

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 664
MA255/2020
(Arising in 111./2020)

In the matter between

BRIGITTE PAYET
(rep. by Guy Ferley)

Petitioner

And

GREGOIRE PAYET
(rep. by Olivier Chang-Leng)

1st Respondent

GREGOIRE'S COMPANY LIMITED
(rep. by Olivier Chang-Leng)

2nd Respondent

Summary	<i>Brigitte Payet v Gregoire Payet and Gregoire's Company Limited</i> MA255 of 2021 (Arising in MC111 of 2020 [2021] SCSC.....08 October 2021
Before:	Vidot J
Summary	Injunction
Heard:	
Delivered:	08 October 2021

RULING

VIDOT J

- [1] This Petitioner filed an application on the 09th December 2020 for the matter in case MC 111 of 2020 to be heard as a matter of urgency and for an Order of an interim injunction to compel the Registrar of Companies and Lands not to register any transfers submitted with respect to shares and immovable properties belonging to the 2nd Respondent; Gregoire's Company Limited ("the Company"). The Respondents had no objection to the

first application which has been granted. Therefore, this Ruling shall be solely be in respect of application for injunction.

[2] The Petitioner is a shareholder of one (1) share of the Company, whilst Mr. Gregoire Payet who together with the Company are Respondents in case MC111 of 2020, is the other shareholder of 999 shares. The Petitioner alleges that Mr. Payet, being in control of the Company, has conducted the affairs of the Company in a manner she considers oppressive and/or unfairly prejudicial to the interest of the Petitioner. In her Petition she enumerates various instances of alleged oppressive conduct which she contends are prejudicial to her interest.

[3] The Petitioner has prayed to Court for the following Orders;

- (i) To appoint a person to investigate into the affairs of the Company and the conduct of Mr. Payet, as Director of the Company and report to Court;
- (ii) To prevent the disposal or dealing with any assets including but not limited to any bank account or rights in land belonging to the Company, until after the investigation has been made;
- (iii) That any person found to have acted contrary to law with regards to the conduct of the affairs of the Company be dealt with as the law prescribes and for any person who has suffered in consequence of such conduct be paid compensation by the said person; and
- (iv) That Mr. Payet is also liable for the costs of the suit.

[4] Together with the Notice of Motion seeking the interim injunction, the Petitioner has attached an affidavit sworn by her. In the affidavit, she inter alia states that unless the Order for interim injunction is granted, the Company will face serious financial difficulties and that as a minority shareholder, her interest will be greatly affected. She also claims it is in the best interest of justice that the Order prayed for is granted.

[5] The Respondents have filed a Reply to the Notice of Motion in which they argue that the Application should be dismissed as;

- (i) The Petitioner has failed to state under which section of Seychelles Code of Civil Procedure or the Civil Code that the injunction is being requested;
- (ii) That the Petitioner has not demonstrated nor proved any harm that cannot be compensated by damages if the injunction is not granted nor why the Order should be granted in the interest of justice;
- (iii) That the Petitioner has only cited that financial difficulties for the Company and herself will face if the order of injunction is not granted, which is not a ground for an injunction.

[6] At this stage, I find that the Reply of the Respondent is full of merits.

[7] To the Reply, the Respondents have attached an affidavit sworn by Jean-Marie Moutia, Director of ACM Associates (an accounting firm) who has been granted a Power of Attorney ("POA") to represent Mr. Payet and he is also Director of the Company. Copy of the POA has been attached to the Reply.

[8] Mr. Moutia stated that as per advice of Counsel, the Petitioner has not presented any legal basis for the grant of injunction. Neither has the Petitioner demonstrated that damages would not compensate her should the injunction not be granted. Furthermore, the Respondents argue that the Petitioner has not demonstrated how granting the injunction would be in the best interest of the Company and further claim that if the injunction is granted the Company would be unable to enter into negotiations with any institution or person in order to settle any debts and cause irreparable harm to the company, as an injunction would restrict dealings with all property of the Company.

[9] Firstly, I note that Counsel for the Petitioner has not yet filed any submission. Therefore, I cannot fully appreciate the reasons for asking for an interim injunction as the Petitioner has not substantiated their grounds for request for an injunction with any arguments.

