

THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA

Miscellaneous Application No. 03 of 2011

(Arising from Civil Side No. 12 of 2011)

Vijay Construction (Pty) Ltd ===== Applicant/Plaintiff

versus

Felicite Island Development Ltd=====Respondent/Defendant

S Rajasundaram for the applicant/plaintiff

Laura Valabhji for the respondent/defendant

RULING

Egonda-Ntende, CJ

1. The applicant is a contractor. It is executing a building contract for the respondent on Felicite Island. The owner, the respondent, is in arrears with regard to payment of certificates for work done. The applicant has filed an action in this court seeking to recover US\$1,242,269.16, the sums due on claim certificate 18. It may be side that at the hearing of this application Ms Laura Valabhji, learned counsel for the respondent, admitted the indebtedness of the respondent to the applicant.
2. The applicant filed several applications at the same time and this ruling is in respect of an application for a temporary injunction to restrain the respondent from disposing of certain properties until the disposal of this suit. The respondent is the lessee of the

said plots of land, all on Felicite Island in the Republic of Seychelles. The plots are 29 in number, FL5 to FL33 inclusive.

3. The application is by motion supported by an affidavit sworn by the Managing Director of the Applicant. As far as I can gather from the affidavit it is contended that the respondent has wantonly and willfully refused to pay the outstanding certificates due to the applicant including the one for which the head suit has been brought. It is estimated that the trial will not take place until the expiry of 6 or more months. It is averred that there is a high and real risk and likelihood the applicant will encounter great prejudice and difficulties to recover the amount due from the respondent. There are strong reasons to believe that the respondent company due to its inability to pay the huge sums of money, may dispose of its assets namely the portions of leasehold land FL5 to FL 33 and other assets. The applicant would therefore not be able to reap benefits from a judgment when it comes.
4. Mr S Rajasunduram, learned counsel for the applicant, submitted that the respondent had refused to pay the applicant the money due. There was evidence that he was the leasehold owner of the property known as FL 5 to FL 33 which this application seeks to restrain the respondent from selling. He prayed that this application be allowed.
5. Ms Laura Valabhji, learned counsel for the respondent, submitted that the applicant had not proved that the property belonged to the respondent and therefore this application ought to fail.
6. Originally the applicant had sought an *ex parte* injunction. I declined to do so and required an *inter partes* hearing. In the meantime I ordered an interim injunction to be in place until I heard and determined this application. Hence the *inter partes*

hearing. The respondent did not file any affidavit in reply though from the bar respondent's counsel conceded that the sum claimed was due. She opined that judgment may be entered against the respondent for the sums claimed.

7. Mr S Rajasundaram, learned counsel for the applicant did not refer to any law, as the basis for his application. I presume that the law applicable to the grant of injunctions, the nature of which the applicant is seeking, is Section 304 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP. It states,

'It shall be lawful for any plaintiff, after the commencement of his 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.'

8. Under this provision an applicant / plaintiff must allege as its ground for the application that the defendant, is continuing or repeating the wrongful act or breach of contract or injury of a like kind, arising from the same contract, relating to the same property or right, which forms the subject matter of the head suit. The injunction would be seeking to restrain the the respondent / defendant from continuing or repeating the breach of contract on such terms as the court shall deem reasonable and just.
9. In the case at hand the applicant is not seeking to restrain the applicant from committing further breaches of contract or repetition of wrongful acts or injury of a like kind as those alleged in the plaint. It is seeking to restrain the defendant from selling properties that belong to it. Clearly the objective of this application is outside

the application of section 304 of SCCP. This is clear from paragraph 12 of the supporting affidavit to this application. The fear of the applicant is that by the time judgment is handed down there might not be property in the hands of the respondent which they would be able to attach in satisfaction of the anticipated judgment unless an injunction is granted to restrain the applicant from selling the 29 plots of land in question.

10. It appears to me Section 304 of the SCCP is unhelpful to the applicant's current dilemma which is shield itself from having a judgment that cannot be satisfied by the property of the defendant. The law has made provision for such situations including the possibility of provisional attachment of property. That is not what is sought in this application. I will say no more about it.

11. In the result I find no merit in this application though not on the ground advanced by Ms Laura Valabhji for respondent. This application is dismissed with costs.

Signed, dated and delivered at Victoria this rd day of May 2011

FMS Egonda-Ntende
Chief Justice