

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 235/2013
(arising in CS 157/2011)**

[2014] SCSC 64

HEDGE FUNDS INVESTMENT MANAGEMENT LTD

Applicant

versus

RAMINDER PANESAR

First Respondent **ASHLEY FRENCH**

Second Respondent

HEDGEINTRO INTERNATIONAL LTD

Third Respondent

Counsel: Mr. S. Rouillon for applicant

Mr. J. Renaud for the 1st Respondent

Mr. A. Derjacques for the 2nd respondent

3rd Respondent – Unrepresented

Delivered: 19 February 2014

RULING ON MOTION

Karunakaran J

[1] This is the ruling on the motion - dated the 30th of September 2013 -filed by the applicant-company “Hedge Funds Investment Management Limited” seeking leave to intervene in the instant suit, Civil Side 157 of 2011.

[2] I meticulously perused the affidavit of Tushar Patel, director of the applicant- company and other relevant documents filed in support of the motion. I also went through the objections to the motion canvassed in the counter-affidavit filed by the 1stdefendant/respondent Ashley French, dated the 25thOctober 2013, and the objections and submissions filed by the 2nd defendant/respondent, dated 4th November 2013 opposing the motion.

[3] Obviously, the application for intervention by an interested person - a third party - to a suit is governed by Sections 117 to 120 of the Code of Civil Procedure. These sections read thus:

117. Every person interested in the event of a pending suit shall be entitled to be made a party thereto in order to maintain his rights, provided that his application to intervene is made before all parties to the suit have closed their cases.

118. An application to intervene in a suit shall be made by way of motion with an affidavit containing the grounds on which the applicant relies in support thereof.

119. Notice of such motion shall be served upon all the parties to the suit.

120. If leave to intervene is granted by the court, the intervener shall, within the period fixed by the court, file a statement of his demand and of the material facts on which it is based and shall at the same time supply a copy of such statement to the other parties to the suit.

[4] Before I proceed to consider the application on the merits, I wish to make the following finding on the interpretation of the law under Section 117 quoted supra, in view of the fact that the 2nddefendant has misconstrued the expression "**before all parties to the suit have closed their cases.**"Indeed, the phrase “closing of a case” in civil proceedings, does

not mean the closing of pleadings, as misinterpreted by Mr Renaud, learned counsel for the 2nd respondent, in his submissions. If I were to accept his submission in this respect, I would have to import additional words in Section 117 of the Seychelles Code of Civil Procedure. This, with due respect to Mr Renaud, I am not empowered to do as this Court thereby would legislate rather than interpret the law.

- [5] On the subject of closure of pleadings, it is interesting to note that under Section 146 of the Code of Civil Procedure parties are indeed, permitted, with the leave of the court, to amend their pleadings *at any stage of the proceedings*, whenever it is necessary for determining the real questions in controversy between the parties. Therefore, a closure of pleadings does not, in fact, have the seal of absolute conclusiveness in the strict sense of the term **closure**, the meaning of which appears to be relative in the civil proceedings.
- [6] Needless to say, in the Code of Civil Procedure, the provisions as to Intervention are intended for the protection of third party's rights and interest in any subject matter under adjudication, between other parties. This is, in fact founded on the age old Latin maxim, **Res inter alio sactaalteri nocere non debet**; meaning that things done between strangers ought not to affect a third person, who is a stranger to the litigation or transaction.
- [7] This view is further strengthened by the words “**shall be entitled to**” used by the legislature in Section 117, which in fact, reads thus: “**Every person interested in the event of a pending suit shall be entitled to be made a party thereto**”. Hence, to my mind, the only duty of the court in considering such applications is to determine the entitlement of the applicant to be made a party to the suit. Once it has been established prima facie, that the applicant has an interest in the subject matter, or in the outcome of the pending suit, he has a right to intervene, which cannot be denied by the Court and it is mandatory.
- [8] Thus, it is evident that an interested third party has a statutory right to intervene in any suit, if the outcome of which affects or is likely to affect his rights and interest. As I see it, this right is no less sacrosanct than that of the rights of the parties to the suit to claim or defend their respective interests in the proceedings.

[9] In light of all of the above, having perused the relevant documents adduced by the parties and having diligently analysed the submissions of counsel, I find the following facts have been established on a balance of probabilities and to my satisfaction:

1. The Applicant herein has a substantive interest, in the event and outcome of the instant suit CS157/2011.
2. The applicant is entitled to be made a party to the suit in order to maintain his rights.
3. The application has been made before all parties to the suit have closed their cases.
4. The affidavit filed in support of the application reveals a nexus between the applicant's interest and the subject matter involved in the instant suit.
5. The application is not frivolous or vexatious in its nature or orientation nor is it an abuse of process as alleged by the defendants.
6. The application is maintainable in law and on facts.
7. Granting of leave to intervene will in no way result in prejudice to the parties to the suit, but doing otherwise would undoubtedly cause prejudice and infringe the applicant's right to be heard in a suit, the outcome of which affects or is likely to affect his interest.

[10] For these reasons, I find it just, necessary and even undeniable, that the applicant should be granted leave and be allowed to intervene in the instant suit in order to maintain its rights. Objections of the defendants are therefore, overruled and leave granted for the applicant to intervene in the pending suit. Motion allowed accordingly.

[11] For the avoidance of doubt, since leave to intervene has been granted by the court, the intervener should, within the period of three weeks from the date hereof, file a statement of its demand and of the material facts on which it is based and should at the same time supply a copy of such statement to the other parties to the suit.

Signed, dated and delivered at Ile du Port on 19 February 2014

D Karunakaran
Judge of the Supreme Court