

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2019] SCSC **726**

CS 152/2018

In the matter between:

SEVERE INVESTMENTS (PTY) LTD

Herein represented by the Chairman of its Board
of Directors & Director, Mr. Joseph Albert
(*rep. by Anthony Derjacques*)

Plaintiff

and

MR. DOMINIC CAMILLE

(*rep. by John Renaud*)

Defendant

Neutral Citation: *Severe Investments (Pty) Ltd v Camille* (CS 152/2018) [2019] SCSC
(5 September 2019).

Before: Carolus J

Summary: Examination on Personal Answers – sections 162 -167 Seychelles Code of
Civil Procedure

Heard: 30 July 2019

Delivered: 5 September 2019

RULING

CAROLUS J

Background

[1] The plaintiff Severe Investments (Pty) Ltd is a company which is represented in these proceedings by Mr. Joseph Albert who is one of its directors as well as being the chairman of its board of directors. The plaintiff company is suing the defendant Mr. Dominic Camille who is another of its directors, for making use its services and facilities without making any payment for the same, and is claiming the sum of Seychelles Rupees two million

seventy-three thousand and fifteen and cents sixty-eight (SCR 2,073,015.68) as payment for the use of such services and facilities.

- [2] The matter was fixed for hearing on 30th July 2019 and 27th September 2019 for the whole day on both days. On the 30th July 2019, after the close of the plaintiff's case, the defendant proceeded with his case. The defendant testified on oath and at the conclusion of his cross-examination, his counsel stated that he did not intend to call any more witnesses on that day, but that on the next hearing date he intended to issue summons on Mr. Joseph Albert to be examined on his personal answers after completion of procedures for the same. The relevant part of the record of proceedings are as follows:

Court: Do you have any more witnesses?

Mr. Renaud: Today no, we have a second day, I intend to issue summons after procedures are completed for Mr. Albert to personally come to Court and depone on certain matters.

- [3] Counsel for the plaintiff objected to Mr. Albert being called to be examined on his personal answers at that stage of the proceedings, stating that summons to secure his attendance should have been served on him before so that he could have appeared on that same day namely 30th July 2019. He submitted that the defendant could not now seek an adjournment because he had not ensured that summons had been issued for Mr. Albert in a timely and manner and prayed the Court not to allow any further adjournment. He submitted that although there was a second date fixed for continuation of hearing of the matter, hearing would have continued on that date only if the time set aside for hearing on the first day had been exhausted. He pointed out that there was still a little less than one hour to go, the time being four minutes past three, in which time any other witnesses could have been heard, had they been present.
- [4] Counsel for the plaintiff relied on the Supreme Court case of **Public Utilities Corporation v Willian Herminie SCSC293 (3 April 2019)** in which, on the date of hearing of the case, after hearing the plaintiff the Court had refused to allow production of a written agreement between plaintiff and defendant which was relied upon by the plaintiff to prove its case.

Consequently counsel for the plaintiff sought an adjournment to call witnesses who were not in attendance and for whom no summons had been applied for. The Court refused to grant the plaintiff's application to adjourn the hearing of the suit for that purpose on the grounds that it had not shown good cause for the same. The plaintiff closed its case, and the defendant not having given evidence or called any witnesses, the Court proceeded to dismiss the plaintiff's case. The plaintiff applied to the Court of appeal in **Public Utilities Corporation v Willian Herminie SCA MA16/2019 arising out of Civil Appeal SCA 23/2019** for leave to appeal out of time which was denied. One of the matters taken into consideration by the Court of appeal in relation to the conduct of the case is the “[C]alling of witnesses when they are not in attendance (nor summoned for that day) ...”

- [5] In reply Counsel for the defendant submitted that since two dates had been fixed for hearing of the matter, the hearing was not complete and he had the right to call Mr. Albert on his personal answers on the date set for continuation, namely 27th September, 2019.
- [6] The Court therefore has to determine whether the defendant can make his application to call Mr. Albert to be examined on his personal answers at this stage of the proceedings.
- [7] The rules relating to procedures to be followed for obtaining the attendance of a party for examination on personal answers, and the point in time at which an application for the same are contained in sections 162 to 166 of the Seychelles Code of Civil Procedure (“SCCP”). The relevant provisions are reproduced below:

162.(1) Any party to a cause or matter may examine the adverse party on his personal answers as to anything relevant to the matter at issue between the parties.

