

**IN THE SEYCHELLES COURT OF APPEAL**

**LESPERANCE ESTATE COMPANY LTD.**

Appellant

VERSUS

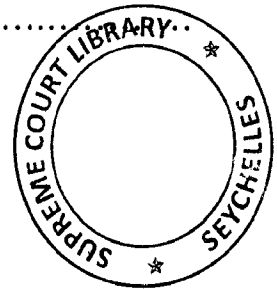
**INTOUR S.R.L.**

Respondent

Civil Appeal No: 10 of 2001

*(Before: Ayoola, P., Pillay & Matadeen JJA)*

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Mr. F. Chang-Sam for the Appellant  
Mr. P. Pardiwalla for the Respondent



**JUDGMENT OF THE COURT**  
*(Delivered by Pillay JA.)*

This is an appeal against a decision of the trial Court which refused to grant an application made by the appellant, a company incorporated in Seychelles, for a writ *habere facias possessionem* against the respondent, an overseas company holding 49% of the issued share capital of the appellant.

It is not in dispute that the appellant is the owner of some 40 hectares of land at Anse Lafarine, Praslin on which stands the Emerald Cove Hotel which covers an extent of about 10 hectares (called "the hotel") and has been in possession of the respondent since 1994.

We need not reproduce the grounds of appeal of the appellant which, in substance, question the alleged wrongful dismissal of the appellant's application.

According to the appellant's application, made in July 2000, the respondent had taken control and possession, without the appellant's authority and consent, of

the hotel which "is in a state of disrepair and there are numerous unsettled debts in its respect (sic) and it is necessary that prompt remedial action is taken in order to prevent the further run down of the hotel".

Moreover, since the respondent is a foreign company, it requires the sanction of the Government to take the hotel on lease from the appellant and this has never been obtained by the respondent.

The respondent's case is, in essence, to the effect that it has invested more than SR41 million towards the construction of the hotel, various payments of which were made by the respondent to the appellant – vide exhibits No. 1 to 5. According to exhibit 4, the appellant had undertaken to grant a lease or assign the management of the hotel to the respondent for a period of 20 years and not to interfere with the running of the hotel. With the support and consent of the appellant, the respondent sought the sanction of the Government – vide exhibit 6. No such sanction, however, has yet been obtained.

Moreover, in pursuance of the agreement reached as per exhibit 4, the respondent has assumed control, and remained in possession, of the hotel since 1994 and it entrusted the management of the hotel to Emerald Cove Limited with the consent of the appellant. Subsequently, the respondent, in pursuance of the company resolution passed by the appellant in 1997 under exhibit 9, terminated the management contract with Emerald Cove Limited whose responsibility it was to settle all the debts of the hotel (clause 2 of exhibit 10) and "keep the Hotel, including all furniture and fittings therein, in a good and tenantable state of repair and condition and keep the exterior thereof in good decorative order, replace any such items in the inventory as are lost or damaged, and return the premises and contents therein in

the same condition at the expiry of the agreement, fair wear and tear excepted" – vide clause 3 of exhibit 10.

In the light of the affidavit evidence buttressed by the numerous exhibits produced by the respondent, it comes as no surprise to us that the learned trial judge, after referring to section 6 of the Courts Act i.e. the equitable powers of the Supreme Court and to the bona fide and serious defence put forward by the respondent, came to the inevitable conclusion that there were eminently triable issues which need to be thrashed out in open court and could certainly not be dealt with by the summary procedure of a writ *habere facias possessionem* (vide Emerald Cove Ltd. v Intour S.R.L. Civil Appeal No. 9 of 2000 where the Court of Appeal applied the principles laid down in Gujadhur v Reunion Ltd. (1960) M.R.199), the more so as (a) it would be unfair in all the circumstances of the case to evict the respondent from the hotel by summary procedure and (b) the appellant had waited for some six years before seeking the writ to repossess the hotel.

We consequently uphold the judgment of the trial court and dismiss the appeal, with costs.



**E. O. AYoola**  
**PRESIDENT**



**A. G. PILLAY**  
**JUSTICE OF APPEAL**



**K. P. MATADEEN**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe, this 8<sup>th</sup> day of August 2001