

IN THE SUPREME COURT OF SEYCHELLES

TIM WALSH

-Plaintiff

Vs

NATHALIE WELLER
(born Hoareau)

-Defendant

Civil Side No: 195 of

2011

=====
=====

Mr. Serge Rouillon for the plaintiff
Mr. Frank Elizabeth for the defendant

FURTHER RULING

The Defendant has now entered her statement of defence and the suit is ripe for hearing. By her statement of defence the Defendant has raised a counter-claim in the sum of Rs600,00.00. The Plaintiff has duly responded to the counter-claim and prayed for its dismissal.

By Notice of Motion which the Defendant entered on 30 January, 2012 she *inter alia* prayed this Court to:

1. Make an order requiring the Plaintiff/Respondent to deposit security for costs pursuant to Section 219 of the

SCCP in the sum of Rs100,000.00 into Court pending the determination of this suit before the Courts.

2. Make an order, ordering the Plaintiff/Respondent to pay the sum of Rs300,000.00 into Court as security for damages pending the determination of this suit by the Courts pursuant to Article 16 of the Civil Code of Seychelles.

In its considered Ruling dated 24 February, 2012, this Court stated that:-

“Upon or after filing the statement of defence, this Court will determine the amount of security if any that the Plaintiff may have to deposit, and may make the appropriate order, before the hearing of the suit.”

The Defendant is now praying this Court to consider the prayers referred to in her Notice of Motion as set out above.

Article 16 of the Civil Code is as follows:

“When one of the parties to a civil action is a non-resident, the court may, at the request of the other party, and for good reason,

make an order requiring such a non-resident to give security for costs and for damages which may be awarded against him.”

As it has always been the case, the Court interprets this provision of law purposively and not arbitrarily. Article 16 of the Civil Code is open to either party to seek security for costs provided the party against whom the order is sought is a non-resident. In the case of **Village Management Ltd v Albert Geers and Village Du Pecheur (Pty) Ltd (SCA3/95)** the Seychelles Court of Appeal *inter alia* stated:

“Although the amount of security for costs awarded is always in the discretion of the court, the amount is in practice based on an estimate of party and party costs usually up to the end of the proceedings. In as case, as this, in which a substantial portion of the damages claimed would have to be determined at the discretion of the Court after evidence would have been gone into, it is inappropriate to order security in the entire amount claimed. In the circumstances, even if the Leaned Judge had had jurisdiction to order security for costs, I would have held that the amount of security

was utterly inappropriate and based on an improper exercise of discretion.”

In that case, neither security or costs nor damages were ordered.

Ex-facie the pleadings it appears that the Plaintiff is indeed not a Seychellois and is also not resident in Seychelles. Whether the Plaintiff has assets in Seychelles is a matter that is to be decided by this suit. The Plaintiff’s case is that he had transferred GBP213,500.00, to be invested in Seychelles, in a bank account at the Mauritius Commercial Bank in Seychelles. This sum appears not to have been reverted back to him and it is therefore reasonable to assume that that sum must be still in Seychelles. Admittedly, this is an issue which is the bone of contention between the parties and upon which the Plaintiff is suing the Defendant for its recovery. The matter would have to be determined after evidence would have been gone into.

In the light of this prevailing situation I am unable to go as far as making a finding that the Plaintiff does not have assets in Seychelles. In the circumstances I will neither make an order for security for costs nor for damages.

.....
B. RENAUD
JUDGE

Dated this 10 May 2012, Victoria, Seychelles