

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 19

MA14/2019 arising in CS 12/2019

In the matter between

JJ SPIRIT FOUNDATION

(rep. by Basil Hoareau)

Petitioner

and

ADVANCED RENAL CARE SEYCHELLES (PTY) LTD

(Unrepresented)

Respondent

Neutral Citation: *Jj Foundation v Advanced Renal Care Seychelles (Pty) Ltd* (case number MA14/2019) [2019] SCSC 19 (judgment date 22 January 2019)

Before: Twomey CJ

Summary: Provisional attachment – conditions for grant

Heard: 22 January 2019

Delivered: 22 January 2019

ORDER

The application for provisional attachment of SR 1,047,940.08 in the hands of the government of Seychelles is granted.

RULING

TWOMEY CJ

[1] The petitioner, an association registered under the Registration of Association Act, has sought an order for the provisional attachment of money belonging to the respondent in the hands of the government of Seychelles.

- [2] In an affidavit in support of the application sworn by its Chairperson, Lise Bastienne, it is averred that the respondent owes the sum of SR 1,083,075 in unpaid rent to the petitioner for the period ending 1st January 2019 and a further sum of SR 96,419.08 for unpaid electricity bills ending November 2018.
- [3] It is further averred that the respondent has ceased its operation in Seychelles in regard to its dialysis service and has no other business in Seychelles. The respondent has no other assets apart from its dialysis equipment or any other movables or immovables in Seychelles.
- [4] The deponent has also further averred that if the money which is in the hands of the government of Seychelles is not attached, there is a clear danger that the respondent would avoid satisfying any eventual judgment against it and it would not be able to enjoy the fruits of such a judgment were the court not to grant its prayer.
- [5] The respondent has been duly served with the notice of motion and petition but has failed to make an appearance or answer to the petition for provisional attachment.
- [6] In considering the application I have taken note of the law on the issue. Sections 280 of the Seychelles Code of Civil Procedure provides that:
- At any time after a suit has been commenced, the plaintiff may apply to the court to seize provisionally any movable property in the possession of the defendant in the suit or to attach provisionally any money or movable property due to or belonging to the defendant in the suit, which is in the hands of any third person.*
- [7] Section 282 of the Code further provides that before an order for provisional attachment is granted, the court must be satisfied that the plaintiff has a bona fide case.
- [8] In this context the Court of Appeal in *Eastern European Engineering Limited v Vijay Construction (Proprietary) Limited* SCA 13/2015, found that these provisions establish that only two requirements need be satisfied for an order for provisional attachment: 1) that a suit has been commenced and 2) that the applicant has a bona fide claim. It is then mandatory that the court direct that a warrant be issued, the only safeguard against abuse

is for the court to demand that the applicant provide security if it sees it appropriate in the circumstances of the case.

[9] As far as the first limb is concerned there is no doubt that a suit has been commenced as the petitioner has filed a petition numbered CS 12/2019 against the respondent praying for damages in the total sum of SR1,047,940.08. In establishing whether such a case is bona fides, the court in *Allied Builders v Fregate Island* (2008) SLR 63 took the following matters into consideration: whether the plaintiff had a claim against the defendant, whether there is a clear danger that the defendant will not adhere to the judgment if the plaintiff is successful and whether the plaintiff would not be able to realise the fruits of judgment if made in the plaintiff's favour.

[10] In *Eastern European Engineering v Vijay Construction* (2013) SLR 25, Egonda-Ntende CJ in respect of a similar application stated:

The raison d'être for provisional attachment of a defendant's moveable properties is to ensure that should the plaintiff succeed in the main suit, the plaintiff would be able to enjoy the fruits of its judgment...

The order for provisional attachment ought to be invoked only in cases where its raison d'être is at stake and not otherwise. The defendant should be acting in such a manner that puts at risk the plaintiff's ability to recover the fruits of his judgment. For instance if he is disposing of his assets with a view to avoiding satisfying any judgment that may be passed against him or he plans to relocate himself or his assets outside this jurisdiction again with the object of not satisfying a possible judgment being passed against him..

[11] I am minded to apply the same conditions for an order for provisional attachment to issue. In the present case it has been established that the respondent has ceased business in Seychelles and has no assets other than its equipment and the money owed to it by the government of Seychelles. I am therefore satisfied that the *raison d'être* for the petition would be defeated if the provisional was not granted.

[12] Therefore, the court orders that a provisional attachment should issue attaching the sum of SR 1,047,940.08 to be paid to the respondent in the hands of the government of Seychelles. This order is to endure until the final determination of the case.

[13] A copy of this order is to be urgently served on the Minister for Finance and the Principal Secretary of Finance for compliance.

Signed, dated and delivered at Ile du Port on 22 January 2019

Twomey CJ