

Civil procedure - Application for Summary judgment under O.14 RSc -
Dishonoured cheques - Bills of Exchange - Bills of Exchange
Act - notice of dishonour must be given to defendant or
statement of facts relied on as excusing the giving
of such notice - Application dismissed.

PRINCIPAL REGISTRY

CIVIL CAUSE NO.1524 OF 1992

BETWEEN:

V. HASSAM & COMPANY (A FIRM) PLAINTIFF

- and -

HARUN HASSAN SACRANIE t/a
PLASTICHEM INDUSTRIES DEFENDANT

CORAM: MWAUNGULU, REGISTRAR

Chizumila, Counsel for the Plaintiff
Maulidi, Counsel for the Defendant

O R D E R

The plaintiff in this action applies for summary judgment in respect of part of the claim in an action commenced on the 22nd of December, 1992. This is a case where the defendant must be given unconditional leave to defend. On the conclusions that I have drawn on the pleadings and the affidavits in support and in opposition of the application for summary judgment, it is unnecessary to consider the arguments and authorities from Counsel.

The action is divided into two parts. The substantive cause of action is based on cheques purportedly drawn by the defendant to the benefit of the plaintiff. Some cheques were dishonoured. Others were countermanded. Others payment had been stopped. The legal effect of all these situations is that the cheques were dishonoured. The other part of the claim is for the value of goods purportedly sold to the defendant by the plaintiff. No cheque was issued in respect of this transaction.

There is a defence filed where liability is denied. The gravamen of the objection is that, albeit the defendant included Mr. Hassan as a signatory on the account of the

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defendant's firm, the transaction between the plaintiff and Mr. Hassan were personal and unrelated to the business which, was not operational, although the cheques of the Company were issued and signed by Mr. Hassan.

On the 10th of May, 1993 the plaintiff took out this summons under Order 14 for summary judgment in respect of the dishonoured cheques. As I said earlier, it is unnecessary to consider the argument by the plaintiff touching the effect of the cheques and the law touching cheques where there is an application for summary judgment. I think one could start from the premise that this action is based on dishonoured cheques or bills of exchange.

The convenient point to start would be Section 48 of the Bills of Exchange Act:

(Cap. 48:02)

"Subject to this Act, when a bill has been dishonoured by non acceptance or by non payment, notice of dishonour must be given to the drawer and each endorser, and any drawer or endorser to whom such notice is not given is discharged"

What I understand the law to be is that no cause of action arises on a bill of exchange if notice of dishonour is not given to the drawer or indorser of the dishonoured bill. I think I should include a crisp and pertinent statement of Wills, J. in May v. Chidley 1894 1 K.B. 451, 453:

May v. Chidley and Another (1894) 1 Q.B. 451

"A defendant in an action on a dishonoured cheque is not indebted unless notice of dishonour has been given".

Since a defendant in an action of dishonoured bill is not indebted unless notice of dishonour has been given, a statement of claim that does not specifically plead that a notice of dishonour was given is defective in that it does not disclose a cause of action.

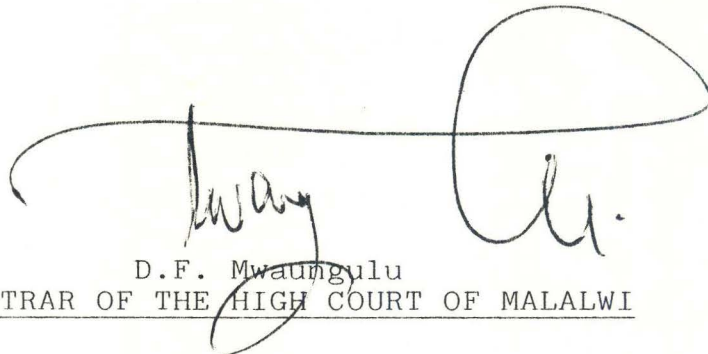
Under Order 14 it is important that the affidavit in support of the application should verify the claim as disclosed in the statement of claim and also specifically state that in the defendant's opinion there is no defence to the action. I fail to see how the latter requirement can be fulfilled if, like in this case, the statement of claim does not contain, as it should, an allegation that notice of dishonour was given to the defendant or a statement of the facts relied on as excusing the giving of such notice (Frühau v. Grosvenor & Co. (1892) 61 L.J. Q.B. 717; May v. Chidley *ibid*,; and Roberts v. Plant (1895) 1 Q.B. 597).

3/.... *Frühau v. Grosvenor and Co. (1892) 61 L.J.Q.B.; 67 L.T. 350*

This case can be distinguished from May v. Chidley in that in Chidley case the statement of claim contained a notice of dishonour. The only question before the Court was whether that fact having not been deposed in the affidavit in support of the application for summary judgment, under Order 14, the summons could be impugned. Justice Wills, with who Justice Lawrance agreed, was of the view that a statement of claim would be defective if an allegation of notice of dishonour was omitted, but that it was not necessary that the fact of the notice of dishonour should be included in the affidavit in support of the application. Again, unlike in the case of Roberts v. Plant, there has been no application to amend the statement of claim on this score.

I dismiss the application with costs and give unconditional leave to the defendant to defend the action.

MADE in Chambers this 19th day of November, 1993 at Blantyre.

A large, stylized handwritten signature in dark ink, appearing to read 'May Ch.', is written over the printed name and title.

D.F. Mwaungulu
REGISTRAR OF THE HIGH COURT OF MALAWI