create a continuing obligation of the nature contemplated in *Bonte*, and that the principles relied upon by the Plaintiff cannot properly be transposed to the circumstances of this matter. Counsel argues that it was the existence of a continuous contractual relationship which led both the Court of Appeal in *General Insurance Company of*

Seychelles v Bonte to conclude that there was no waiver of prescription in respect of part of the claim, and that the appellant was entitled to recover remuneration for the period during which he continued to serve as a director. In the present case, counsel argues that no such continuous contract exists. An Acknowledgment of debt, it is submitted, constitutes a single transaction, concluded upon its execution, by which the Defendant undertook to commence repayment of the debt as from 1 December 2017. Once that obligation arose, time began to run for the purposes of prescription.

[11] Counsel further contends that the breach occurred on 1 December 2017, being the date on which the first instalment fell due and no payment was made. On that basis, it is argued that prescription began to run from that date, as the Defendant failed to perform his obligation in accordance with the terms of the Acknowledgment of debt. Counsel argues that a continuous contract of employment cannot be equated with an acknowledgment of debt for the purposes of continuity and it is submitted that an acknowledgment of debt constitutes a single transaction, and that no continuing contractual relationship subsists between the parties following its execution. Counsel further argues that, once the cause of action arose, it was incumbent upon the Plaintiff to pursue legal proceedings against the Defendant for breach of the Acknowledgment of debt.

[12] Accordingly, counsel urges the Court to uphold the *plea in limine litis* raised by the Defendant, namely that the action is prescribed pursuant to Article 2271(1) of the Civil Code, in that the suit was instituted more than five years after the cause of action, or the right to institute proceedings, arose. On that basis, it is submitted that the suit is prescribed and ought to be dismissed.

LAW AND ANALYSIS

[13] The Defendant raises a *plea in limine litis* that the Plaintiff's claim, based on an acknowledgment of debt dated 31 October 2017, is prescribed under Article 2271(1) of the Civil Code, on the ground that the suit was filed more than five years after the cause of action arose.

[14] The central question is therefore whether prescription, in a debt payable by monthly instalments, runs:

- (i) once and for all from the first missed instalment (as argued by the Defence), or
- (ii) separately from the due date of each instalment (as argued by the Plaintiff).

- [15] This Court has not had the privilege of having sight of the acknowledgment of debt but as per the plaint it is alleged that the Defendant acknowledged a debt of SR 1,000,000/-, and undertook to repay it in consecutive monthly instalments of SR 5,000/-, commencing 1 December 2017, until fully discharged. It is further alleged the Defendant made no payments at all, and the Plaintiff seeks judgment for the full SR 1,000,000 plus interest and costs.
- [16] Although this Court is applying Seychelles law, the Court has noted the jurisprudence of the French courts which is both direct and substantial in providing some clarity on the point of law raised. The first civil chamber of the Cour de Cassation¹ rendered a decision concerning debts payable by successive instalments. The dispute arose from a long-term loan agreement, repayable over four hundred and twenty monthly instalments. Following defaults in payment, the creditor bank ultimately pronounced “*déchéance du terme*” and initiated enforcement proceedings. The borrowers responded by asserting that the bank’s action was prescribed, relying on the argument that prescription had begun to run from the date of the first unpaid instalment and had fully accrued two years thereafter under the applicable consumer prescription regime. The Court of Appeal in Bordeaux accepted this reasoning and declared the entirety of the bank’s action prescribed, ordering, inter alia, the discharge of the mortgage securing the loan.
- [17] The Cour de Cassation however condemned this approach in unequivocal terms and at the heart of its reasoning lies the principle that, in the case of a debt payable by successive terms, prescription follows the same divisibility as the debt itself. Where a debt is fractioned in time, its enforceability is likewise fractioned, and prescription cannot be artificially unified without distorting the nature of the right being extinguished. The ruling carefully distinguishes between two categories of claims arising from such a contractual arrangement. On the one hand are the monthly instalments which have fallen due and remain unpaid. Each of these gives rise to an

¹ Cour de cassation, première chambre civile, 6 février 2019, pourvoi no 18.10.398, inédit
<https://www.legifrance.gouv.fr/juri/id/JURITEXT000038137097>

autonomous cause of action from the moment of its individual eligibility. Prescription, accordingly, begins to run separately for each instalment from its own due date. On the other hand, stands the claim for the capital balance, which is not eligible by default but only becomes so upon the creditor's exercise of a contractual or legal right to accelerate the debt. The Court makes it clear that prescription of the action for payment of the capital balance cannot begin before that acceleration, because prior to that moment the creditor is legally incapable of demanding immediate payment of the entire outstanding sum.

