

**IN THE SUPREME COURT OF SEYCHELLES**

**Paolo Ghezzi  
Nadine Andre  
Plaintiffs**

**Vs**

**Giuseppe Imbergamo  
1. Cala Maria Di Nunzio  
Defendants**

**Andrea Colucci  
Intervener**

**Civil Side No: 256 of 2007**

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**Mr. Rajasundaram for the plaintiffs**

**Mr. C. Lucas for the defendants**

Mr. W. Lucas for the Intervener

**D. KARUNAKARAN, J.**

**RULING**

**This is an application filed by the above Intervener under Section 117 of the Seychelles Code of Civil Procedure. In this application, the Intervener seeks this court for an order granting leave for him to intervene and be made as a party to the instant suit which now remains part-heard pending for determination. The plaintiffs vehemently resist this application, whereas the defendants do not have any objection to this application made by the Intervener.**

Indeed, by a plaint dated 31<sup>st</sup> August 2007, the 1<sup>st</sup> Plaintiff and the Intervener (herein) who was 2<sup>nd</sup> plaintiff (therein) jointly instructed the Attorney Mr. K.B. Shah and commenced the present suit in C. S No: 256 of 2007, against the defendants for specific performance of a contract, which they had entered into jointly and severally with the defendants for the purpose of purchasing certain shares of Kaz Kreol Investment (Pty) Ltd, a company incorporated in Seychelles. In pursuance of the said contract both the 1<sup>st</sup> Plaintiff and the Intervener had each individually deposited the sum of Euros 30,000/- to Notary Public Mr. Ramniklal Valabji as initial deposit for the purchase of the first 20% of the shares of the said company. The sum of Euros 60,000/- had been kept in an escrow account with the Notary pending the occurrence of certain contingent events as condition-precedent for the fulfilment of each party's contractual obligations. Admittedly, the contingent event as to certain government sanctions contemplated by the parties to the contract did not materialise. In the mean time, having instructed his counsel Mr. Shah and after having commenced the suit, the Intervener in his personal capacity impliedly revoked the said contract by withdrawing his share of deposit Euros 30,000/- from the Notary and cancelled or withdrew the instructions given to his Attorney Mr. Shah. Consequently, the 1<sup>st</sup> plaintiff

was forced to retain another Attorney Mr. Rajasundaran in the place of Mr. Shah and had to amend their joint plaint by deleting the Intervener as 2<sup>nd</sup> plaintiff in the original suit and amended the pleadings in the plaint accordingly.

Following these developments, the Court allowed the 1st plaintiff to proceed with hearing of the suit as per the pleadings in the amended plaint. The plaintiff's case has already been heard. Now, at the present stage of the proceeding the Intervener has come before this Court, seeking leave to intervene as a party in this action.

Upon a careful perusal of the plaint, the petition, and the affidavit of facts filed in support thereof, I am satisfied that the Intervener has no *bona fide* claim against the defendants in this suit. To say the least, this application as I see it, is intended to delay the proceedings obviously, for reasons best known to the intervener only. From the averments on record and on a balance of probabilities, I find that the application made by the intervener in this matter is frivolous and vexatious. I find so for the following reasons:

1. The present suit is one for specific performance of contract. The intervener has already in my view, *impliedly rescinded* the contract having withdrawn his deposit from the escrow account, in breach of his contractual obligation. Hence, he is *estopped by his*

**conduct** from claiming or maintaining any right under the contract to insist the defendants for specific performance of the contract, which has already been rescinded by him.

**2. The intervener has already withdrawn his instructions from his Attorney Mr. Shah on 5<sup>th</sup> November 2008; since then, he has been sleeping on his right. He neither reinstated a fresh action nor retained any other counsel to replace his former Attorney Mr. Shah. Although the intervener had the knowledge about the pending suit in court, he did not follow-up, not even as watching brief. Had he been really genuine and serious in pursuing his claim under the contract, what prevented him at least, from joining the 1<sup>st</sup> plaintiff and continue prosecuting the original suit to maintain his right, if any. In fact, since he withdrew his brief from his former Attorney Mr. Shah, the intervener did not take reasonable steps as a prudent litigant, at least to know what had happened to his pending case in Court. But it appears that he has completely ignored the matter.**

**3. As rightly pointed out by the 1<sup>st</sup> plaintiff, the intervener in his affidavit dated 6<sup>th</sup> July 2009 has clearly stated that he is desirous of pursuing his claim**

against the defendants in a separate plaint. Then, why he should come before this court to intervene in this action at this stage of the proceeding, unless his intention is to delay the instant suit or embark on a fishing expedition.

4. In any event, in my view, the intervener has no locus standi and is therefore, estopped from joining the 1<sup>st</sup> plaintiff in this suit to pursue his claim for specific performance of the contract, which he himself has already rescinded by his conduct.

In view of all the above, I hereby dismiss the application of the intervener and decline to grant leave to intervene in this action.

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**D. Karunakaran**

Judge

**Dated this 6<sup>th</sup> day of May 2010**