[10] I shall now deal with the objection of the Petition on the ground that the Petitioner has not stated under which law the application is made. It is correct that the Petitioner did not make reference to any law in her pleadings. Counsel for the Respondents cited **OL v DL**

CS SCSC 2020 341, in which Twomey CJ noted that interim injunctions are made in pursuance of the provisions of Sections 121, 122, 123 and 304 of the Seychelles Code of Civil Procedure as read with provisions with section 5 and 6 of the Courts Act. Was such flaw detrimental to the Petition? It is trite that an application for injunction will follow from these statutory provisions. It could not have been invoked under any other provisions. Therefore, the Petitioner's failure to mention the provisions of the law is not fatal. After all, unlike any other matter, an interim injunction is an equitable remedy and granted at the discretion of the Court. Nonetheless, the Court has to exercise this discretion judiciously and ensure that interest of justice prevails.

[11] As above stated, an interim injunction is granted at the discretion of the Court. In the case of **American Cyanamid Company v Ethicon [1975] AC 396**, it was held that in dealing with injunction, the court shall be guided by three considerations and they are;

- (a) Whether there is a serious question to be tried;
- (b) Inadequacy of damage to either side; and
- (c) That on the balance of convenience an interim injunction should be granted.

These same considerations were followed in **Techno International v George SCSC 147/2002 (31ST July 2002)**, **Laporte & Anor v Lablache [1956-1962] SLR No.41**, **France Bonte v Innovative Publications [1993] SLR 138** and **OL v DL (supra)**.

[12] In **Dhanjee v Electoral Commission [2011] SLR 141**, the Court interpreted balance of convenience to include the consideration of the following factors;

- (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 than of injustice if it is refused; and
- (c) Whether the breach of the appellant's rights would outweigh of the rights of others.

See **Government of Seychelles v Doreen Monthy MA357/2017 and MA 03/2018 (arising in136/2017) [2018] SCSC**

- [13] After a perusal of the Petition, I find that there is a question to be tried. That would satisfy the first consideration in favour of granting the interim injunction.
- [14] However, I do not consider that the Petitioner has satisfied the 2nd and 3rd limbs of factors to be considered for the grant of an injunction. The Petitioner has not demonstrated how she will not be adequately compensated if the injunction is not granted. The Petitioner merely holds one share in the company. The Petitioner alleges that the Company will face "*financial difficulties*" if the injunction is not granted and that as a result will affect her interest as a shareholder. She did not expend any further on that averment.
- [15] The Petitioner's only interest as a shareholder in the Company is financial. As a shareholder she shares in the profits or dividends of the Company. The benefit that the Petitioner will derive from the company is only financial and no other interest. Therefore, the Petitioner has failed to establish in the affidavit attached to the Petition that she would suffer harm if the injunction is not granted. She has not explained the nature of harm that she could possibly suffer. I find that she can be compensated by monetary damages.
- [16] Furthermore, the Petitioner has failed to establish that the balance of convenience tips in favour of granting the injunction. As already highlighted, the Respondent can be compensated monetarily. Any loss that she could possibly suffer would be restricted to the one share that she holds in the company. On the other hand, the Respondents submit that the Company should be allowed some free rein to conduct its business which the granting of an injunction might inhibit. They claim that if the injunction is granted, it will not be able to enter into negotiations to settle its debts. That could lead to the Company's properties and assets being seized by creditors or even winding up petitions being made against it. This as a result may cause irreparable harm to the company. Therefore, the Company could not be compensated with damages if wound up. This means that the risk of injustice is higher of the company than the Petitioner. I do agree with the Respondents that the balance of convenience lies in favour of the Respondents as they will suffer greater harm than the Petitioner if the injunction.

[17] Therefore, the application is denied and the Petition dismissed.

[18] In the late morning of the 07th October 2021, I received a copy of submissions from her Counsel for the Petitioner. My Orderly was served with a copy of the submission dated the 06th October 2021, earlier that morning, at which point this Ruling had already been written. Therefore, due to its late filing, this Court has not considered Counsel for the Petitioner's submission.

[19] The Petitioner shall pay cost to the Respondent in respect of this Petition

Signed, dated and delivered at Ile du Port on 08 October 2021



M Vidot J