

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC 346
MA 177/2018

In the matter between:

SARAH WALSH
(rep by S. Rouillion)

Judgment Creditor/Respondent

and

NATHALIE WELLER (BORN HOAREAU)
(rep by K Shah)

Judgment debtor/Applicant

Mauritius Commercial Bank

1st Garnishee

Mr. Frank Elizabeth representing Victoria law Firm

2nd Garnishee

Arriva Real Estate

3rd Garnishee

Neutral Citation: *Walsh Sarah v (Born Hoareau) Weller Nathalie, Mauritius Commercial Bank, Victoria Law Firm, Arriva Real Estate (MA 77/2018) [2019] SCSC 346*

Before: Andre J

Summary: Application for validation of attachment of a moveable property – sections 247, 248, 249, 250, 280, 281, 281, 283 and 284 of the Seychelles Code of Civil Procedure (Cap 213)

Heard: 30th January 2019

Delivered: 23rd April 2019

ORDER

Application dismissed

RULING

ANDRE J

[1] This Ruling arises out of an application of validation of a moveable property under section 248 of the Seychelles Code of Civil Procedure (Cap 213) (*“the Code”*) of the 11th July 2018 and filed on the 12th day of July 2018 as against Nathalie Weller (born Hoareau) (*“Judgment debtor”*), Mauritius Commercial Bank (*“1st Garnishee”*), Victoria law Firm represented by Frank Elizabeth (*“2nd Garnishee”*) and Arriva Real Estate (*“3rd Garnishee”*).

[2] The application for validation is made in pursuance to two **‘alleged Orders’** made by the Registrar of the 19th June 2018 entitled Opposition in the hands of a third party and same in CS 195 of 2011 and the said **‘alleged Orders’** of the Supreme Court arose out of a Garnishee application for attachment by the Judgement Creditor/Applicant of the 28th March 2018, which application in turn was made in furtherance to a Judgment of the Supreme Court by Renaud J of the 19th March 2015 as modified on appeal by virtue of the Judgment of the Court of Appeal of the 7th December 2017, wherein the latter Court of Appeal Judgment, the award of the Supreme Court in the sum of *GBP 228,500.00* was modified to (*exclude the amount of GBP 15,000 erroneously awarded as damages and the sum of S.R. 22,340.00/- paid to Peter Rosalie*).

(Emphasis is mine)

[3] The **‘alleged Orders’** of the Registrar pertaining to the attachment application read as follows:

“Whereas an application dated the 28th day of March in the year two thousand and eighteen has been made to the Registrar of the Supreme Court of Seychelles, by Mrs Sarah Walsh.

These are to allow the said Sarah Walsh to attach in your hands all sum of money and other property whatsoever you now owe or may owe on whether account to the above-named Judgment Debtor, especially the sum of R 253,808 & Pounds 185,064.89 the object of the present attachment being to secure payment of the sum of GBP 228,500 due to the said Judgment Creditor under the above application, all costs that may be incurred by the said Judgment Creditor.

Issued by Order of the aforesaid Registrar this 19th day of June 2018.”

“Whereas an application dated the 29th day of March in the year two thousand and eighteen has been made to the Registrar of the Supreme Court of Seychelles, by Mrs Sarah Walsh.

These are to allow the said Sarah Walsh to attach in your hands all sum of money and other property whatsoever you now owe or may owe on whether account tot eh above-named Judgment Debtor, especially the sum of USD 17,373.87/- the object of the present attachment being to secure payment of the sum of UK Pounds 214,678 and rupees 39,985 due to the said Judgment Creditor under the above application, all costs that may be incurred by the said Judgment Creditor.

Issued by Order of the aforesaid Registrar this 19th day of June 2018.”

[4] For the purpose of this Ruling the following is in essence the factual and procedural background to the current application.

[5] The Applicant obtained Judgment in her favour before the Supreme Court Renaud J, on the 19th March 2015 in Civil Side No. 195 of 2011 in the sum of *GBP 228,500* with interest thereon at commercial rate from the 21st August, 2011 and continuing until final repayment of the total amount due and this Judgement was awarded as against the Judgment Debtor (supra).

