

IN THE SUPREME COURT OF SEYCHELLES

Civil Side no: MA154/2018

[2018] SCSC 617

Nathalie Lefevre

VS

Beau Vallon Properties Ltd & Ors

Heard: 27 June 2018

Counsel: Ms K. Louise standing in for Mr F. Elizabeth for the Applicant

Delivered: 27 June 2018

ORDER

M. Twomey, CJ

- 1] The Applicant has applied ex parte and urgently for orders against the Respondents to generally maintain the status quo in relation to the ownership of shares in the 1st Respondent and other properties held by the 1st Respondent until the final outcome of case CC8 of 2017.

- 2] She has supported her application by an affidavit in which she avers that she believes that the 3rd Respondent may alienate shares in the 1st Respondent and together with the 2nd Respondent seek retrospective sanction for the transfer of shares into their respective names.

- 3] She has averred that were she to be successful in her action in CC8 of 2017 she will not be able to enforce the judgment as all assets would be have been dissipated or elevated. She has further averred that it is her belief that the directors of the 1st Respondent may attempt to destroy evidence in relation to their financial status rendering it impossible for the Court to obtain the accurate financial position of the 1st Respondent.
- 4] She has sought orders for sequestrations of properties under section 307 of the Seychelles Code of Civil Procedure and an interlocutory injunction under provisions of sections 121, 122, 123 and 304 of the Seychelles Code of Civil Procedure as read with the provisions of section 5 and 6 of the Courts Act.
- 5] Section 307 of the Seychelles Code of Civil Procedure in application of Article 1961 of the Civil Code of Seychelles gives the Court powers to sequester movables and immovable property between actions being commenced in court and judgments delivered. Section 304 of the Seychelles code of Civil Procedure empowers the court to issue injunctions *pendente lite*.
- 6] Injunctions are equitable in nature and in such applications the Court is guided by three considerations:
 - i. Where there is a serious issue to be tried,
 - ii. Whether the damage would be inadequate to redress the harm caused by the grant of the injunction,
 - iii. And on a balance of convenience it would be best to grant rather than deny the injunction. (*see Techno International vs Georges*, unreported CS147 of 2002).
- 7] Further in *Dhanjee vs The Electoral Commission* (2011) SLR 141, the Court interpreted the balance of convenience test to include the consideration of the following factors:
 - i. Whether more harm would be done by granting or refusing the injunction.

- ii. Where the risk of injustice would be greater if the injunction was granted, the no risk of injustice it was refused, and
 - iii. Where the breach of the parties rights would outweigh the rights of others in society.
- 8] On the face of the pleadings and the affidavits and in the light of the authorities above, I am satisfied that the Applicant appears to have a bona fide claim as against the Respondents in the main suit. I am further satisfied that unless the Court grants the interlocutory injunctions and orders of sequestration as sought by the applicant in this matter she will suffer substantial and irreparable loss, hardship and inconvenience in the event that judgment is given in her favour.
- 9] In the circumstances I issue a writ of injunction against the Respondents prohibiting them from dissipating or alienating all the assets until this matter is finally decided in this court.
- 10] I also order that all movables are sequestered until the final decision in this case is delivered.
- 10] I order that all documentation including electronic evidence relating to the underlying financial position of the 1st Respondent be maintained and preserved until the final order of this Court.
- 11] I order that copies of this order be served on the Registrar of Lands to comply with the orders of this Court and served on all Respondents so that they may be informed of the orders of this Court.

Signed, dated and delivered at Ile du Port on 27 June 2018.

M. TWOMEY

Chief Justice