

SUMERU LTD v RODRIGUES REGIONAL ASSEMBLY
[The Supreme Court of Mauritius – Court of Civil Appeal]
2018 SCJ 70
SUMMARY

Facts: This is an appeal against a judgment of the learned trial Judge who upheld a plea in limine litis raised by the then defendant and set aside the plaint with summons lodged by the plaintiff. Whilst the plaintiff's case rested on a breach of contract by the then defendant, the latter raised preliminary objections to the effect that the plaint with summons disclosed no cause of action against it and that the plaintiff had failed to aver that the then defendant as 'commettant' is liable for the wrongful acts and doings of its 'préposés' and relied on Section 2 of the State Proceedings Act (SPA) which concerns "Liability of the State in tort".

Held: As regards the status of the Rodrigues Regional Assembly (RRA), the Court agreed with learned Senior Counsel for the plaintiff that the RRA is a body corporate exercising its function on behalf of the Government by way of delegated authority and hence it is not the State. The Court further stated that if the RRA were to be equated to the State, the requirements of Section 2 of the SPA would still not apply. A case of breach of contract against the State would, instead, involve Section 1 of the SPA which provides for the "Right to sue the State".

The Court held that the trial Judge relied heavily on the case of **DSA Company Ltd v The Ministry of Public Infrastructure [2013 SCJ 485]** and wrongly interpreted the following paragraph: "*in the absence of any specific averment in the plaint with summons to the effect that the defendant is liable as a "commettant" for a breach of contract initiated by its "préposé", the plaint with summons does not...disclose a proper cause of action*". The cited passage can only mean that the liability of the "commettant" extends not only to a 'faute délictuelle' of its préposé but also to a breach of contract initiated by a préposé. But it does not mean that in a case of breach of contract, there should be specific averment in the plaint with summons that the defendant is liable as a "commettant" for a breach of contract initiated by its "préposé". Since the question of specific averments has not been expressly canvassed by the Full Bench, it was not proper for the learned judge to infer such a requirement.

As far as a body corporate, a municipal council, a local authority or a company is concerned, when there is a breach of contract by that body, same cannot be attributed to the officers or employees who may have initiated that process on behalf of, and at the request of, that body. In the circumstances, they cannot be said to have personally committed any "faute contractuelle" or to be individually responsible in any way. Hence, in a case of breach of contract, there is no need to aver any "lien de subsidiarité".

The Court, therefore, held that that the action has been rightly entered against the then defendant in its capacity as a contracting party in its own right and that there was no need to aver the relationship of "commettant" and "préposé" in the plaint with summons. The Court also took judicial notice of the fact that the same reasoning as that of the learned trial Judge was applied in another Supreme Court case of **Westport Enterprise Ltd v The State of Mauritius [2017 SCJ 256]** and held that that decision was also wrong for the same reason given in this judgment.

This summary is provided for information purposes and to assist in understanding the Court's decision. It does not constitute legal advice. The full judgment of the Court is the only authoritative document.

Short Summary

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In the present matter, the Court held that in a case of breach of contract, there is no need to aver any “lien de subsidiarité”. Having found that the grounds of appeal were well taken, the Court of Civil Appeal allowed the appeal, quashed the decision of the learned trial Judge. The Court also found that the decision in the case of **Westport Enterprise Ltd v The State of Mauritius [2017 SCJ 256]** is also wrong for the same reasons given in this judgment.