

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2019] SCSC ... **FOS**

MA 269/2019

Arising in CA 11/2018)

In the matter between:

BEAU VALLON PROPERTIES LIMITED (T/A CORAL STRAND)
(rep. by Emmanuella Parmentier)

Appellant

and

RAHUL BHASIN
(rep. by Alexia Amesbury)

Respondent

Neutral Citation: *Beau Vallon Properties (T/A Coral Strand) v Rahul Basin* (MA 269/2019 arising out of CA 11/2018) [2019] SCSC 23rd August 2019

Before: Pillay J
Summary: Stay of Execution
Heard: 23rd August 2019
Delivered: 23rd August 2019

ORDER

Stay of Execution is granted

RULING

PILLAY J

- [1] This is an application for a stay of execution of the judgment of the Supreme Court given in the matter on 14th November 2018, pending the hearing of the appeal by the Court of Appeal.

- [2] The motion is supported by an affidavit sworn by Vadim Zaslouov with a Notice of Appeal to the Court of Appeal attached.
- [3] Mr. Zaslouov avers that the merits of the main case are very strong in the Appellant's favour and the Appellant has a high chance of success in the appeal.
- [4] He further avers that the Respondent will not suffer any material prejudice if the execution of the judgment is stayed pending the appeal as compared to the prejudice the Appellant would face if execution is not stayed and the Respondent is awarded the money and leaves Seychelles.
- [5] Counsel for the Appellant submitted and produced a bank guarantee to the effect that the Appellant has funds secured to settle the judgment debt in the event it loses its appeal.
- [6] Counsel for the Respondent objected to the application stating that the Appellant was given a chance to be heard by the Supreme Court but failed to appear for the hearing or file submissions. Counsel further submitted that there is no appeal filed in this case in view of the fact that the Notice of Appeal states the judgment was given by Robinson J which is not the case. She further submitted that greater prejudice would be caused to the Respondent if the stay was granted since he is in dire need of the money. She added that there was no merit to the main case. Counsel submitted that execution had already started with two vehicles having been seized.
- [7] Counsel for the Respondent relied on the authority of **Chang-Tave v Chang-Tave (2003) SLR 74** for her proposition that the motion should be dismissed.
- [8] The above mentioned case indeed reflects the position as regards applications for stay of execution.
- [9] According to the case of **Pool v William (1996) SLR 206** relied on in **Chang-Tave** above, whether or not the Appellant had a good chance of success is not enough. The Court in **Pool** laid down the circumstances for the Court to consider in granting a stay of execution as follows:

(1) The Appellant would suffer loss which could not be compensated in damages;

(2) Where special circumstances of the case so require;

(3) There is proof of substantial loss that may otherwise result;

(4) There was substantial question of law to be adjudicated upon at the hearing of the appeal; and

(5) Where the appeal would be rendered nugatory.

- [10] I further note the findings of Karunakaran J in **Chang-Tave** above that whether a ‘stay of execution should be granted or refused ...is entirely a matter to be considered within the discretion of the Court, upon the fact and circumstances of each case. ...this discretion should be exercised by the Court judicially and not arbitrarily...in exercise of its equitable jurisdiction in terms of Section 6 of the Courts Act.
- [11] Indeed as noted by counsel for the Respondent the Notice of Appeal attached to the application makes reference to a judgment delivered by Robinson J. Indeed the Notice reflects the laxities of counsel but that is a matter for the Court of Appeal to deal with. However the Notice of Appeal shows that it reflects the parties in the case and the grounds reflect the circumstances of the present case.
- [12] Having noted the submissions by both sides the Court accepts the contention of the Appellant that the Appellant will suffer greater prejudice if the stay is not granted. As much as the Court understands the Respondent’s plight, counsel for the Respondent stated that the Respondent is out of the Republic which in my view justifies the Appellant’s fears that should the judgment debt be paid before the appeal is heard the Appellant may not be able to recoup the monies should the Appellant be successful in its appeal. This Court is of the view that should the money be paid without any real prospects of recovery that would render the appeal nugatory in the circumstances.
- [13] On the basis of the above this Court grants the stay of execution pending the hearing and disposal of the appeal.
- [14] The vehicles already seized are to be released with immediate effect. So it is ordered.

Signed and dated at Ile du Port on 23rd August 2019



Pillay J



Read and delivered at Ile du Port on 23rd August 2019 by

A handwritten signature in black ink, appearing to read "Vidot J".

Vidot J