[6] It is to be noted further that the Learned Renaud J held at page 9 thereof that”

“... An e-mail from the Defendant to the Plaintiff is dated and other persona dated 10th June, 2011 was admitted as Exhibit P 18. It is a 9 page documents (excepting pages 3, 4 and 5). The purpose of this e-mail was to introduce Mr. Peter Hubert, A British Architect, who was appointed by the Defendant for the purpose of producing some technical and conceptual drawings of the Project. Mr. Hubert visited the project location

in August 2011 to further the project. The fees of Mr. Hubert amounting to GBP 13,500 were paid by the Defendant from the funds that the Plaintiff earlier transferred in the Defendant's bank account..... The claim of the Plaintiff's is for the return to him of the total funds amounting to GBP 213,500 less legitimate invoices that have been spent on the Architect and Surveyor....”

(Emphasis is mine)

[7] The Supreme Court Judgment was appealed against and the Court of Appeal Judgment of the 7th December 2017 of Justices Fernando. McGregor and Robinson (concurring) partially allowed the appeal in the following terms:

“The appeal is allowed partly by varying the judgement of the Supreme Court to the extent that the sum of GBP 15,000 erroneously awarded as damages and the sum of S.R. 22,340.00 paid to Mr. Peter Rosalie on invoices P 29 & 30 be deducted from the sum of GBP 228,500.00 awarded against the Appellant. Subject to this variation the judgment of the Trial Court is confirmed.”

[8] It is to be noted further that at the stage of the Supreme Court hearing, an ex-parte Order of Provisional Attachment, was granted by Learned Renaud J as against the Mauritius Commercial Bank Limited the first garnishee in this application of the 21st October 2011 wherein the Order reads as follows:

“In the interest of justice, I hereby make an ex parte Order of Provisional Attachment, prohibiting the Seychelles branch of Mauritius Commercial Bank Limited in whose hands the money of the Respondent/Defendant from paying such money to any other person pending the further order of this court or until the final judgment in the principal suit. I

hereby direct that a copy of this my order be served by an usher of the court on the Managing Director of the Seychelles branch of Mauritius Commercial Bank Limited as well as a copy of the Defendant and/or her lawyer Mr. Frank Elizabeth.”

- [9] In line with the provisions of Sections 248 and 249 of the Code, the *Garnishees* asper **‘alleged Orders’** of the Registrar (supra) were examined by this Court as to the moveable property which had been attached, on oath concerning the monies alleged to be due to the judgment debtor.
- [10] As per records of proceedings of the 21st January 2019, Mr. Vivian Rassool representative of the 1st garnishee testified that his Agency was involved in transaction of a property at Takamaka namely T 4070 and whereby they received finance from the proceeds of sale. That the said property was being represented by the executor to the estate of late Raoul Edmond namely, Mr. Collin Mc lain. He further testified and confirmed that he did receive some funds from the proceeds of sale namely the sale price of Two Hundred and Seventy Thousand One Hundred and Thirty Five Dollars (USD 270,135). It was further testified that some of the money was retained into a trust account, a company account form Arriva, a client’s account, the amount was Fifty Two Thousand One Hundred and Twenty Six point One Five Dollars (*USD 52,126.15*). Mr. Rassool further testified that he received instructions from the said executor that the said amount was to be divided to four different people, namely Nathalie Weller (the judgment debtor), Debra Hoareau and Linda Dawn Kats (all heirs of the late Raoul Edmond). It was further testified that an amount of Dollars Fourteen Thousand One Hundred and Sixteen point Eight Seven (*USD14,146.87*) would accrue to each heir.

[11] Mr. Vivian Rassool further testified that of the Court made an Order to release the funds to be apportioned to the judgment debtor to a named person he would abide to the same.

[12] Ms. Cheryl Dubel legal and documentation specialist of the 2nd garnishee testified that The Mauritius Commercial bank had in the account of the Judgment debtor her rupee account the sum of namely Account Number 00000031108 the sum of S.R. 2045.82/- as of the date of the hearing. It was further testified that as of 27th June 2011 the balance in the account was of S.R. 253,800/- but that after June starting from the 4th July 2011 there were multiple withdrawals on the account leading to its lowest on the 7th October 2011 in the sum of S.R. six and eighty two cents and there was a deposit on the 23rd December 2011 to the amount of two thousand rupees leading to the current amount (supra). It is to be noted that the statement of accounts was only itemized by Learned Counsel for the Applicant).

