

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 98  
MA 190/2019  
(Arising in CA17/2019)

**LODGE CAFÉ (PTY) LIMITED**  
*(rep. by Anthony Derjacques)*

**Applicant**

versus

**EDEN ISLAND RETAIL(SEY) LIMITED**  
*(rep. by Kelly Louise)*

**Respondent**

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**Neutral Citation:** *Lodge Café v Eden Island Retail* (MA190/2019) [2020] SCSC98 (5<sup>th</sup> February 2010).

**Before:** Dodin J

**Summary:** Stay of Execution pending appeal

**Heard:** 23 January 2020

**Delivered:** 5 February 2020

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**ORDER**

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**RULING**

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**DODIN J**

[1] The Applicant has filed an appeal against the decision of the Rent Board ordering it to:

- i. Vacate the premises of the Respondent at Eden Plaza within six months;
- ii. Pay to the Respondent the sums of US\$912,668.52 and SCR436,975.36 owed and continuing to be owed at the date of the order; and
- iii. To continue to pay all rent and utilities becoming due until the final date of ejection from the premises.

[2] The Applicant now also files for stay of execution of the orders of the Rent Board raising amongst other grounds that if a stay is not granted the Applicant would suffer undue hardship, the restaurant will close down, 14 workers would lose their livelihood and be rendered unemployed, the Applicant would be rendered bankrupt and the bank may foreclose on his properties. The Applicant further submitted that any award of damages would not repair the damage to his business and his workers and that he has substantial grounds of appeal and a reasonable chance of success on appeal.

[3] The Respondent objects to the application for stay of execution maintaining that the chances of the Applicant succeeding on appeal is minimal in view that there is no evidence adduced which can be relied on by the Applicant on appeal as the Applicant was absent from the Rent Board hearing; that the Applicant was given 6 months to vacate which gave the employees of the Applicant ample time to find alternative employment. Learned counsel submitted that in view of the amount of money owed by the Applicant it would also be just and proper for the Court to make an order for security in the amount ordered by the Rent Board.

[4] Section 251 of the Seychelles Code of Civil Procedure contains the following provisions for recovery of judgment debt;

*“A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default or satisfaction of the judgment or order.”*

[5] The Respondent has not initiated the procedures under section 251. The Respondent has also given no indication as to what it intend to do to obtain the benefits of its judgment.

[6] The Applicant has so far also not advanced any reason for not satisfying the judgment debt and for not vacating the Respondent’s premises. Section 230 of the Seychelles Code of Civil Procedure provides that:

*“An appeal shall not operate as a stay of execution of proceedings under the decision appealed from unless the court or the appellate court so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be invalidated except so far as the appellate court may direct”.*

- [7] In the case of *Pool v William Civil Side 244/1993* (judgment delivered on 11 October 1996) the Court determined that in considering whether to grant a stay of execution the Court must take into consideration the following:
- a. Whether an appellant would suffer loss which could not be compensated in damages;
  - b. Where special circumstances of the case so require;
  - c. If there is proof of substantial loss that may otherwise result;
  - d. If there is substantial question of law to be adjudicated upon at the hearing of the appeal; or
  - e. If the appeal would otherwise be rendered nugatory.
- [8] In *Chang-Tave v Chang-Tave [2003]SLR 74* (Civil Side 153/2002 judgment delivered on 6 March 2003), the Court further stated that a stay of execution will only be granted if:
- a. Without a stay the appellant would be ruined; and
  - b. The appeal has some prospect of success.
- [9] In *Avalon v Berlouis [2003 SCSC 20]* (Civil Side 150/2001, judgment delivered on 8<sup>th</sup> September 2003), the Court stated further that it will exercise its discretion to grant a stay of execution sparingly. It will not without good reason delay a successful plaintiff from enforcing the judgment obtained although as a Court of Equity it will not deny an unsuccessful defendant the possible benefit from the appeal process.
- [10] The Court must also consider the balance of convenience, hardship or loss the parties may suffer. The judgment debtor must show that the likely injury to be suffered by him in the event there is execution will be greater than any likely to be suffered by the Respondent if the stay is not granted.

- [11] The Court has a complete discretion in the matter. The burden is on the Applicant to satisfy the Court that his case merits a stay and the Court will weigh the balance of convenience and the competing rights of the parties. A stay will be granted where a successful appeal will be futile if a stay is not granted. The court may also grant a stay with conditions such as adequate security being provided by the Appellant/Applicant.
- [12] It is not however for the Court to prejudge the appeal but only to make an assessment of whether the appellant has a good chance of success or the appellant may be ruined if the stay is denied or if the appeal has little chance of succeeding.
- [13] Having considered the submissions in this case and the affidavits of Gerard Patti and Aarti Kerai, I find that the Applicant has not given any reason why it has failed to comply with the determination of the Rent Board delivered on 24<sup>th</sup> May 2019, which is more than 8 months ago. Since the Applicant is not in a position to deny that he is in occupation of the Respondent's premises and that he is in arrears with rental and utilities payments I cannot conclude that the Applicant has a reasonable chance of success on appeal.
- [14] Furthermore I agree with the Respondent that the Applicant has had ample time to meet the judgment debt and for the employees to seek alternative employment. Complacency should not be tolerated as a ground to stay the execution of a judgment. The Applicant must show that reasonable steps were being undertaken to satisfy the judgment debt even if he feel he has a chance of success on appeal. With none of these factors present, the application for stay of execution cannot be sustained.
- [15] The application for stay of execution is therefore dismissed with costs to the Respondent.

Signed, dated and delivered at Ile du Port on 5 February 2020.

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Dodin J