

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 6/2015**

**[2015] SCSC 167**

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**THOMAS GEIGENBERGER**  
**ELECTING HIS LEGAL DOMICILE IN THE CHAMBERS OF**  
**MS NATASHA FAULCONER-ALTON**  
**SUITE 213**  
**PREMIERE BUILDING**  
**VICTORIA**  
Applicant

Versus

**MONIQUE HERMITTE**  
**ANSE POULES BLEU**  
**MAHE**  
First Respondent

versus

**PAUL HERMITTE**  
**ANSE POULES BLEU**  
**MAHE**  
Second Respondent

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Heard: Wednesday 19<sup>th</sup> May 2015.  
Counsel: Ms Natasha Faulconer – Alton for Applicant  
Mr Basil Hoareau for Respondents  
Delivered: 12<sup>th</sup> June 2015.

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## RULING

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### McKee

[1] This Ruling relates to an urgent application dated 4<sup>th</sup> March 2015 filed by the Plaintiff in the principal matter.

[2] It transpires from the pleadings that by a Lease Agreement dated 22<sup>nd</sup> December 2009 entered into between the Applicant and the Respondents the Respondents leased to the Applicant part of parcel C50 and the buildings thereon [ hereinafter referred to as “the premises”] for the Applicant to carry on a restaurant business. It was inter alia agreed that the lease was to subsist for a period of ten years from 1st January 2010 until 1<sup>st</sup> January 2019. It would seem that the lease proceeded in a normal way between January 2010 and the middle of 2014. During the month of August 2014 and during the term of the lease the Respondents broke and replaced the locks of and took possession of the premises. As a result the Applicant and his employees are unable to regain access to and repossess the premises.

[3] Following commencement of the suit, the Applicant has now by way of motion applied to this Court for an interlocutory injunction ordering the Respondents 1] to return the premises to him 2] to allow him immediate access to his office located on the premises in which he has personal items and/or information and 3] to return to him all personal items and all other items belonging to him, all with immediate effect. Therefore, the Applicant

seeks in his motion a writ of injunction against the Respondents.

[4] The Respondents on the other side resist the motion, on the grounds that the rent had not been paid timeously for the month of July 2014, there is damage to a ceiling where an unauthorized fan had been installed and the premises are generally in an untidy state or poor state of repair. They submit that they were entitled under the proviso to paragraph 12 of the lease to treat the lease at an end and to re-enter and re-possess the premises.

[5] I have given careful thought to the arguments advanced by counsel on both sides. I have considered the authorities submitted by both counsel. The interlocutory injunction is discretionary in terms of section 6 of the Courts Act. A court may exercise this equitable jurisdiction where no sufficient legal remedy is provided in order to prevent irreparable injury which may not be able to be remedied by an award of damages. There must be a substantive and arguable principal case on the merits. The Court in considering whether to grant or refuse the injunction should consider the balance of convenience and any hardship of the parties. It is for the Applicant to show that the inconvenience he will suffer by a refusal is greater than that which the Respondents would suffer by the grant of the injunction. In my view the exercise of this equitable jurisdiction is subject to equity, fairness and justice in the particular circumstances of this case. This would lead to a flexible rather than narrow interpretation of the issues.

[6] I find that the substantive case is an arguable case on the merits. The main relief sought by the Applicant in the pending suit is for re-possession of the premises and the continuation of the Lease until 1<sup>st</sup> January 2019. The situation now facing the Applicant is that the Respondents may have deprived him of possession of the premises unlawfully, by a wrongful act or contrary to the provisions of the Control of Rent and Tenancy Agreements Act, and so, during the inevitable interval between now and the determination of the suit, prevent him from benefiting from the conduct of his business on the premises. In that event if this position is maintained at present the Applicant will be put to irreparable loss, hardship and inconvenience if a Court later gives judgment in his favour. Therefore refusal of the injunction in this matter would, in my view, cause more injustice to the Applicant than the one caused to the Respondents by the granting of it.

[7] Hence I allow the motion and grant the writ of injunction ordering the Respondents:

- 1] to return the whole premises, including the office premises, into the full custody, possession and control of the Applicant or his servants and agents with immediate effect; and
- 2] to return into the custody, possession and control of the Applicant all his personal items and/or information with immediate effect, and
- 3] to return into the custody, possession and control of the Applicant or his servants and agents all other items on the premises belonging to the Applicant, with immediate effect.

[8] The Writ of Injunction shall subsist until the determination of the suit in Civil Side Number 06 of 2015 in this matter.

Signed, dated and delivered at Ile du Port on 12<sup>th</sup> June 2015.

C McKee

**Judge of the Supreme Court**