

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2020] SCSC 414

MA 103 of 2020

Arising in CS 65 of 2020

In the ex parte matter between:

ASCENT PROJECT (SEYCHELLES PROPIETARY) LIMITED Plaintiff
(rep. by Kieran Shah)

and

CONSOLIDATED POWER PROJECTS

GROUP AFRICA LIMITED 1st Defendant
(rep. by)

CONSOLIDATED POWER PROJECTS (SEYCHELLES)

LIMITED 2nd Defendant
(rep. by)

PUBLIC UTILITIES CORPORATION 3rd Party
(rep. by)

Neutral Citation: *Ascent Project (Seychelles) (Proprietary) Limited v Consolidated Power Projects Group Africa Limited and Anor* MA 103/2020 arising in CS 65/2020) [2020] SCSC 414 (10th July 2020)

Before: Pillay J

Summary: Provisional Attachment Order

Heard: 10th July 2020

Delivered: 10th July 2020

ORDER

Therefore, the court orders that a provisional attachment should issue attaching the sum of USD 521, 892.36 to be paid to the Respondent in the hands of the Public Utilities Corporation. This order is to endure until the final determination of the case.

A copy of this order is to be urgently served on the Public Utilities Corporation for compliance.

ORDER

PILLAY J

- [1] The Petitioner in the case, a company registered in Seychelles and the Plaintiff in case CS 65 of 2020, seeks for an order for provisional attachment of the monies belonging to the Respondent, Defendant in the main case, in the hands of the Public Utilities Corporation.
- [2] In an affidavit in support of the application sworn by Rajesh Pandya, the Managing Director of Ascent Project (Seychelles) Proprietary Limited, it is averred that the Respondent owes the total sum of USD 521, 892.36 for works completed by the Petitioner from October 2019.
- [3] It is further averred that the Respondents do not have a permanent presence in Seychelles and once their work is completed they will leave Seychelles without having paid Ascent Project.
- [4] Attempt was made to serve the Respondents but the process servers filed a return to the effect that the Respondents have changed their registered office. With that learned counsel for the Petitioner moved for the application to be heard ex-parte which it was.
- [5] In considering the application I have taken note of the law on the issue. Sections 280 and 281 of the Seychelles Code of Civil Procedure provides that:

280. 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. The Petition shall be by petition supported by an affidavit of the facts and shall be signed by the plaintiff or his attorney, if any, and shall state the title and number of the suit

281. If the court is satisfied that the plaintiff has a bona fide claim, the court shall direct a warrant to be issued to one of the ushers to seize provisionally such

property, or shall make an order prohibiting the third person in whose hands such money or other movable property is from paying such money or delivering such property to any other person pending the further order of the court. The order shall be served on the third party by an usher of the court. The court, before any such warrant or order is issued, may require the Petitioner to find such security as the court may think fit.

- [6] In accordance with sections 280 and 281 above therefore the Petitioner has to show that a suit has been commenced and the Plaintiff has a bona fide claim.
- [7] This approach was accepted and adopted in the case of **Eastern European Engineering v Vijay Construction (MA275/2012) [2013] SCSC 24 (25March 2013)** by Egonda N'tende then Chief Justice. However he went on to review this approach finding that:

After observing that traditional jurisprudence supports the approach that all that is required for a Court to order the attachment of a respondent's bank accounts is the institution of a suit and a claim that it is bona fide, stated-

[13]... The time has come for a review of this approach and to restrict such orders to defendants acting in such a way as to defeat the possibility of a successful plaintiff from recovering the fruits of his or her judgment. A plaintiff or a party ought to show that a defendant has acted in a manner that is putting at risk the possibility of recovering the fruits of his judgment should he or she succeed in the head suit.

- [8] The Learned Chief Justice went on to state-

[14] The raison d'etre 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. However at this stage no trial has taken place. No 'judgment' as such has been ordered against a defendant. Judgment may well be two or more years away. In this Court it is not uncommon to have cases last for five years without completion. It appears to me quite wasteful in economic terms, both to the owner and the nation that an order of the Court can sequester assets of the defendant for such a period, locking such assets out of economic or commercial activity to the benefit of the owner when the owner has done nothing wrong at that stage. All there is, is a suit filed against him. In my view there must be more.

[15] The order for provisional attachment ought to be invoked only in cases where its raison d'etre 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

*to avoiding
plans to relocate
object
him.*

*judgment. For instance if he is disposing of his assets with a view
satisfying any judgment that may be passed against him or he
himself or his assets outside this jurisdiction again with the
of not satisfying a possible judgment being passed against*

- [9] The reasoning of the learned Chief Justice in the abovementioned case was approved by the Court of Appeal in Eastern European Engineering v Vijay Construction SCA13/2015 (31 August 2018).
- [10] In consideration of the above I find no reason to depart from the adopted considerations when deciding whether or not to issue an order for provisional attachment. In the present case it has been established that the Respondent has no permanent presence in Seychelles and is owed money by the Public Utilities Corporation. I am therefore satisfied that the raison d'être for the Petition would be defeated if the application for provisional attachment order is not granted.
- [11] Therefore, the court orders that a provisional attachment should issue attaching the sum of USD 521, 892.36 to be paid to the Respondent in the hands of the Public Utilities Corporation. This order is to endure until the final determination of the case.
- [12] A copy of this order is to be urgently served on the Public Utilities Corporation for compliance.

Signed, dated and delivered at Ile du Port on 10th July 2020

Pillay J