

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 998
MA 262/2020
(Arising in 132/2020)

INTENDANCE RETREAT LIMITED
(rep. by Alexandra Madeleine)

Petitioner

and

HILL VIEW RESORTS (SEYCHELLES) LIMITED
(rep. by)

Respondent

Neutral Citation: *Intendance Retreat Limited v Hill View Resorts (Seychelles) Limited* (MA 262/2020) [2020] SCSC 998 (31 December 2020).

Before: Vidot J

Summary: interlocutory injunction, Articles 304 and 305 of the Civil Code of Seychelles

Heard: 30 December 2020

Delivered: 31 December 2020

ORDER

Application granted; interlocutory injunction imposed

RULING

VIDOT J

- [1] The Petitioner has moved this Court for an interlocutory injunction. The Petitioner is the owner of the Residence on the Rocks, a luxurious villa forming part of the Bayan Tree Resorts which was a tourism resort. The Bayan Tree Resorts (Seychelles) Limited (“hereafter “the Bayan Tree”), was renamed the Hill View Resorts (Seychelles) Limited following change of ownership. As such the Respondent is under obligation to honour any agreement which the Bayan Tree had entered into.

- [2] Further to an agreement of the 12th October 2012 (“the Service Agreement”) entered into by the Bayan Tree and the Petitioner, it was agreed that the Bayan Tree provides utility services to the latter. The services included electricity, water, cable TV and repairs and maintenance, room services, laundry and other services provided by the Bayan Tree without interruptions. The Petitioner was billed for the provision of services and affirm that all bills were settled on time.
- [3] It was a term of the grant of sanction by the Government of Seychelles, as per sanction letter dated 09th July 2010, that when the Respondent bought the Bayan Tree, that the use of Parcels T2666 and T3094 by the Petitioner must be in compliance with Agreement reached between the Government and Bayan Tree, in that the development of the residential villas constructed on the above mentioned parcels must for part of and parcel of the Bayan Tree villa rental pool and not rented out on its own.
- [4] By letter dated 04th May 2011, Bayan Tree, informed the Respondent despite the then anticipated sale of the Bayan Tree to the Respondent that the Service Agreement will continue to be honoured.
- [5] However, in breach of the Service Agreement and the sanction letter the Defendant has cut supply of certain services such as water and TV to the Residence on the Rock which is occupied by the Petitioner. Now, the Respondent has threatened to cut off the supply of electricity to the Residence on the Rock as from the 1st January 2021. Thus this application.
- [6] The Petitioner has tried to contact the Public Utilities Corporation (PUC) in an effort to get alternative means of power supply. By letter dated 3rd June 2020, PUC informed the Petitioner that that was not possible since the residence was receiving their supply via internal low voltage supply from Bayan Tree Resort and that the only way to reach the residence of the Petitioner was through the Respondent’s property.
- [7] Since the cutting of water the Petitioner have found it extremely hard to live at the Residence. Its workers are having to carry water from other sources.
- [8] An interim injunction is unlike any other matter, an equitable remedy. This means that in theory the party seeking an injunction must comply with usual basic equitable requirement,

for example coming with clean hands and that there is no delay. The application is being made in pursuance to Section 304 of the Seychelles Code of Civil Procedure.

- [9] Since the application is for interim injunction the Court allowed the hearing to proceed ex-parte whilst remaining aware of the requirements of section 305 of the Seychelles Code of Civil Procedure. In **D'Offay v The Attorney General (1975) SLR 118**, it was held that in matters of injunction, although the application is made pursuant to section 304 of the Seychelles Code of Civil Procedure, this court should be guided by precedents of the courts of England. It was held in **Pickwick International Inc. (G.B) Ltd v Multiple Sound Distributors Ltd. (1972) 1WLR 1213** that there was no requirement that the writ be served on the Defendant prior to the hearing. This same approach is echoed in **France Bonte v Innovative Publication (1993) SLR 138**. It is my view that the ex-parte procedure should only be adopted if two conditions are satisfied; (i) there is urgency and relief is required immediately and (ii) secrecy is essential. Relying on the affidavit, I was satisfied that these conditions exist.

- [8] An interim injunction is granted at the discretion of the Court. In the case of **American Cyanamid Company v Ethicon Ltd. [1975] AC 396**, it was held that in dealing with interlocutory injunctions, the court shall be guided by 3 considerations;

- (a) whether there is a serious question to be tried,
- (b) Inadequacy of damages to either side; and
- (c) that on the balance of convenience an interim injunction should be granted

These are the same considerations considered in **Techno International v George SSC 147/2002, (31st July 2002)**, **Laporte & Anor v Lablache [1956-1962] SLR No. 41** and **France Bonte Innovative Publication**

- [9] In its consideration of the Application the Court approach it based on the presumption that there will be trial on merits at a later stage. The court shall be satisfied that prima facie there is a serious question to be tried. It has to consider the actions and conduct of both parties before exercising its discretion. The Court shall also evaluate if the parties can be

adequately compensated for any damages suffered should the application be denied. The court shall ensure that any further loss or damage, especially if such will be irreparable, is contained. The test to be used in addressing itself to and evaluating the balance of convenience the court shall consider;

- (a) whether more harm will be done by granting or refusing the injunction,
- (b) whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused and
- (c) whether the breach of the Applicant's rights would outweigh the rights of others.

[10] I have carefully considered the Notice of Motion together with the affidavit and find that the conditions of **American Cyanamid Company v Ethicon Ltd.** (supra) are satisfied. I find that the Petitioner will suffer greater harm if the injunction is not granted and a serious injustice will be done since the Petition will most certainly not be able to occupy its premises if there is no provision of utilities to its residence.

[11] Therefore, I grant an interlocutory injunction preventing the Respondent from not honouring the service agreement. The Respondent is therefore prevented from cutting off electricity to the Residence on the Rock and to reconnect or restoring any other utilities and services included in the Service Agreement. This injunction will endure until the final determination of Supreme Court case No.132 of 2020 or until such time that there is application to vary or remove it altogether.

[12] A copy of this Ruling shall be served on the Respondent and their Counsel Olivier Chang-Leng forthwith.

Signed, dated and delivered at Ile du Port on 31st December 2020


Vidot J