IN THE FIJI COURT OF APPEAL

Civil Appeal No. 115 of 1985

Between:

NAVIN CHANDRA, JAYANTILAL and MANUBHAI all sons of Maganlal — Appellants

- and -

VALLABHBHAI NATHUBHAI PATEL s/o Nathubhai — Respondent

Mr. G.P. Shankar for the Appellants

Mr. D.C. Maharaj and K.C. Chhaganlal for the Respondent

Date of Hearing: 18th July, 1986

Delivery of Judgment: 23 July, 1986

JUDGMENT OF THE COURT

Holland, J.A.

This appeal is from a decision of Rooney J. granting the respondent summary judgment under Order 14 of the Rules of the Supreme Court.

The respondent sued and applied for summary judgment for $20,009 with interest and costs in respect of a promissory note signed by the appellants and given to the respondent. The appellants do not dispute that they signed the promissory note. They allege that it was obtained without consideration or for a consideration which has totally failed, or, alternatively that it was induced by fraud on behalf of the respondent.

The appellants, the respondent and others were in partnership together until they entered into a deed dated 24th September, 1983 providing that the respondent and another should be deemed to have separated from the partnership upon the expiry of 31st March, 1983. Under the terms of the deed the appellants and their father were required to pay the respondent $63,834.22 representing the respondent's capital share in the partnership amounting to $43,412.72 together with accrued salary interest and loans due to the respondent's wife and two sons.

The promissory note is dated the same day as the deed. Under the promissory note the three appellants promise to pay the respondent or order "the sum of twenty thousand and nine dollars ($20,009.00) value received free of interest and payable as follows:-

"1. The sum of $10,000 on or before the 31st December, 1983.

2. Balance on or before 24th September, 1984."

In their statement of defence the appellants by implication admit the giving of the promissory note and that nothing has been paid pursuant to it. They plead that all moneys owing to the respondent have been paid and deny that any other moneys are or have ever been owing by them to the respondent. They plead that the respondent fraudulently represented to them that the value of the respondent's share in the partnership was $20,000 plus the amount of $43,412.72 shown in the Deed. This allegation is supported by an affidavit sworn by one of the appellants and stated to be made on behalf of all appellants. To this affidavit the respondent has filed an affidavit in reply in which he states:-

"I deny each and every allegation of fraud and/or fraudulent mis-statement of facts as alleged by the defendant."

Rooney J. dealt with the matter as follows:-

" There are innumerable cases on the proper application of Order 14. It is a procedure designed to put an end to the practice of putting in pleas for the purpose of delay where it is not in the interests of justice that such things continue. Order 14 was intended to prevent sham defences from defeating the rights of parties by delay. (Jacobs v. Booth's Distillery Company 85 L.T.R. 262). However, a defendant who raises an issue which ought to be tried should not be shut out from laying his defence before the Court.

The defendants in the present instance executed a promissory note in favour of the plaintiff on the same day as these parties (and others) signed a deed of dissolution of a partnership which made no provision for the making of the note. They raise as a defence that the plaintiff defrauded them while he was a former partner.

I am not persuaded that the circumstances alleged by the defendants constitute a defence to the action on the promissory note. It is reasonable to assume, in the absence of any other explanation, that the note was issued in settlement of a collateral transaction not directly connected with the former partnership or its dissolution. It could not therefore be affected by the fraud alleged. The defendants have not established a prima facie case of fraud affecting the promissory note or any other defence.

The bald statement in paragraph 4 of the defence that "in fact there is no consideration to support the said note. The said note is therefore uneforceable for want of consideration" cannot override the presumption that the note was given for valuable consideration. "

With respect to Rooney J. we think he may have misconceived the appellants' allegations. Certainly in the appellants' statement of defence they allege fraud on the part of the respondent in the conduct of the partnership. We agree with him that it is difficult to see how such allegations could be a defence to the promissory note. However the appellants allege, supported by affidavit, that the promissory note was obtained as a result of a specific fraudulent representation that the respondent's share in the partnership was worth more than the amount stated in the deed. The respondent in his affidavit in reply has chosen not to disclose the circumstances under which he maintains that the promissory note was given. He merely says:-

> "I deny each and every allegation of fraud and/or fraudulent mis-statement of facts as alleged by the defendants."

There appear to us to be issues raised by the appellants which ought to be tried. The appeal is allowed. The order for summary judgment is quashed and the appellants are granted unconditional leave to defend. Costs in the Supreme Court should be reserved for determination at the trial. The appellants are entitled to costs of the appeal to be fixed by the Registrar.

.....
Judge of Appeal

.....
Judge of Appeal

.....
Judge of Appeal