

IN THE SUPREME COURT OF SEYCHELLES

E.M.E MANAGEMENT SERVICES LTD

PLAINTIFF

VS

ISLAND DEVELOPMENT COMPANY

DEFENDANT

Civil Side no 90 of 2009

Mr. Hoareau for the Plaintiff

Mr. Chang Sam for the Defendant

RULING

The Plaintiff in this case EME Management Services Ltd obtained an ex-parte order on the 17th of April 2009 in terms of section 281 of the Seychelles Code of Civil Procedure Cap 213, prohibiting payment in a sum of 1 million US dollars by Platte Island Resort and Villas Ltd to the Defendant Island Development Company Ltd.

The Defendant filed Petition, Defence and Counter Claim on the 20th of May 2009 and moved court that the aforementioned prohibition order be set aside. Learned counsel for the defence relied on the case of **Baker vs. Beau Vallon Property 1975 SLR pg 115** where it was held, that although the law does not specifically provide for the removal or vacation of an order of provisional seizure the court has an inherent right to do so.

The main contention of learned counsel for the defence was that there was no existing contract

between the Plaintiff and the Defendant as the Plaintiff had failed to obtain a license as required by section 16 of the Licenses Act Cap 113 which was impliedly, a requirement of the said contract. He further contended that the Plaintiff had admitted this fact in a letter dated 23 April 2009, marked P4 and hence the Plaintiff's case could not succeed as there was no contract between the parties and therefore the prohibition order should be vacated.

It is pertinent to mention at this state that in the case of **Union Estate Management (Proprietary) limited vs. Herbert Mittermayer 1979 SLR pg 140** Sauzier J held that in issuing an order for provisional seizure the following criteria should be considered inter alia;

"The Plaintiff should disclose a prima facie case against the Defendant and it is not necessary to show that the claim is likely to succeed or that it rests on documentary proof".

Hence it is apparent that the likely hood that the Plaintiff's case would succeed is not a ground to be considered, as it would be a premature and unnecessary exercise to do so at this stage. Furthermore learned counsel for the Plaintiff in his submissions, brought to the notice of court, that the letter referred to by the defence and marked P4, as a letter in which the Plaintiff had admitted he did not have the required license, was a letter issued by "EME Overseas" and not by the Plaintiff in this case. On perusal of the said letter, on the face of it, it is apparent that the letter has been issued by EME Overseas Ltd and in the light of learned counsel's submission, it could not be considered as a fact admitted by the Plaintiff, as there is no evidence before court at present connecting these two entities.

It is also to be noted, that Defendant having made submissions to the effect that the prohibition order should be set aside, as there was no valid contract between the parties, has proceeded to file a counterclaim based on the breach of the contract, thereby admitting that in fact there was a contract in existence between the parties, which the Plaintiff had breached.

In view of the above circumstances this court is inclined to decline the application of learned

counsel for the Defendant to vacate the prohibition order issued on the 17th of April 2009.

M. BURHAN

JUDGE

Dated this 20th day of July 2009