

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES
HOLDEN AT VICTORIA

CIVIL SIDE NO. 17 OF 2010

Rose-Marie Solomon
Plaintiffs
France Agathine
Bernard Agathine
Louis Agathine
Jean Charles Agathine
Agnes Agathine
Christianne Labiche

vs

P & I CLUB
Defendants
Bernard Georges

Frank Elizabeth for the Plaintiffs
Defendant no. 2 appearing in person

RULING

Egonda-Ntende, CJ

1. This is an application seeking 'a mandatory injunction' against the defendants to disburse the sum of SR. 1, 300,000.00 in the possession of defendants due and outstanding to the plaintiffs from the defendants. The grounds upon which it is made are stated to be set out in the supporting affidavit sworn the plaintiff No.1. The affidavit regurgitates the facts set out in the plaint.
2. The defendant no.1 Mr. Bernard George appeared in person and opposed the application as lacking in merit. Defendant no.1, if it exists at all, has not been served with these proceedings

and as such it cannot be affected by this application.

3. The plaintiffs are the heirs and *ayants droit* of the late Francois Michel Agatha who died intestate on a fishing vessel on 3 December 2008. Criminal Proceedings were commenced against against a crew member who was convicted of 5 counts of manslaughter. Defendant no.2 represented the crew member. Defendant no.2 subsequently undertook, on behalf of his clients, to pay compensation to the plaintiffs in the sum of SR 280,000.00 and Euros 38,000.00.
4. In breach of that agreement the defendants have not paid that money and the head suit is brought to recover the said money from the defendants.
5. When I asked Mr. Frank Elizabeth under that law he had made this application he replied that it must be section 204 or 205 of the Seychelles Code of Civil Procedure. The applicable law would seem to be sections 304 and 305 of the Seychelles Code of Civil Procedure. Section 305 provides for the form of an application made under section 304. Section 304 states,

'It shall be lawful for any plaintiff, after the commencement of this action and before or after judgment, to apply to court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said court upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.'
6. In Laporte and Anor v Lablache [1956-1962] S.L.R 274 Rassol, J., held, following Central Dock Company v Colonial Dock Company [1891] M.R. 49, that with respect to the grant of injunctions, courts in this jurisdiction were to be guided by precedents of courts in England. The grant of an injunction should be to protect a party against irreparable injury to their rights.
7. The applicants have not shown, on their application, that they would suffer any irreparable loss or injury, if this application was not granted. This action is based on contract. It is not alleged that there is a continuing breach of the contract. Neither is there a prayer in main suit

for an injunction to restrain further breach of the alleged contract between the parties. In the circumstances of this case no case has been made out for the grant of an interlocutory injunction.

8. I note that the relief sought on the application would equate to judgment in the head suit in the sense that the applicants would get, by this application, what they seek to get through the main suit. There would be no incentive on the part of the applicants in continuing with the main suit if they can obtain final relief on an interlocutory application.

9. For those reasons I find that this application has no merit. It is dismissed with costs.

Dated, signed, and delivered at Victoria this 1st day of March 2010

FMS Egonda-Ntende
Chief Justice