[13] Mr. Frank Elizabeth representative of the 3rd Garnishee testified in a gist that his Chambers use to represent the Judgment debtor but that they seized being her attorney after the Judgment of the Court of Appeal (supra). It was confirmed that there was a lump sum of money paid in the client's account of the judgment. debtor in the sum of *GBP 185,064.89* on the 28th September 2011 and that the funds were held and some of it was used to pay an architect in London for there was supposed to be a project on the property and he was instructed to pay this sum to the architect and the balance remained with the law firm until the court of appeal Judgement was given. That after the Court of appeal judgment was given he deducted *GBP 7000* for legal fees and filing fees and the balance of *GBP 173,000* was paid to Mr. Rouillon on or about the 26th March

2018. (*Exhibit P1*). Mr. Frank Elizabeth further confirmed that his Chambers had no more funds remaining for the judgment debtor.

[14] On his part, Learned Counsel Mr. K Shah remarked that the Judgment debtor is not residing in Seychelles hence not being called and he would refrain from making submissions.

[15] Both Learned Counsels Rouillon and Elizabeth field written submissions of which contents have been duly considered for the purpose of this Ruling.

[16] Now, having illustrated the salient background pertinent to this application, I shall now move on to the applicable law and its analysis thereto.

[17] First and foremost, Learned Counsel for the 2nd Garnishee has raised several legal objections as against the application as filed by the Applicant and I deem it appropriate to consider the legal objections first and dependent on its outcome the Court shall determine the issues if any on the merits (if arising).

[18] The legal issue of contention is whether the Applicant's application for validation of the attachment Order is in conformity with section 248 of the Code.

[19] The relevant provisions of the Code to be considered in that light are sections 247, 248, 249, 250, 280, 281, 282, 283 and 284 thereof.

[20] I shall first deal with the legal contention with respect to application of Article 284 of the Code and this vis-à-vis the provisional attachment Order made by Renaud J under section 280 of the Code of the 21st October 2011 and that Order was specific to the 1st garnishee in this application and to be noted that the Learned Judge in that Order simply directed that copy of the Order be served by usher of the Supreme Court, on the judgment

debtor (defendant then) and or his lawyer the 2nd Garnishee. No Order of provisional attachment was made against the chambers of the 2nd garnishee in that said Provisional Order.

[21] It is argued by the 2nd Garnishee that the application is bad in law, procedurally defective and prescribed as will be seen from an examination of the stated sections of the Code and thus the 2nd garnishee submits that the court mero motu should summarily dismiss this application with costs for falling afoul of the law.

[22] The Court, in that light will examine firstly based on a chronology of events arising in this case as per records the merits of the said legal argument.

[23] This Court notes that The Seychelles Court of Appeal finally adjudicated upon the Judgment of Learned Renaud J of the 19th March 2015 on the 7th December 2017 wherein the Appeal partially (supra).

[24] It follows thus that the provisional Order made by Renaud J (supra) of the 21st October 2011 as against the 1st garnishee ought to have been subject to an application for validation as per the provisions of section 284 of the Code as of delivery of the Court of Appeal Judgement. In that light the provisions of section 284 of the Code is couched in peremptory terms as follows:

“If the plaintiff obtain judgment in his favour, any money or other moveable property attached in the hands of a third person shall remain under attachment, unless the plaintiff otherwise request, until the attachment is validated. Within eight days after Judgment has been delivered, the judgment creditor shall apply to the court to validate the attachment and he shall apply to the court to validate the attachment and he shall within

the same period issue summons (a) to the judgement debtor to show cause why such money should not be paid to the judgement creditor or why such immoveable property should not be seized and sold in execution of the judgement and (b) to the third party to appear in court and state what money or other movable property due to or belonging to the judgment debtor is in his hands and the court shall thereupon proceed in the manner laid down in section 249.....”

[25] Based on the above cited record of proceedings, it is abundantly clear that the Applicant has not followed the procedure as mandatorily set out in section 284 of the Code which I repeat is couched in mandatory terms and the Judgment Creditor has not offered a reasonable and or sufficient excuse for flouting the mandatory legal procedures and time standards as set out of validation of the Provisional Attachment Order of Learned Judge Renaud of the 21st October 2011 and this as of eight days of the Court pa Appeal Judgement of the 7th December 2017. It follows that this error in procedure is fatal to the current application of the 28th March 2018 and which application shall be further treated below.

[26] It is to be further to be decided with respect to the application of 28th March 2018 as filed on the same date for the attachment under section 247 of the Code, as to whether, the proper procedure has been adopted and whether an Order was infact granted upon filing of such application with the Registrar giving rise to the current application for validation of an alleged order of the Registrar of the 19th June 2018 and this in pursuant to paragraph 4 of the affidavit of the Applicant of the 3rd July 2018 attached thereto.

