

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC *.H24*
MA92/2020
Arising in CS 173/2019

In the matter between

VENDESTO LTD

Applicant

Versus

MAERSK LINE A/S

Respondent

*Represented by its agent Hunt Deltel & Co. Ltd
(rep. by Amanda Faure)*

AND IN THE EX PARTE MATTER OF:

VENDESTO LTD

Applicant

(rep. by Guy Ferley)

Neutral Citation: Ex Parte Vendesto Ltd (MA92/2020) [2020] SCSC... (13 July 2020)

Before: Carolus J

Summary: Urgent Interlocutory Injunction

Heard: 13 July 2020

Delivered: 13 July 2020

ORDER

CAROLUS, J

1. This is an ex parte application by Vendesto Ltd (“applicant”) for interlocutory injunction compelling the respondent Maersk Line A/S, to release a shipment of rice under bill of lading No. 589607399, Manifest No: 20/24.
2. The applicant is a trading company and the respondent a shipping carrier. The applicant has filed a plaint in CS173/2019 (“the principal suit”) against the respondent, averring that a dispute has arisen between the parties regarding outstanding electricity, rental expenses and demurrage charges in the sum of R254,846.00, for a shipment belonging to the applicant under bill of lading No.968140430, which the defendant/ respondent claims the

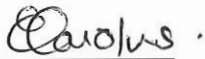
plaintiff/ applicant owes it. The plaintiff/ applicant denies that it owes the defendant/ respondent the said sum which it has refused to pay. The defendant/ respondent has filed a counterclaim praying for a judgment in its favour in the sum R254,846.00 which is contested by the plaintiff/ applicant in its defence to the counterclaim.

3. It is averred in the affidavit in support of the present application that the Respondent has unilaterally decided to seize a shipment of rice, unrelated to the dispute, which has recently arrived in Seychelles under bill of lading No. 589607399, Manifest No: 20/24 belonging to the applicant and that the reason given for the seizure of the said shipment is that there is an outstanding payment under bill of lading No. 968140430. It is averred that the seizure of the shipment under bill of lading No. 589607399, Manifest No: 20/24 belonging to the applicant is unlawful and that the respondent has no legal right to retain the said shipment because it is under a separate contract from that of the disputed claim under bill of lading No. 968140430 and alternatively that the action of the respondent is an abuse of right if it has a right in the first place.
4. It is also averred that the applicant is suffering severe prejudice arising from the seizure of the said shipment under bill of lading bill of lading No. 589607399, Manifest No: 20/24 because the merchandise contained therein is rice which will pass its sell-by date shortly and if not released immediately will be unsellable. The applicant avers that the shipment has been in the custody of the respondent since 29th January 2020 and despite requests has persistently refused to release the same, insisting that it is paid all monies purportedly due to it including monies including the monies that is the subject of litigation in civil side 173/2019. The applicant further avers that on the other hand if the respondent is ordered to release the shipment it will suffer no consequence as it already has a counterclaim against the applicant pending before the court in civil side 173/2019 to recover the alleged debt under No. 968140430, and that it is in the best interests of justice that the application is granted.
5. Despite the application having been made ex-parte, the respondent was represented by Counsel at the hearing thereof, and was heard on the application. She objected to the application but then agreed to the release of the shipment of rice on condition that charges

owing to the respondent by the applicant relating to that specific shipment was settled. Counsel for the applicant agreed to that condition.

6. In the circumstances, and in view of the nature of the commodity sought to be released and further that the sum allegedly owed by the applicant to the respondent under bill of lading No. 968140430 is already the matter of a counter-claim by the respondent before this Court, and taking into consideration the prejudice to the applicant if the application is not granted, I find that the balance of convenience lies in granting the application.
7. I therefore grant the application and order the respondent to release the shipment of rice under bill lading No. 589607399, Manifest No: 20/24 as prayed for by the applicant upon payment of all outstanding charges owed by the applicant to the respondent in respect of that shipment.
8. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 13 July 2020.



Carolus J