

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 357/2017 and MA03/2018**

**(arising in CS136/202017)**

[2018] SCSC 338

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**GOVERNMENT OF SEYCHELLES**

Petitioner

versus

**DORINE MONTHY**

Respondent

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Heard: 08 March 2018

Counsel: Ms. B. Confaitfor petitioner

Mr. O. Chang-Lengfor respondent

Delivered: 4 April 2018

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**ORDER ON MOTION**

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**Vidot J**

[1] The Petitioner has filed 2 Notices of Motion supported with affidavits, seeking interlocutory interim injunctions. The affidavit in MA357 of 2017 is sworn by Mr. Jeffrey Denis Barbe, the Principal Secretary of the Department of Habitat in the Ministry of Habitat Infrastructure and Land Transport and that in MA 03 of 2018 by Ravi Valmont, Principal

Secretary for Land. These Notices of Motion arise from the same case; CS136 of 2017. The case pertains to the lease of property, V9215 (hereafter “the leased property”) belonging to the Petitioner. The parties signed a lease agreement dated 08<sup>th</sup> November 2016 and registered at the office of the Land Registrar on 21<sup>st</sup> December 2016, (hereafter “the lease agreement”). The Petitioner is claiming that the Respondent has breached the terms of the lease agreement and on that basis claims that the agreement is therefore *ipso facto* terminated and cancelled.

- [2] In case, MA 357 of 2017, the Petitioner seeks an injunction to restrain the Respondent from making any future alterations and/or additions to the leased property. The other case, MA 03 of 2018 seeks an injunction to refrain the Respondent from carrying any business activity on the leased property. With consent of the parties, since the 2 Notices of Motion are between the same parties and involve the same transaction (ie. The lease agreement), in terms with Section 106 of the Seychelles Code of Civil Procedure (hereafter “the Code”), the 2 were consolidated.
- [3] I note that the applications are not in conformity with Section 121 of the Code as no Motion was filed. The Notice of Motion is merely to place a respondent on notice. There is need to file a Motion supported by affidavit. The omission was not so serious and the Court shall overlook it.
- [4] Unlike any other matter, an interim injunction is an equitable remedy. That means that the Applicant for the injunction must comply with usual basic equitable requirement, such as coming with clean hands and acting fast in making the application without delay. The application is made in pursuance with Sections 304 and 305 of the Code. As correctly pointed out by Counsel for the Respondent despite applying provisions of the Code, the Court is guided by precedents of the Courts of England.
- [5] An interim injunction is granted at the discretion of the Court. In the case of **American Cyanamid Company v Ethicon [1975] AC 396**, it was held that in dealing with interlocutory injunction, the Court shall be guided by 3 considerations;

- (a) Whether there is a serious question to be tried ;

(b) Inadequacy of damage to either side; and

(c) That on the balance of convenience an interim injunction should be granted.

These are the same consideration considered in adopted in **Techno International v George SCSC 147/2002 (31<sup>st</sup> July 2002)**, **Laporte & Anor v Lablache [1956-1962] SLR No. 41** and **France Bonte v Innovative Publications [1993]SLR 138**.

[6] In considering the Application, the Court's approach is based on the presumption that there will be a trial on merits at a later stage. After a cursory perusal of the Plaintiff's Complaint the Court should be satisfied that prima facie there is a serious question to be tried. The actions and conduct of both parties have to be considered before the Court exercises its discretion. The Court shall also evaluate if the parties can be adequately compensated for the damages suffered should the application be denied. The Court shall ensure that any further loss or damage, especially if such will be irreparable, is contained. The test to be used in addressing itself to and evaluating the balance of convenience the court shall consider;

(a) Whether more harm will be done by granting or refusing the injunction;

(b) Whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused, and

(c) Whether the breach of the Applicant's rights would outweigh the rights of others.

[7] I have had a perusal of the pleadings in this case and I am satisfied that indeed there is prima facie a triable issue. I also find that the Petitioner has not delayed in filing the applications.