[27] Applicant was awarded Judgment by Learned Renaud J on the 19th March 2015 as modified on appeal on the 7th December 2017 (supra) in the sum of 213,500 GBP and

further deduction of the sum of S.R. 22,340/- paid to Mr. Peter Rosalie as per invoices P
29 & 30 with cost against the Judgment debtor. The said Judgment debt has remained
partly unsatisfied by the Judgment debtor in that the sum of *GBP 173,000 (Exhibit P1)*
was paid to the Applicant's lawyer Mr. Rouillon on the 26th March 2018 and the monies in the
hands of the 1st garnishee pending validation and the 3rd garnishee pending attachment.

(Emphasis is mine)

[28] Now moving onto the gist of the second legal point to be treated in this Ruling, I refer to
the application filed on the 28th March 2018. The record shows that upon application the
Registrar on the 19th June 2018 served notice of the application as per Returns of the
Usher of the Supreme Court of the 22nd June 2018. No date was fixed for the hearing of
application for attachment.

[29] This instant application for validation of attachment was filed on the 12th July 2018
It refers therein to an attachment order, "*of this honourable court dated 19th June 2018*"
and that "*it is now necessary for the proceeds from the attached Garnishees to be
located, retrieved and if necessary paid to me in settlement of the judgement debt and
associated costs including the costs of this Application.*"

[30] It wish to clearly state at this juncture that upon careful scrutiny of the records as
highlighted in terms of the procedure adopted by the Registrar on the 19th June 2018,
there is no such attachment Order allegedly made by the Registrar, let alone if Registrar could
make any or by Court which is the proper forum for such an Order.

[31] The record simply reveals service of the application as ordered by the Registrar on
the garnishees in this application. And in this instant case the application to validate

the alleged attachment was filed on the 12th July 2018. This application cannot pertain to an attachment Order, if any, made subsequent to the service by the usher of the application to the garnishees for same is not on records either. It is clear that there has been no attachment order issued by the Registrar, if any, on the 19th June 2018 prohibiting the third party from disposing of the money as alleged in the application. What happened on the 19th of June 2018 was merely service of the application for attachment by the Registry on the Garnishees. No order of attachment was made.

[32] It is true that under section 248 of the Code the reference is that the “Registrar shall issue an order prohibiting: the Garnishee. The submission to “*an attachment order is issued ex-officio*” is a procedure which finds favour under French law whereby “*L’acte initial de la saisie arrêt est un exploit d’huissier, adresse par le saisissant au tiers saisi, par lequel le premier fait défense au second de se dessaisir des objets or valeurs qu’il détient pour le compte du saisi...*” (**Reference to Dalloz, Verbo Procédure, Saisie Aret, note 117**). The French procedure does not find application before this Court where the settled practice has been for the Court to issue the order following the application form the attaching party. Any doubt to that effect is dispelled by the form prescribed under the Code itself (**Reference to Schedule C Form 12**), which provides:

“Whereas an application..... has been made to (the) Judge of the Supreme Court.....

These are to allow the said (applicant) to attach in your hands all sums of money and other property whatsoever you now owe or may owe on whatever account to the above-named defendant, especially the sum of Rupees.... The object of the present attachment being to

serve payment of the sum of Rupees.... Due to the said plaintiff under the above application, and all costs that may be incurred by the said Defendant.

Issued by order of the aforesaid Judge this

(Emphasis is mine)

- [33] There is implicit recognition that a court Order is necessary in the application for attachment filed on the 28th March 2018 for same is filed before the Supreme Court and at paragraph 11 of the applicant clearly seeks for formal notice of these proceedings and formal notice of the provisional attachment of the 25th October beissued.
- [34] For reasons given above, I find that there has been no attachment Order issued by this Court on the 19th June 2018 as alleged that can be validated in the instant proceedings.
- [35] It follows thus that this instant application cannot be entertained for it does not meet the pre-condition for seeking of a validation Order.
- [36] This Court thus hereby rules that since the Applicant failed to validate the provisional attachment order of Learned Renaud J within eight days as of the 7th December 2017 under section 284 of the Code is thus debarred form applying for the current validation application and as a consequence effect and direct consequence of this failure, the attachment made in 2011 hereby ceases to have effect and the money or other property shall be released from attachment.
- [37] The application is thus considered for reasons given falling afoul of the law and is hence dismissed accordingly. No consideration on the merits is made in view of the legal findings.

Signed, dated and delivered at Ile du Port on 23rd April 2019.

ANDRE J