

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA
Miscellaneous Application No. 23 of 2011
(Arising from Civil Side No. 49 of 2011)

Latitudes Consulting S.A

Applicant

Versus

1. JFA Holdings Ltd

Respondents

2. Joseph Albert

Frank Ally for the Applicants

RULING

Egonda-Ntende CJ

1. This is an ex parte application seeking an order of provisional attachment, under Section 280 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP, of the money of the respondents held in the hands of Barclays Bank (Seychelles) Ltd, Mauritius Commercial Bank (Seychelles) Ltd, Bank of Baroda, Seychelles Savings Bank Ltd, Habib Bank Ltd and Seychelles International Mercantile Banking Corporation Ltd (Nouvobanq) all of Victoria, Seychelles.

2. This application is brought by petition and is supported by an affidavit sworn by Mr Mitchell Alan Barret, a director of the applicant. The Applicant is the plaintiff in the head suit. This application is brought ex parte for fear that service of it on the respondents would jeopardise the success of the application as it would be open to the respondents to move their funds out of reach of this court.
3. The head suit is seeking the recovery of €1,250,000.00 as principal sum together with interest from the defendants/respondents. It is averred both in the plaint and repeated on the application that this sum is due on account of a written agreement between the parties for services rendered. In breach of the agreement between the parties, and in spite of the applicant having performed their part of the agreement, the respondents are in breach thereof.
4. Following the performance of their part of the agreement the respondent no.1 was paid a sum of €13,000,000.00 (thirteen million euro) by a third party. On receipt of the said sum of money the respondent no.1 transferred it into the bank account of respondent no.2. Thereafter the respondents refused to pay to the applicant the sums due to the applicant on the due date as agreed in the written agreement or thereafter.
5. The applicant is afraid that by the time the head suit is heard the respondents will have dissipated all this money and that it would not be possible to satisfy its judgment, hence this current application. Mr. Frank Ally, learned counsel appearing for the applicants, submitted that this was a proper case for the issue of a provisional warrant of attachment to the banks named so as

to protect the applicant's interest to satisfy its judgment at the end of the determination of this case.

6. In response to an inquiry from court as to whether this application was not fishing expedition as it was directed to almost all the banks in Seychelles without any averment whether the respondents had any accounts in those banks, Mr Frank Ally stated that in this case a fishing expedition was permissible to protect the interests of the applicant. It would be open for the respondents to come to court and seek orders to vary the provisional attachment, if necessary.

7. The applicable provisions of the law in this regard are Sections 280 and 281 of the SCCP. I shall set them out in full. Section 280,

‘At any time after a suit has been commenced, the plaintiff may apply to the court to seize provisionally **any money or moveable property due to or belonging to the defendant in the suit, which is in the hands of any third person.** The application shall be by petition supported by an affidavit of the facts and shall be signed by the plaintiff or his attorney, if any, and shall state the title and number of suit.’

8. Section 281 states,

‘If the court is satisfied that the plaintiff has a bona fide claim, the court shall direct a warrant to be issued to one of the ushers to seize provisionally such property, or shall make an order prohibiting the third person in whose hands such money or other moveable property is from paying such money or delivering such property to any other person pending the further order of court. The order shall be served on the third party by an usher of the court. The court, before any such warrant or order is issued, may

require the applicant to furnish such security as the court may think fit.’

- 9.** In my view, in light of the foregoing provisions of the law, the facts that must be disclosed at this stage on affidavit, in addition to showing that the applicant/plaintiff has a *bona fide* claim, include the knowledge of a third party in possession of money belonging to the respondent/defendant. This provisional warrant is not intended to be a ‘fishing expedition’ by which an applicant/plaintiff tries to ascertain who may have money belonging to the respondent/defendant. The applicant/plaintiff, either by his knowledge or information from some other person must be able not only to provide the identity of the third party who may have the money or property in question but also must be able to aver that such party to his knowledge or information has money or property belonging to the respondent/defendant.
- 10.** In the instant case in spite of knowing and averring that the respondent no.1 transferred €13,000,000.00 to the account of respondent no.2, including providing the account number, the affidavit does not disclose to which institution this sum of money was transferred. Mr. Frank Ally informed me that this was deliberate as they feared that the money may have been moved to other banks. That may be so but in my view it is important the third party who to the applicant’s knowledge and or information had the money or property in question is identified and would be the person to whom a provisional warrant is addressed.
- 11.** It appears to me the applicant’s fears have caused him to cast the net too wide without any information at all as to whether the respondents have accounts or money with those various banks or third parties named. In my

view the applicant has failed on the affidavit to show the third party who has funds or money belonging to the respondents. There is simply no connection between the banks named and possession of funds of the respondents that can be gathered from the affidavit. It is simply assumed that the respondents must have some account or accounts in one or more of the banks named. It would be left to the banks to respond whether or not the respondents have any accounts in their bank, and if they do, whether there is any money or not. This casts an unnecessary burden on a third party who may after all not be connected with the respondents.

12.I am satisfied that the affidavit fails to show that there is ‘**any money or moveable property due or belonging to the defendant(s), which is in the hands of any third person**’ mentioned in this application. The application is accordingly dismissed.

Signed, dated and delivered at Victoria this 21st day of March 2011

FMS Egonda-Ntende
Chief Justice