

**Laporte v Laporte
(2008) SLR 24**

Nicole TIRANT with Lucy POOL for the applicant
Frank ALLY for the respondent

Ruling delivered on 13 June 2008 by:

PERERA J: The applicant has filed a motion dated 1 April 2008 seeking an injunction on the respondent for the following orders -

- (1) That the Respondent be restrained from the current Management Style of the Chalets D'Anse Forbans which is jeopardizing the profitability and long term sustainability of the business.
- (1) That an interim injunction apply forthwith to prevent any dealings with the property and funds of the Chalet D'Anse Forbans by the Respondent or her servants or agents without prior consultation with and the approval of the Applicant, the other partner in partnership.
- (2) That the Respondent provide the Applicant with a full account of all revenue and expenditure of the business, including the use of funds from all the foreign currency accounts, since 2006 to date.
- (3) That the Respondent be ordered, with effect from the date of the order, to desist from all management decisions, including but not limited to, employment of personal, purchases, of equipment and services, building and renovation works using or in any way affecting the funds and investment of the partnership.
- (4)

The main dispute between the parties, who were formerly husband and wife, was that they had entered into a verbal partnership agreement to establish the business called "Chalets D'Anse Forbans" on the basis of the applicant holding 90% interest and the respondent a 10% interest, but that subsequently the respondent claimed a 50% interest and ownership of the business. The applicant therefore sought a declaration in this case that he holds a 90% interest, and for an order allowing him to manage the said business without undue interference from the respondent.

The present motion is one of several such similar motions for injunctions under section 305 of the Code of Civil Procedure filed by the applicant pending the determination of the main cause of action pleaded in the plaint dated 15 July 2005. The orders made thereon by Karunakaran J are relevant to appreciate the context in which the present

motion for injunctions has been filed. I shall therefore first set out the history of these motions and the rulings based on the pleadings of the parties.

The applicant filed a motion on 9 August 2005 for an interim injunction seeking management responsibility of the business including sole and individual responsibility in all financial transactions and operations, and an order on the respondent prohibiting her from unduly interfering with the business, and being physically present on the business premises. In a supporting affidavit, the applicant averred that the respondent had no experience, training or exposure to the hotel industry and was mismanaging the business by treating guests in a hostile manner and ill-treating the staff, forcing some of them to leave. He also averred that he was not consulted on business matters, and that the premises and the property were neglected, leaving it in a state of disrepair. He also alleged fraud on the part of the respondent in respect of the revenue of the business.

On 3 November 2005, Karunakaran J granted an ex parte interim injunction as prayed for by the applicant. The respondent who had not been heard, sought a stay of that injunction until the final disposal of the case, and the Court so ordered by order dated 7 November 2005. An inter partes hearing on the merits of the motion for injunction filed by the applicant was fixed for 30 November 2005 at 9.00 am. The applicant was absent and unrepresented when the order of 7 November 2005 was made.

On 7 November 2005 the applicant filed a motion to hold the respondent in contempt of Court for failure to obey the order of 3 November 2005. By that time the order of 3 November 2005 had been stayed. However, the respondent filed an affidavit on 14 December 2005 making counter-allegations against the applicant, who she alleged was responsible for the inability to operate and manage the business due to his unreasonable conduct towards the business, members of the staff and also members of his own family. She therefore sought an order, giving her sole responsibility to sign cheques for the business in the business accounts, specifically MCB - USD, Euro, GBP and SCR A/C No. 01712137200, and Barclays Euro A/C No 9987980 and SCR A/C No 1043371,

on condition that accounts thereof are rendered every month to the applicant and he is paid his half share in the profits of the partnership pending the dissolution of the partnership or until such other or further order of this honourable Court.

The respondent also attached a copy of the judgment entered by Renaud J in the divorce case dated 10 October 2005, settling the matrimonial property, and inter alia holding that the parties were each entitled to a half share in the business known as Chalets D'Anse Forbans.

A further affidavit was filed by the respondent on 15 February 2006, in support of her claim that she was managing the business properly, and refuting allegations of fraud on her part in dealing with the business revenue. She alleged that the applicant was unreasonably refusing to sign business cheques, and that consequently debts were

owed to clients and members of the staff. She also averred that the inflow and receipt of foreign exchange is being closely supervised by the Central Bank on a weekly basis and under her management, the business has not been investigated or charged for any improper dealings in foreign currency.

