

**Panimports (Pty) Ltd v Fagitien Estate (Pty) Ltd
(1997) SLR 120**

Serge ROUILLON for the Plaintiff
Charles LUCAS for the Defendant

**Ruling on the application to withdraw the interim injunction issued delivered on
16 January 1997 by:**

AMERASINGHE J: At the instance of the plaintiff petitioner on 26 September 1996 an interim injunction was issued restraining the defendant respondent from disposing of its only known assets at Anse Marie-Louise, Praslin, until the final disposal of the action before the courts.

The defendant respondent on receipt of notice of the interim injunction by an affidavit dated 24 October 1996 moved Court "to withdraw the injunction" on the following grounds-

- (1) That the learned counsel for the petitioner has acted without a mandate, authority, right and locus standi to make the averments in the affidavit supporting the application for an injunction.
- (2) That paragraph 2 of the said affidavit aver, that the "defendant has a good cause of action against the defendant." The unfortunate lapse being obvious and of no consequence, no further comment is needed.
- (3) That the land in respect of which the interim injunction is granted does not relate to the cause of action pleaded, which is on a contract between the parties.
- (4) That the defendant has substantial assets as described in paragraph 5 of the statement of objections and that the Director of the defendant company, Enrico Famulari, is a Seychellois national.
- (5) That the plot of land in question is already encumbered, hence an injunction will serve no purpose in view of the existing encumbrances receiving priority.

It is observed at this juncture that the defendant's assertions by affidavit have not been disputed by the plaintiff.

As decided in *Jean Maurel v Angel Isle (Prop) Ltd & Others* (unreported) CS 159/1996 on 7 November 1996, the Seychelles Code of Civil Procedure (hereinafter referred to as the Code) does not provide for interlocutory injunctions, hence recourse has to be had to the principles of the courts of England, vide *Laporte v Lablache* (1956 - 1962) SLR 274. In the ex parte issue of an interim injunction the affidavit supporting the application

takes the place of oral evidence and the Court relies upon the facts vouched for by the deponent. The first objection of the defendant touches upon the validity of the affidavit to support the application. Section 170 of the Code provides thus: "except on interlocutory applications on which statements as to his belief, with the grounds thereof, may be admitted." On a reading of the contents of the affidavit of the plaintiff's attorney, the grounds for his belief are non-existent, hence it has to be concluded that the application for the injunction has not been supported by proof of facts relied for the court to act upon.

In the absence of reasons to the contrary the attorney-at-law is presumed to be properly instructed by the defendant to depone to the facts in the affidavit, although such assertions without the grounds for his belief are insufficient. Hence the order of the court is wanting in lawfully admitted facts for the issue of the injunction. The defendant therefore succeeds on this objection.

In respect of the objection on the want of a good cause of action, the plaintiff at the stage of seeking an interim injunction has only to satisfy the court that on the pleadings a reasonably maintainable cause of action is disclosed, which in my view in the present proceedings was satisfactorily discharged by the plaintiff.

Although the rest of the averments are wanting in clarity, it could reasonably be understood to mean that the injunction obtained fails to protect any rights, interests or claims arising under the contract. The defendant is no doubt correct in the assertion, as on any action founded on contract, that section 304 of the Code only provides for an injunction to prevent the repetition or continuance of the (wrongful act or) breach of contract arising out of the same contract or relating to the same property or right. The action of the plaintiff being for loss and damages consequent on the breach of contract, it has no bearing on the repetition or continuance of a breach of contract. The affidavit supporting the plaintiff's application clearly states the injunction sought is to prevent the defendant from disposing of its only asset and causing it by its own actions to be unable to satisfy any judgment entered against it in these proceedings.

Injunctions issued under such circumstances are common in the United Kingdom, however in view of specific provisions in section 304 of the Code it is not reasonable to import such powers into the jurisdiction of the Supreme Court of Seychelles. The injunction that has come to be known as the "Mareva injunction" was recognised by the judgment in the case of *Mareva Compania Naviera S.A v. International Bulk Carriers S.A. "The Mareva"* [1980] 1 All ER 213. The object of this injunction was "preventing a defendant from dissipating or concealing his assets so as to make a judgment against him worthless or difficult to enforce." I therefore conclude that such interlocutory injunctions are not known to the laws of Seychelles. The objection is therefore upheld. However a claimant before the court is not without relief as under similar circumstances, it could have recourse to the provisions in the Land Registration Act (Cap 107) Part VIII under "Restraint on Dispositions" Division 1 on Inhibition.

It is also held in defendant's favour that in the absence of evidence to the contrary that

the defendant has substantial assets to meet the award of damages if made against it in these proceedings and that the defendant has in no way affected those with claims against it. The objection on the ground of existing encumbrance is considered without merit as the plaintiff's claim will be in any event subject to prior claims against the property in question.

The above matters considered by the Court being sufficient to dispose of the matter before it, I vacate the order for the grant of the injunction on the ground that the Court issued it without jurisdiction.

The defendant is entitled to costs from the plaintiff.

Record: Civil Side No 238 of 1996