[18] This reasoning exposes the fundamental error committed by the Court of Appeal in Bordeaux because by treating the first unpaid instalment as the starting point of prescription for the entire debt, the lower court effectively allowed prescription to run against claims which were not yet legally actionable. Of particular importance is the Court's implicit rejection of the idea that the unity of the contractual instrument implies unity of prescription. The loan contract was undoubtedly a single juridical act, but it generated a plurality of obligations unfolding over time. The Cour de Cassation thus reinforces a classic but sometimes overlooked distinction between the source of the obligation and its modalities of performance. Prescription attaches not to the instrument itself but to the enforceable rights it produces. Ultimately, the Cour de Cassation's decision reaffirms that prescription must be analyzed claim by claim, obligation by obligation, and that courts must resist the temptation to simplify complex temporal obligations by collapsing them into a single prescriptive timeline.

[19] This comparative articulation is particularly instructive because it addresses the precise legal error that could arise if the courts were to treat an instalment debt as a single cause of action arising entirely upon the first default.

Is the document to be viewed as a "single transaction" or "successive obligations":

[20] The Defence characterises the acknowledgment of debt as a "single transaction", and submits that therefore the cause of action must be treated as having arisen entirely on the first default. However, even if the Acknowledgment of debt is a single written instrument executed on one date, the obligation created by it is not to pay one sum at one time, but rather to pay SCR 5,000 each month, consecutively, over a lengthy period.

[21] Whilst the Court is satisfied that the acknowledgment is a single act, it does not in the Court's view give rise to a single, immediately enforceable obligation for the whole sum. The structure if properly analysed is a debt payable by successive terms, such that each instalment constitutes a performance owed at a distinct time. On that logic, the Court is persuaded that prescription cannot fairly or legally be treated as running globally from the first missed instalment in December 2017, because such an approach would collapse the payment timetable and treat future obligations (not yet due at that time) as though they were immediately claimable.

[22] It is therefore evident that the Defendant's plea is premised on a misunderstanding of the nature of the obligation created by the acknowledgment of debt and if the argument was to be accepted it would allow prescription to extinguish rights before they come into existence. Furthermore, it would also lead to manifestly illogical consequences, particularly in long-term repayment arrangements, where a creditor would be compelled to sue immediately upon the 1st Default or risk losing the entirety of the claim, including sums not yet due.

[23] This aligns with the reasoning expressed by the French apex court, namely that in instalment debts, "*prescription divides like the debt itself*" and runs separately from the due date of each fraction.

Applicability of the case of General Insurance Company of Seychelles v Bonte:

[24] The Defence argues that Bonte is distinguishable because it arose from an employment contract, allegedly a "continuous contract," and that no comparable continuity arises in an acknowledgment of debt.

[25] With respect, the decisive factor is not whether the underlying relationship is employment, directorship, loan, or acknowledgment of debt; rather, it is whether the obligation is structured as repeated payments falling due at different times, each giving rise to an enforceable claim when due. That is precisely the principle the Plaintiff invokes with its argument that each instalment payable is a distinct obligation attracting its own prescriptive period.

[26] The Court de Cassation reinforces this interpretation in a context wholly unrelated to employment, namely a repayment of a loan by monthly instalments, and treats the

prescription as divisible for that reason. Accordingly, this Court finds that the Defendant's attempt to confine the divisible prescription approach to "continuous employment" contracts is not persuasive when applied to obligations payable by instalments.

The correct starting point of prescription in the present case:

[27] The Defence asserts that the breach occurred on 1 December 2017 and that prescription therefore began to run as from that date for the entire debt. The Court accepts that a cause of action arose in December 2017, but is of the view that it arose in respect of what was due and payable at that time, namely the December 2017 instalment, not necessarily the full debt of SCR 1,000,000/-. In other words, the default on 1 December 2017 triggered enforceability of one instalment, and each subsequent failure to pay a later instalment triggered enforceability of that later instalment when it fell due.

[28] This approach is consistent with the Plaintiff's submission that "*a fresh cause of action arose with each subsequent default,*" and prescription runs independently from the date each instalment became due and the French formulation that the action for unpaid monthly instalments prescribes from their respective maturity dates.

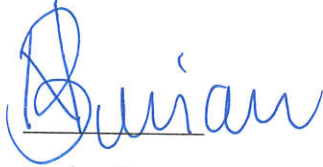
[29] In the present case, the Plaintiff claims the full SCR 1,000,000/-, but the repayment schedule clearly contemplates that the debt is to be discharged by instalments over time. The record before the Court does not indicate, at least at this stage of the plea, that the Plaintiff has any entitlement to accelerate the whole balance accordingly, the Court considers that the cleanest analysis, for purposes of prescription, is to treat the claim as one for sums payable by instalments, subject to prescription separately.

CONCLUSION AND ORDER

[30] For those reasons, the Court finds that the Defendant's submission that the entire suit is prescribed too broad and does not properly reflect the structure of an instalment obligation. The Court is of the view that prescription would apply only to instalments which fell due more than five years prior to the filing of the action and as such the instalments falling due within the five-year prescriptive period remain actionable.

[31] The *plea in limine litis* is therefore upheld only to the extent that instalments falling due outside the relevant prescriptive period are barred, but the action is not prescribed in its entirety.

Signed, dated and delivered at Ile du Port on 23rd January 2026



Burian J