The case was fixed for mention on 1 June 2006 at 9.00 am but on that day, the respondent and her counsel were absent. Mr Derjacques who appeared for the applicant had withdrawn his appearance in favour of Mr A Juliette, who appeared for the applicant that day. The Court ordered that the case be mentioned on 13 July 2006 at 9.00 am with notice to the respondent's counsel Mr F Ally. However, the Judge made an ex parte order on the same day (1 June 2006) authorizing

Mrs Marie Daphne Laporte to operate all bank accounts in Seychelles for and on behalf of the firm "Chalets D'Anse Forbans", *as single signatory to the cheques* and related bank documents. Further I direct all the banks in Seychelles to honour and accept the cheques and other related documents duly signed by Marie Daphne Laporte as a single signatory.

The applicant, by a motion filed on 2 June 2006, sought to set aside that ex parte order on the ground that he had been denied an opportunity to be heard. In any event, the case had already been fixed for motion on 13 July 2006, and hence, how substantial relief sought by the respondent in her affidavit of 14 December 2005 came to be granted ex parte, is not borne out in the record. Hence there had been no proper inter partes order so far.

The respondent filed an affidavit dated 6 July 2006, resisting the application to set aside the ex parte order of 1 June 2006. No order was made on that matter, until the applicant filed the instant motion dated 1 April 2008, seeking the above stated orders.

It must initially be stated that the declaration made by Renaud J in the divorce case that both parties are entitled to half share of the business, has been set aside by the Court of Appeal, and the fresh hearing on that matter has been listed for 16 June 2008. The Court of Appeal has restored the status quo of the parties until the decision of that case. The resulting position is the disharmonious relationship between the parties as regards the management of the partnership business consequent to the ex parte order of 1 June 2006. The applicant avers that the respondent, acting on the basis of that order is enjoying full and exclusive management of the Chalets and using funds without reference to him or obtaining his approval. He avers that this situation is affecting the profitability of the business, and is likely to affect the value of his shares in the venture when the matter is finally dealt with by the Court. He avers that decisions taken by the respondent unilaterally, include -

- (1) Increasing the number of employees at the Chalets D'Anse Forbans.
- (2) Financial statements unsigned since 2005.

- (3) Absence of business accounts, and administrative and accounting records relating to the business. In this respect, it is averred that the applicant has not received any records of expenditure on the foreign exchange accounts of the business despite his requests.
- (4) Absence of revenue accounts relating to the business. He avers that he is not receiving details of monthly revenue and sales of the business, although he is in possession of the financial statements for the years 2005, 2006 and 2007.
- (5) Use of foreign currency accounts. In this respect, the applicant avers that the bank has the foreign currency retention quota of the business, and since there is no consultation, the respondent is using the funds to purchase a large number of items which could be purchased locally, thus saving the foreign currency reserves of the business. He also avers that he has no details of the amounts banked in that account.
- (6) Rebuilding and renovation of the Chalets. The applicant has averred that large scale renovation works which are unnecessary are being carried out without consulting him, using business funds.

The applicant avers that the respondent ignores all correspondence sent by him calling for details of expenditure.

The applicant has disclosed the following particulars regarding the business accounts -

Barclays Bank

- Euro A/C No 998780
- Sey Rs A/C No 1043371 (Corporate current A/C)

Mauritius Commercial Bank

- Sey Rs A/C No 00712137200
- 7 day call A/C/ No 007712137204
- UK Pound Sterling A/C No 06712137200
- Euro A/C No 07712137200
- US Dollar A/C No 01712137200.

He avers that he has no information regarding the expenditure on these accounts.

The applicant therefore avers that as a partner and the principal investor, he should be aware of the operations and management of the Chalets, and should be directly involved in the administrative decisions taken, and also should be consulted prior to expenditure on any of the business accounts. He therefore avers that unless the Court so orders, irreparable damage and loss will be caused to his investment. He however admits that a monthly "stipend" of R 5000 he received has now been increased to R 7000 since November 2007, and that he has received two cheques of R 50,000 and R

200,000 which are supposed to be his share of the profits. Details have however not been supplied though requested. In addition to the orders sought in the motion dated 1 April 2008, the applicant prays for an order of this Court that –

- (1) The respondent ceases forthwith all capital expenditure on the Chalets.
- (2) The respondent consults him on all managerial issues concerning the business.

The respondent on the other hand, resisting the instant motion, avers that subsequent to the decision of the Supreme Court in case No Dv 22 of 2004, (Renaud J) she has filed a plaint for the dissolution of the partnership in Civil Side No. 461 of 2005 which is pending. In any event, a determination of the matrimonial property issues between the parties is still to be decided. Undoubtedly, one of issues therein would be the financial adjustment of the parties relating to the partnership. In the present case, the applicant seeks a declaration that he is entitled to 90% interest and ownership of the business. Hence there are a multitude of issues being canvassed in separate cases, which the parties must ultimately decide to limit to one or the other of these cases. Should the dispute as regards the partnership be confined to the case where the respondent is seeking its dissolution, and if so be excluded from the matrimonial property case? Further, what would be the purpose in the present case to determine whether the applicant has a 90% interest in the business on the basis of an alleged agreement, if the matter is canvassed in the case of the contentious pleadings in the present matter? The pursuit of separate cases bearing on the same matter, albeit from different causes of action, might lead to conflicting decisions leaving the parties to agitate and reagitate the issue ad infinitum. Hence, until a consensus is reached on this matter, I shall confine myself to the relief sought by the applicant in his motion and affidavit of 1 April 2008.

