

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 507
CS 119/2019

In the matter between:

BEAU VALLON PROPERTIES LTD
rep by its director Mr Yuri Khlebnicov

1st Plaintiff

and

EASTERN EUROPEAN ENGINEERING LTD
rep by its director Mr Vadim Zaslouov
(rep. by E Chetty)

2nd Plaintiff

v

Denis Verkhoburov
c/o Georges and Associates Chamber
(rep. by Ms. Louise)

Respondent

Neutral Citation: *Beau Vallon Properties Ltd and Anor v Verkhoburov* (CS 119/2019) [2020]
SCSC 507 (30th July 2020)

Before: Govinden J

Summary: Dismissal of No Case to Answer submissions

Heard: 16th October 2019

Delivered: 30th of July 2020

ORDER

The Defendant has a case to answer

RULING

R. GOVINDEN J

- [1] The 1st Plaintiff has made averments in the plaint which are to the following effect; that the Defendant was one of its former employees and that their employment agreement contained a confidentiality clause that prohibited the Defendant from disclosing any information that was considered confidential. It is his further averments that contrary to the provisions of this agreement the Defendant has revealed confidential information to a third party that he has obtained during the course of his employment. Due to the alleged act of the Defendant the Plaintiff avers that he had incurred damages in the amount of RS 1, 000,000 of which the former has to make good.
- [2] The Defendant on the other hand denies those averments. He avers that at no point were confidential information given by him to any third party and he puts the Plaintiff to the proof of those allegations. It is the defence of the Defendant that these allegations are but a ploy to prevent him from giving evidence on the bad practices of the Plaintiff in a suit before the court. As a result, he denies any liability for damages.
- [3] The Plaintiff has led evidence of Mr Vadim Zaslomov one of its directors. Learned counsel closed the case for the Plaintiff after leading his evidence.
- [4] Upon the closing of the case for the Plaintiff, Learned counsel for the Defendant has submitted that her client has no case to answer. She was put to her election by the court and she elected not to call any evidence if the court's Ruling was to go against her client. The election was put in accordance with the Supreme Court decision of *Victor vs Azemia*, SLR 1977, page 195. Accordingly, the Defendant would not be entitled to call evidence if this Ruling goes against him.
- [5] The Court's authority to make a finding of no case to answer at the close of the claimant's case arises from the English Civil Procedure Rules. We have borrowed these Rules in the silence of our procedural law. It is almost trite to say that the English Civil Procedure Rules, under r. 3.1 gives the Court wide-ranging powers to manage a case both at the pre-trial and trial phase. Specifically, r. 3.1 (2) (m) gives the Court the power to "take any... step or make any... order for the purpose of managing the case and furthering the overriding objective" over and above the specific orders and directions specified earlier in that rule. In support, it would appear an oddity that the Defendant has the power to

seek summary judgment on the basis that a plaintiff has no reasonable prospect of success at the pre-trial stage (see r.24.2), but would be denied such an opportunity, if after a plaintiff gives evidence, grounds for contending that he has no reasonable prospects of success arise. This as it may, the test for the Court to apply is the same as that for summary judgment, namely, whether the Plaintiff has 'no real prospect of success and has no prima facie case'.

- [6] In *Benham Limited v Kythira Investments Ltd and Anor* [2003] EWCA Civ 1794 the Court of Appeal of England echoed the pronouncement of earlier courts that a court should rarely entertain a submission of no case to answer and dismiss the action at the close of the claimants evidence without putting the Defendant to his election. The disadvantages were put as follows by Simon Brown LJ:

"The disadvantages of entertaining a submission of no case to answer are plain and obvious and have been spelled out already in the cases. Essentially, they are twofold. First, as Mance LJ explained the submission interrupts the trial process and requires the judge to make up his mind as to the facts on the basis of one side's evidence only and applying the lower test of a prima facie case with the result that, if he rejects the submission, he must then make up his mind afresh in the light of whatever further evidence has been called and then on the application of a different test. This, to say the least, is not a very satisfactory procedure. The second disadvantage... is that if the judge both entertains and accedes to submission of no case, his judgment may be reversed on appeal with all the expense and inconvenience resulting from the need to resume the hearing or, more probably, retry the action."

- [7] I have carefully applied my mind to the entirety of the pleadings in this case including the Motion and the Objection thereto and their accompanying affidavits in the light of the evidence led on behalf of the Plaintiff. I did so bearing in mind the applicable legal principles. Having done so, I find that the Defendant has a case to answer as the Plaintiff has shown that he has a prima facie case. I therefore Rule that the Defendant has a case to answer and he is called upon to make his defence.

Signed, dated and delivered at Ile du port on the 30 July 2020

Govinden J