(2) If a party to any cause or matter be the Republic, a public establishment (établissement public), a corporation or a body having a legal entity, such party shall be bound to appoint a special attorney to give his personal answers in such cause or matter. If on the day fixed for the appearance of any such party to give his personal answers, no such attorney appears on behalf of such party, and no satisfactory reason for such attorney's non-appearance is given, the facts, matters and things alleged by the adverse party may be held to have been admitted:

Provided however that administrators, managers or agents of such party may also be called upon to give their personal answers on matters which are within their personal knowledge, and the court may in its discretion attach whatever weight it thinks fit to such answers.

(3) If a party to a cause or matter be incapable in law of contracting (incapable), he shall give his personal answers through his guardian, curator or other legal representative.

163. Whenever a party is desirous of obtaining the personal answers not upon oath of the adverse party, he may apply to the Judge in court on the day fixed for the defendant to file his statement of defence or prior thereto, or he may petition the court ex parte at any time prior to the day fixed for the hearing of the cause or matter to obtain the attendance of such adverse party and the court on sufficient ground being shown shall make an order granting the application or petition. And the party having obtained such order shall serve a summons, together with a copy of the order, on the adverse party to appear in court on the day stated therein.

164. If a party to the cause or matter is present in court at the hearing of the case, he may be examined on his personal answers with the permission of the Judge, without any previous application.

[...]

166. The examination on personal answers shall be in open court at the hearing of the cause or matter, but no party having closed his case shall be allowed thereafter to examine the adverse party on his personal answers.

[8] A reading of the above provisions will show that there are three points in time at which a party may apply to the Court to examine an adverse party on personal answers. Firstly under section 162 of the SCCP, this may be done in court on the day fixed for the defendant to file his statement of defence or prior thereto. It is obvious that the defendant in this case cannot avail himself of this option at this point in time, the date for filing the statement of defence having already passed. Secondly, under the same section, the party wishing to examine another party on his personal answers may, at any time prior to the day fixed for the hearing, petition the court *ex-parte* to obtain the attendance of such party. In both cases the court upon

being satisfied that there are sufficient grounds for granting the petition shall make an order to that effect. The party having obtained such order shall serve a summons, together with a copy of the order, on the adverse party to appear in court on the day stated therein. Thirdly under section 166 of the SCCP a party may without any previous application but with the permission of the Judge, examine an adverse party on his personal answers where such party is present in court at the hearing of the case. Again this option was not open to the defendant as Mr. Albert was not present at the hearing of the matter.

- [9] It is obvious therefore that the second option is the only one under which the defendant may proceed.
- [10] The record of proceedings shows that the two hearing dates of the 30th July and 27th September 2019 were fixed on 16th May 2019. In my view a diligent counsel should have petitioned the Court to allow him to call Mr. Albert to be examined on his personal answers, prior to the first hearing date of the 30th of July 2019. Had the Court found merit in his petition, it would have granted the petition and the defendant could have summoned Mr. Albert to appear in Court on the 30th of July 2019, when he would have been examined on his personal answers, had the time permitted.
- [11] The defendant argues that since two days were fixed for the hearing and that the second day namely 27th September 2019 still remains, then it is in order for him to make his application before the second day of the hearing,
- [12] In my view, the defendant should not use the fact that the hearing had been fixed for two days to condone his failure to make his application to the Court in a timely manner, so that the matter is completed expeditiously and timeously.
- [13] However I take note of the case of **Chez Deenu v Loizeau SCA 17/1987 22 July 1988**, reported in SCAR 1988-1993 at page 27 in which the Court held inter alia that:

Examination on personal answers is a legal right that should not be denied to a claimant except on very strong grounds. Such grounds include where physical attendance is impossible or dangerous to life, or if it is proved that the person to be

examined has no connection with the issue. The Court has a discretion to disallow a motion for examination on personal answers if the motion is unreasonable.

[14] Since a further hearing date has been fixed for continuation of hearing of this matter, I see no harm in allowing the defendant to file his petition to call the plaintiff to be examined on its personal answers, in particular as this has been done before he has closed his case in accordance with section 166 of the SCCP. This is subject to the petition being filed and dealt with prior to the next hearing date of the 27th September, 2019.

[15] I order accordingly.

Signed, dated and delivered at Ile du Port on 5 September 2019

Carolus .

Carolus J