The respondent, has in a comprehensive affidavit, supported by documents vehemently resisted the motion for interim injunctions. Considering only the averments relevant for present purposes, the respondent avers that she does not consult with the applicant regarding the business as they are not on good terms, as he is abusive and violent towards her. She however avers that she renders him regular accounts, and manages the business with utmost diligence. As regards the order of 1 June 2006, which was made on the affidavit of the respondent dated 14 December 2005, she avers that by granting her powers with regard to the "operation of the accounts" she was granted the "sole management of the business". This is contested by the applicant, in paragraph 7 of his affidavit as an erroneous interpretation of that order. The respondent, in paragraph (xi) of her affidavit dated 14 December 2005 sought sole responsibility "to sign the business cheques" on condition that accounts thereof are rendered every month to the applicant and he is paid his half share in the profits of the partnership pending the dissolution of the partnership or until a further order of the Court.

Unfortunately, the conditional part of the prayer was not included in the ex parte order of 1 June 2006. That order was based particularly on the said paragraph (xi) of the

respondent's affidavit, and gave her no more powers than to sign business cheques, as the applicant had allegedly refused to countersign them, thus causing hardship to the day to day running of the business. The respondent herself had set a condition to render monthly accounts to the applicant, and to pay his half share of the profits of the partnership.

The respondent has therefore exceeded the scope of the order of 1 June 2006 and arrogated to herself the sole management of the partnership business as well. However I have perused the averments in her affidavit and the supporting documents. The applicant's allegations regarding mismanagement and accounting irregularities cannot be fully justified. But that does not cure the legality of managing a partnership business unilaterally to the exclusion of the other partner, especially as there is no specific order of Court. As there is admittedly, no written partnership agreement, the proportion of the respective interests in the business is not known. Until that is judicially ascertained, the parties should proceed on an equal basis. The only obstacle appears to be the inability of the parties to work together due to their acrimonious relationship. This is averred in paragraph 14(xxiii) of the respondent's affidavit dated 24 April 2008. She has further averred in paragraph 17(i) that – “any *direct involvement* of the applicant in the administrative decisions of the partnership at this stage will only hinder the good management of the business.....” Further she avers that –

If the applicant is given any management powers in the partnership until it is dissolved, there is strong likelihood that the applicant will be vindictive and he will resort to his old style of management by obstructing the proper management of the business by unreasonably refusing to sign cheques.

The respondent therefore moves that the present status quo be maintained until the partnership is dissolved in appropriate proceedings.

Mrs Nicole Tirant-Gerhardi, counsel for the applicant, after making detailed and comprehensive submissions on the respective averments of the parties, conceded that given the present relationship of the applicant and the respondent, joint management by the two parties was not feasible. She suggested that, if the Court so orders, the applicant would be prepared to manage the business with the respondent through an agent. Mrs Gerhardi, upon instructions, offered her services in that respect.

The applicant is entitled to have a more meaningful role in the management. The respondent basically is apprehensive of any "direct involvement" of the applicant in the administrative decisions of the partnership. Hence she cannot complain if the applicant is given management powers through the services of Mrs Gerhardi, or any other legal or accounting professional. The respondent shall co-operate with that person, and act in a more transparent manner. In these circumstances, the Court makes the following orders -

- (1) The respondent is restrained from solely managing the Chalets D'Anse Forbans. It shall be done jointly with the agent of the applicant in a peaceful and business-like manner without conflict.
- (2) An interim injunction is issued preventing any dealings with the property and funds of the business by the respondent or her servants or agents without prior consultation or approval of the applicant through his agent.
- (3) The respondent shall provide the applicant with a full account of all revenue and expenditure of the business, including the use of funds from all the foreign currency accounts since June 2006, to date. However, to prevent any further conflict, the respondent shall continue to have the power to sign cheques in terms of the order of 1 June 2006.
- (4) The respondent shall, with effect from the date the applicant intimates to the respondent his choice of the agent, consult with and seek and obtain prior approval of the applicant through the agent, for all management decisions, including the employment of service personnel, purchasing of equipment and services, building and renovation works using the funds and investments of the partnership.

Ruling made accordingly.

Record: Civil Side No 253 of 2005