

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact
[2020] SCSC ...
MA 220/2020
(Arising in CS07/2019)

In the matter between:

**THE ATTORNEY GENERAL
FOR THE COMMISSIONER GENERAL OF THE
SEYCHELLES REVENUE COMMISSION**
(rep. by Mr. Hemanth Kumar)

Applicant

and

ISLAND CONSTRUCTION COMPANY LIMITED
(rep. by Joel Camille)

Respondent

Neutral Citation: *Commissioner General v Island Construction Company Limited*
(MA220/2020) [2020] SCSC (17 December 2020).

Before: E. Carolus J

Summary: Application to charge property as lien for unpaid revenue - section 27(2) of the Revenue Administration Act.

Heard: 17 December 2020

Delivered: 18 December 2020

ORDER

The application to charge Title Numbers B1404, B1940 and S2773 as lien for unpaid revenue owed to the Seychelles Revenue Commission by Island Construction Company Limited is dismissed.

RULING

CAROLUS J

[1] This ruling arises out of an application made under section 27(2) of the Revenue Administration Act (“RAA”) for an order directing the Registrar General / Land Registrar to register a charge in favour of the Seychelles Revenue Commission (“the SRC”) on certain specified immovable properties of Mr Franky Petrouse.

- [2] The application arises out of CS No.07/ 2019 (the “head suit”) in which the Commissioner General of the SRC (plaintiff) seeks to recover unpaid revenue (taxes) in the sum of SCR 24,355,141.79 from Island Construction Company Limited represented by its Public Officer and Director Mr. Frankie Petrouse (defendant). The applicant and respondent in the present application are plaintiff and defendant respectively in the head suit.
- [3] The application is made by way of Notice of Motion supported by an affidavit sworn by Ms. Thirah Ah-Kong, legal officer of the SRC who avers that she is duly authorised by the Commissioner General by Special Power of Attorney to represent the SRC in the head suit out of which the present application arises. Supporting documents are also attached to the Notice of Motion.
- [4] The respondent has raised two points of law in *limine litis* alleging firstly that the Notice of Motion having been served on counsel representing the plaintiff Island Construction Company, was not properly served on the respondent who being a third party to the proceedings should have been personally served. Secondly that since the properties sought to be charged are his personal properties he should have been personally served. The respondent has in addition filed objections to the motion on the merits. The parties have made oral submissions in respect of the pleas in *limine litis* and on certain related points raised in the respondents on the merits. However before dealing with the pleas in *limine litis* and related matters on the merits, I find it necessary to deal with a procedural matter.
- [5] The purpose of this application is to charge immovable properties averred in the Notice of Motion to belong to Mr. Petrouse namely land parcels Title Numbers B1404, B1940 and S2773 and any permanent structures connected to those properties, for unpaid revenue due to the SRC by the respondent.
- [6] In paragraphs 6 and 7 of her affidavit Ms Thirah Ah-Kong avers that:
6. *I state that SRC had an information that **Mr. Franky Petrouse owning an (sic) immovable properties in Seychelles bearing Title Numbers - B1404, B1940 and S2773. If he is not restrained by this Court not to transfer the Title of these lands***

to others by any means SRC would not recover the tax dues from him who is the taxpayer on behalf of his company. Now he is trying to sell these lands to other persons through his agents in Seychelles. Section 27(1) of the Revenue Administration Act states that Revenue imposed under a revenue law that has not been paid by the due date is a lien and charge upon the property, real or personal, of the taxpayer. Hence SRC has power to have charge on these properties by Court Order

7. Hence on behalf of the applicant herein/ Plaintiff in this application, I pray this Honourable Court **for an order directing the Registrar General/ Land Registrar to register a Charge in favour of Seychelles Revenue Commission on the properties of Mr. Franky Petrouse bearing Title Numbers - B1404, B1940 and S2773.** Emphasis added.

[7] Before making an order to charge such properties this Court has to be satisfied that they indeed belong to Mr. Petrouse. The applicant relies on certain documents attached to the application in support of its application. I note that none of these documents show ownership of Title Numbers - B1404, B1940 and S2773, against which a charge is sought to be registered. In other words no documentary evidence has been produced by the applicant in support of the averment in Ms. Ah-Kong's affidavit that these land parcels belong to Mr. Petrouse.

[8] It is trite that any documentary evidence in support of an application must be exhibited in the supporting affidavit. In the case of *Daniella Lablache de Charmoy v Patrick Lablache de Charmoy SCA MA08/2019 [2019] (17 September 2019)* which concerned an application for stay of execution of an order of the Supreme Court, Robinson JA stated at paragraph 10 of her Order:

10. Before turning to the question in issue, the Court considers the objection of Counsel for the respondent that **the record of proceedings cannot be used in combination with the affidavit because they had not been exhibited to and filed with it.** The submissions of Counsel for the applicant abundantly refer to the record of proceedings of 30 January 2019, 16 January 2019, and 31 October 2018. **The affidavit also refers to a decree absolute made and a certificate issued by the Registrar on the 30 January 2019. The aforementioned documents had also not been exhibited to the affidavit.**

11. *Rule 25(3) of The Seychelles Court of Appeal Rules stipulates that interlocutory matters shall be brought by way of notice of motion, which shall be substantially in the form A as provided in the First Schedule to the Rules, and shall be supported by affidavits. An interlocutory matter means any matter relevant to a pending appeal, the decision of which will not involve the decision of the appeal (Rule 25 (1)). The Seychelles Court of Appeal Rules do not stipulate that the Registrar shall undertake the preparation of any record after an application for stay of execution is lodged. Therefore, Counsel for the applicant cannot be heard to submit that the Registrar should have ensured that the record of proceedings should have been on file. In Re Hinchliffe, A Person of Unsound Mind, Deceased, [1895] 1 Ch. 117, the Court of Appeal held that any document to be used in combination with an affidavit must be exhibited to and filed with it. In the same light any document to be used in combination with an affidavit in support of an application to stay execution must be exhibited to and filed with it. Counsel for the applicant should be mindful that the affidavit stands in lieu of the testimony of the applicant.*

[9] The applicant not having exhibited any documentary proof that land parcel Title Numbers - B1404, B1940 and S2773 are registered in the name of Mr. Petrouse, and this Court not being satisfied of the ownership of the said parcels, finds itself unable to make an order to charge such properties. In view of the foregoing this Court finds it unnecessary to consider the other matters raised in *limine* and on the merits of the application by the respondent.

[10] For the reasons stated above, the application stands dismissed.

Signed, dated and delivered at Ile du Port on 18 December 2020

E. Carolus J