[8] The Respondent indicated that the renovation work has been completed. Therefore any grant of injunction will be purely academic as the issue is moot. Counsel for the Petitioner acknowledged that if the renovation works have been completed there was no necessity to pursue that matter further. She nonetheless tried to impress upon Court that the Respondent was not coming to Court with clean hands and suggested that the works were carried out prior to the certificate for change of use had been issued. She further stressed that works

were performed without permission from the Republic in conformity with the lease agreement. Be that as it may there is no basis to pursue with the application for injunction in MA 357 of 2017. However, I do find that there is necessity to prevent any further works being carried out and therefore as far as MA357 of 2017 is concerned I accede to the request for interim interlocutory injunction. Since the main case deals with breach of the lease agreement and without full assessment at this stage of the merit of the Plaintiff, it will be in the Respondent's interest not to incur additional cost to make more improvements as it could end being an unnecessary loss to her.

- [9] In addressing on the Motion for injunction in case MA03 of 2018, I note that Counsel for the Petitioner was going too much on substantive issues of the case. I have set out above the considerations for allowing or refusing a Motion for injunction. It is not the Court's intent to explore such substantive issue at this stage.
- [10] Counsel for the Petitioner argued that the balance of convenience tilts in favour of the Petitioner. In the Plaintiff it was averred that due to the Respondent alleged breach of the lease agreement in that she failed to observe the covenants and conditions of the lease agreement; that agreement has become *ipso facto* forfeited and cancelled. Counsel submitted that the Petitioner is relying on Article 1184 of the Civil Code of Seychelles.
- [11] Counsel for the Respondent opposed the Motion and argued that the Petitioner is not coming before Court with clean hands. He noted that the Petitioner has already asked the Planning Authority not to issue a certificate of occupancy, thereby frustrating the possibility for her to commence her business after she has invested in carrying out the repairs. He disputes any breach of the terms and conditions of the lease agreement. He added that the Petitioner is seeking to terminate the lease in a manner not provided for. He relied on **D'Offay v AG [1975] (No. 1) SLR 274**. He argued that where a Plaintiff is asserting a title or right, an interim injunction should be refused if the existence of such a title or right is open to serious doubt. He further added that the Respondent avers that there is sufficiently serious doubt as to the ownership and land title V9215.
- [12] I have considered submissions made by both Counsels. The Respondent has alleged that the Petitioner is not coming before court with clean hands because they have already

instructed the Planning Authority not to issue a change of use certificate for the leased property. I have not been provided with evidence of the same and I cannot find any additional evidence to support that claim and therefore accept that the application is not made mala fide. I note further that the Respondent has already and according to her completed renovations that was required. However, I still feel that the expenses can be quantified and can be compensated for the same. I find that neither party will not be able to be adequately compensated if the injunction should be granted.

[13] I have to consider the balance of convenience, whether it favours the grant of such an injunction. If the injunction is to be granted, the Respondent will lose the possibility of starting a business, which obviously is dependent on her obtaining the necessary licence. If the cancellation of the lease is found to have been unlawful, the Respondent can always sue for damages for loss of earnings. However, if she was to start business, additional inconvenience will be caused to the Petitioner as the Respondent will have to be given time to close her business. She intends to run a child day care facility and that would require that she be allowed time to close it down. The Petitioner will not be able to regain possession of the property immediately after pronouncement of a judgment. I also note that that ownership and title is not in dispute. In her affidavit the Respondent acknowledges that the Petitioner is the "*freehold owner of land parcel V9215*". The Respondent is claiming a leasehold. In the circumstances, I find that an interim injunction can be granted.

[14] I am of the opinion that more harm will be done to the Petitioner if the application is denied and no serious injustice will be occasioned to the Respondent. I have weighed the rights of the parties and find that the balance of convenience tilts in favour of allowing the application and granting the application and therefore grants an interim injunction against the Respondent, restraining her from carrying out any business whatsoever on the leased premises until further Order from this Court.

Signed, dated and delivered at Ile du Port on 4 April 2018



M Vidot  
Judge of the Supreme Court