

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO. 85/93

In the matter between:

SWAZILAND RANCHES LIMITED

t/a

TAMBANKULU ESTATES

Plaintiff

and

CHARLES RUDD

Respondent

CORAM :

Sapire A.J.

FOR THE APPLICANT :

Mr. Flynn

FOR DEFENDANT :

Mr. Mamba

JUDGMENT

13/08/93

Sapire A.J. ,

The defendant has excepted to plaintiff's summons as amplified by further particulars supplied in answer to a request therefor. Plaintiff has alleged that the defendant was formerly its employee, but has not expressly stated that the events and circumstances which are alleged to give rise to its cause of action, took place during the time that the defendant was in its employ. Whether this is significant or not is like a number of aspects of plaintiff's case not clear from the particulars of claim as amplified.

The plaintiff alleges that on 30th June 1992, the defendant purchased on plaintiff's account, a motor vehicle to the value of E57612.

2

This allegation is ambiguous as it would appear that the amount of the purchase price was E57612, and that, that amount may or may not be the value of the vehicle. This is significant in relation to the claim in so far as it is based on unjust enrichment. It is also not clear whether the defendant purchased the vehicle for himself or for the plaintiff, and whether it was the plaintiff or the defendant which acquired the vehicle.

One may infer that what the plaintiff intends to allege is that the plaintiff in fact authorised the defendant to purchase a vehicle for himself for which the plaintiff would pay, the purchase price, which was not to exceed E47,000.

This can be gleaned from the particulars with reference to the further particulars supplied. I read the summons as I must do as so amplified. Paragraph 4 of the particulars of claim so read is inaccurate in

that it means that the defendant had no authority to purchase a motor vehicle at all, whereas the further particulars make it clear that he did have limited authority to purchase a vehicle.

The plaintiff alleges that the defendant misrepresented to members of plaintiff's staff, who were charged with the payment of plaintiff's accounts, that the purchase of the vehicle for E57,612 was authorised, and so induced them to make payment to the supplier of the vehicle in that amount.

3

It would seem that once the defendant was authorised by the plaintiff to purchase a vehicle, the supplier would not be bound by any private limitation of that authority as between the plaintiff and the defendant.

Paragraph 8 of the summons becomes a non sequitur if the defendant had been authorised by the plaintiff to purchase a vehicle for himself for a purchase price of E47,000, which the plaintiff was to pay, and if exceeding his authority, the defendant purchased a vehicle for E57,612, thereafter inducing the plaintiff's staff to pay the greater amount. If E4,800, has been recovered from the defendant, arising from the transaction, it is difficult to see how the defendant has been enriched in an amount of E54608.75 as plaintiff has pleaded, or how the plaintiff has been correspondingly impoverished.

It does not seem to me that unjust enrichment is the appropriate cause of action in the premises of plaintiff's particulars of claim. It is not specifically alleged whether the alternative claim is made on the basis of a fraudulent negligent or innocent misrepresentation and the amount of damages claimed does not seem to accord with the facts alleged.

The steps taken by the defendant to attack the summons, namely a notice to remove cause of complaint and a subsequent exception appear however to be misdirected.

4

The notice required the plaintiff to remove a cause of complaint that the defendant was embarrassed because the further particulars introduced a new cause of action. The complaint is not justified.

Although as I have observed, paragraph 1.1 of the further particulars, must be read as varying the allegations in paragraph 4 of the particulars, no new cause of action is introduced. The exception on the basis of the summons being vague and embarrassing on the grounds complained of must fail.

This does not mean that the particulars as amplified are not subject to attack on some other ground.

The second ground of exception is that the particulars as amplified are deficient of allegations to sustain a cause of action based on fraudulent misrepresentation. It is by no means clear whether the plaintiff does or does not rely on a fraudulent misrepresentation, but the plaintiff does not have to put a label to its cause of action. The test I must apply is whether if at the trial the plaintiff establishes by evidence the allegations it has made, it may be entitled to some relief, whether in the amount claimed or some lesser amount. On this test the exception cannot succeed.

5

If the scenario which I have gleaned from the confused allegations in the summons is established, the plaintiff would be entitled to some relief, as the defendant would have caused the plaintiff to pay out more for the vehicle than the defendant was authorised to spend in terms of the underlying agreement between them. This situation would give rise to a claim for damages.

I have considered, having regard to the defects in the particulars of claim whether I should make any order as to costs, but have concluded that as the exception has been taken on grounds which are misconceived, there is no reason to deprive the successful party in these interlocutory proceedings, of its costs.

The exceptions are dismissed with costs.

SAPIRE A.J.