

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 239/2018
(arising in CS 139/2018)**

[2018] SCSC 890

IN THE MATTER OF DHEVATARA PROPERTIES (SEYCHELLES) LIMITED

Applicant

Heard: 4th October 2018
Counsel: Mr. Guy Ferley for applicant
unrepresented for respondent
Delivered: 5th October 2018

ORDER ON MOTION

L. Pillay, J

[1] The Applicant by a notice of motion pursuant to section 204 of the Seychelles Code of Civil Procedure, seeks an order of the Court against the Defendant in the main case, that the Defendant in the main case be prevented by injunction from continuing with the construction of structures on the Plaintiff's property pending the final determination of this suit.

- [2] The motion is supported by affidavit of Cecile Mondon, in her capacity as Manager of the Applicant company, the Plaintiff company in the main case, dated 1st October 2018.
- [3] She has averred in her affidavit that the Applicant is the owner of a parcel of land at Anse Gaulette, La Digue registered in register B34 No. 1452 and transcribed in volume 84 No: 90 dated 16th January 2017, as per attached transcription.
- [4] She has further averred that the Defendant in the main case, Barry Payet of B & M Store, Anse Reunion La Digue, has by himself or has through his employees, servants and/or agents erected foundation structures alongside a path on the property referred to above and the Defendant is continuing with construction on the said land, as shown by the photographs attached to the application.
- [5] The application has been filed ex-parte. Urgent ex-parte interim injunctions are to be granted on a consideration of the urgency involved and impracticability of service on the Defendant before the action sought to be restrained occurs or to halt an action that is occurring (see **Ex Parte Giovanni Rose**).
- [6] Injunctions are equitable in nature. In **Techno International v George SSC147/2002 31st July 2002** the Supreme Court held that in such cases the court will be guided by three considerations:
- i) when there is a serious issue to be tried
 - ii) whether the damages would be adequate by redress to redress the harm caused by the grant of the injunction
 - iii) whether on the balance of convenience it would be just to grant rather than refuse the order
- [7] In **Dhanjee v Electoral Commission, 2011 SLR 141**, the balance of convenience test was defined as:
- (i) whether more harm will be done by granting or refusing the injunction;

- (ii) whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused; and
- (iii) whether the breach of the appellant's rights would outweigh the rights of others in society

[8] In consideration of the affidavit and attached documents it is my view that there is a greater risk of harm and prejudice being caused to the Applicant than the Defendant in the main case if the injunction is not granted.

[9] I am not convinced that irreparable harm will be occasioned to the Defendants by the granting of the injunction.

[10] On the basis of the above, I find that it is an appropriate case where the Court should make an urgent ex-parte order of interim injunction against the Defendant in the main case, as sought by the Applicant.

[11] I hereby grant an ex parte interim injunction, as follows:

(i) the Defendant in the main suit, Barry Payet of B & M Store, Anse Reunion La Digue and/or his agents is/are prevented from continuing with the construction of structures on the Plaintiff's property at Anse Gaulette, La Digue pending the final determination of this suit.

(ii) The order shall remain in force until 15th October 2018 at 1.45 pm on which day and time, the Defendant is required to attend Court, and show cause, if any, against the extension of this order until the final disposal of the matter.

[12] I direct the Registrar to serve copies of this order forthwith on the Defendant in the main case, Barry Payet of B & M Store, Anse Reunion La Digue.

Signed, dated and delivered at Ile du Port on

L. Pillay, J
Judge of the Supreme Court