

FTCC 024/22

2022

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NO.1

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION

BETWEEN

HARRY'S (SL) LIMITED

-PLAINTIFF

AND

MR. MOHIT RAMCHANDANI & ANO

-DEFENDANT

RULING DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR
ON THE 12TH MAY 2022

A. K. KOROMA -COUNSEL FOR THE PLAINTIFF/APPLICANT

The Plaintiff have approached this court by Judge's Summons dated 21st April 2022 praying for judgment to be entered against the defendants for Damages for breach of Contract. The application is made pursuant to Order 16 rule 1 of the High Court Rules 2007. This provision reads thus;

"Where in an action to which this rule applies a defendant has been served with a statement of claim and has entered appearance, the plaintiff may, on notice apply to the Court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of the claim except as to the amount of any damages claimed"

The Plaintiff maintains that pursuant to clause 13 in agreements with the defendants, both dated 23rd April 2020, the defendant are barred from establishing the same or similar businesses for a period of 5 years after leaving the employ of the Plaintiff.

For a clear understanding, I must reproduce clause 13 thereof verbatim. It reads;

"It is a further condition of this employment contract that while the employee is employed by the employer and for a period of 5 years after leaving the service of the employer for any cause whatsoever, the employee shall not canvass or endeavour to take away from the



employer's company and of the business, customers or clients of the employer. The employee shall not take up employment with any firm, company or person or do business directly or indirectly within 50 miles radius of any town or locality in which the company operates but in which he has not performed any duties under this agreement. Any breach of these conditions will render the employee liable to the employer in full for all travel expenses incurred by the employer on behalf of the Employee from and to India as well as government taxes and fees expended for his sojourn as well as be subjected to legal action in the court of law for breach of this covenant".


In the law of contract, terms of this nature are generally referred to "Restraint of Trade". It is one by which the future liberty to carry on business, trade or profession is restricted in such a manner as is agreed by the parties to the contract. A contract of this nature is prima facie void in law subject however to proof that the restriction is justifiable in the circumstances as being reasonable for the parties in particular and for the community in general.

Over the years this position has been shifted understandably by the courts. We have to hold the balance perfectly. On one hand, if all restraints of trade agreements are held to be valid, this will create monopolies which will not be good for the development of the economy. On the other hand, making void all terms restraining trade will hamper the growth of businesses and institutions as businesses would rather be content with the little they can make with their available labour and expertise than risk losing it all to someone else whose endeavour was to learn trade secrets and carry away customers and or clients.

The case of **Mitchel v Reynolds (1711) 1 P Wms181** laid the foundation of the present day position of the courts with respect to this principle. Lord Macclesfield stated thus;

"Wherever a sufficient consideration appears to make it a proper and useful contract, and such as cannot be set aside without injury, to a fair contractor, it ought to be maintained; but with this constant diversity - namely where restraint of trade of general not to exercise a trade throughout the kingdom and where it is limited to a particular place; for the former or these must be void being of no benefit to either party and only oppressive".

It is quite clear from the above that the standard laid by the common law is that where the restraint of trade is general such as prohibiting the practice of the trade or profession in the entire country, it must be held to be void.



But what about situations as in the present case where the restraint of trade is partial? The Plaintiff's agreement with the defendants is that they must not practice their trade within ".....a 50 miles radius of any town or locality in which he has discharged his duties under the agreement.....". Is it oppressive or should this court hold same as being valid? A proper understanding of this term of the agreement is necessary to aid this court in reaching a conclusion. I understand this to mean that the defendants are prohibited from practicing their trade within a 50 miles radius of any town or locality in which the defendant performed their duties under the agreement for and on behalf of the Plaintiff. That is to say the defendant cannot operate within 50 miles from where they worked for the Plaintiff in fulfilment of the terms of the agreement.

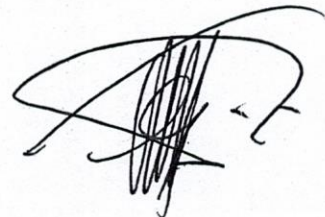
As deposed to in paragraph 8 of the affidavit in support of this application, six months after the terminating their contracts with the Plaintiff, the defendants the defendants took up employment or are running a business at a place known as 6 Miles, Off Waterloo which said business deals in the same type of business as the Plaintiff. The said business is also said to be in close proximity to the Plaintiff's business.

Based on the facts presented before this court, this is precisely the conduct addressed by clause of the agreement between the Plaintiff and the Defendants. The defendants have in about six months after leaving the employ of the Plaintiff become a direct competitor. Conducts like this if left unaddressed have the potential of hampering the growth of businesses and institutions as stated above.

Based on the foregoing, the Plaintiff has approached this court for judgment to be entered against the defendants on the grounds that they do not have a defence to this action pursuant to **Order 16 of the High Court Rules 2007**. The provision reads thus;

"Where in an action to which this rule applies a defendant has been served with a statement of claim and has entered appearance, the plaintiff may, on notice apply to the Court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of the claim except as to the amount of any damages claimed".

By this provision, this court is cloaked with authority to enter judgment for the Plaintiff where after an appearance has been entered for and on behalf to the Defendants, it is made clear to the Court that the defendants have no defence to the action. The circumstances under which this authority can be exercised are laid bare by the Supreme Court in the case of **Aminata Conteh V All People's Congress Civ. App. 4/2004**. The court held that;

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"The object of the order is to ensure a speedy conclusion of the matters or cases where the Plaintiff can establish clearly that the defendant has no defence or triable issues. This draconian power of the court in preventing the defendant from putting his case before the court must be used judiciously. A judge must be satisfied that there are n triable issues before exercising his discretion to grant leave to enter summary judgment. The judge is also obliged to examine the defence in detail to ensure that there are no triable issues".

In the present action the defendant have not filed a defence and have not opposed this application despite being notified of the current state of affairs. As such, there is no defence for this court to examine in detail to see if there are any triable issues at all. Based on this circumstances, as shown above clearly, this court have examined thoroughly the case for the Plaintiff with a view to ascertaining that it does indeed have a valid claim would entitle it to summary judgment being entered in its favour.

I have no doubt in my mind that the plaintiff have made its case and have discharged the burden placed on it by law. It is therefore entitled judgment in this action as prayed for in the writ of summons. In the circumstances judgment is entered for the plaintiff as follows;

1. The Plaintiff is entitled to damages for breach of contract to be assessed.
2. Cost of the action to be assessed.
3. Cost of this application is assessed at Le 5 million each to be paid by the Defendants to solicitors for the Plaintiff.



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HONORABLE JUSTICE LORNARD TAYLOR