

IN THE HIGH COURT OF KIRIBATI 2019

MISCELLANEOUS APPLICATION NO. 32 OF 2019
(ARISING FROM CIVIL CASE NO. 6 OF 2019)

	[BANIAN RARATU	PLAINTIFF
	[
BETWEEN	[AND	
	[
	[JIAN PEI LI	DEFENDANT

Before: The Hon Chief Justice Sir John Muria

29 October 2019

Ms Taaira Timeon for Plaintiff
Ms Botika Maitinnara for Defendant

JUDGMENT

Muria, CJ: This is an application by the plaintiff for leave to enter final judgment against the defendant. The application is brought pursuant to O.14 r1 of the *High Court (Civil Procedure) Rules 1964*.

Brief background

2. The plaintiff and the defendant entered into a tenancy agreement on 6 May 2013. The agreement was to enable the defendant to use the plaintiff's land Nukantekainga, Betio for store. In return the defendant was to pay the plaintiff \$800.00 per month as rental.

3. It was alleged that there was no payment made by the defendant and so the plaintiff sued the defendant claiming \$18,500.00 unpaid rent. The defendant entered appearance and filed defence. The plaintiff nevertheless asked for leave to enter judgment against the defendant.

The Defence

4. The Statement of Defence filed by the defendant on 16 April 2019 is basically a denial. The defendant, however, filed an affidavit which supplanted his denial of being in default. In addition to the defendant's affidavit, there were agreements signed between the plaintiff and defendant that, if accepted, show that the original Agreement entered into in May 2013 had been modified.

5. Although the Defence is a fairly short one, consisting of only six paragraphs, it does raise an arguable issue of whether the payments received by the plaintiff from the defendant and evidenced by the subsequent agreements, did constitute valid payments of rent by the defendant to the plaintiff. This can only be tested in Court.

6. The Court noted that the plaintiff has not made any rebuttal to the matters raised in the defendant's affidavit filed on 23 September 2019. This leaves open the issue raised by the defendant that the plaintiff had been receiving payments from the defendant as rental payments over the years.

The Law

7. The law is that in a case where summary judgment is sought, the plaintiff, upon affidavit evidence, may ask the Court for summary judgment against the defendant on the basis that in his belief the defendant has no defence to the claim. The burden is on the defendant to show that **"he has a good defence to**

the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action” based on evidence before the Court. That is the position laid down under O.14 r.1 of the *High Court (Civil Procedure) Rules*.

8. The evidential burden is on the defendant to satisfy the Court that he has “a good defence” or sometimes referred to as “an arguable defence” which must be based on credible evidence shown to the Court. See *Governor and Company of the Bank of Ireland –v- O’Grady and Another* [2018] 1 ECA 180. The plaintiff, however, must also demonstrate the basis for his belief that the defendant has no defence to his claim or that the defendant’s defence (if he files one) “lacks a real prospect of success”. See *Swain –v- Hillman* [2000] 1 All ER 91.

9. As explained by Lord Woolf in *Swain –v- Hillman*, “real prospect” of success must be “realistic” and not “fanciful”, whether as a claim or defence. This clearly must mean that there must be evidence to sustain the claim or defence, without which the chance of success would only be fanciful.

Disposition of Plaintiff’s Application

10. In the present case there are facts disclosed in the affidavit evidence of the defendant, sufficient to test the merit of the defendant’s defence raised. That is good enough reason to have the case proceed to trial.

11. The plaintiff’s application for summary judgment is dismissed. The case is to proceed to trial in the usual way.

Dated the 21st day of February 2020



SIR JOHN MURIA
Chief Justice