

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 8

MA 186 of 2020

Arising out of CS No. 62/2020

Exparte:

NATASHA HELDA MICHELLE BONNE

(rep. by Mr.W Herminie)

Plaintiff/Respondent

and

JASE CONSTRUCTION

(rep. by Ms Dick)

Defendant/Applicant

Neutral Citation: *Bonne Natasha v Construction Jase* (MA 186 of 2020 (Arising out of CS 62/2020)) [2021] SCSC 8

Summary: Supreme court- Joinder of third party - Application by defendant - costs of the joinder..

Heard: 16 December 2020

Delivered: 18 January 2021

ORDER

The following Orders are made:

- [1] The application is granted and leave allowed for joinder of third party.
- [2] Costs of service to the third party to be borne by the defendant.

RULING

ANDRE-J

Introduction

- [1] This Ruling arises out of an application by the defendant for leave to issue a third party notice on one Anna Gonthier of Roche Caiman, Mahe and this arising out of a suit filed

by the plaintiff/respondent as against the defendant/applicant in CS 62 of 2019 for breach of agreement of an alleged agreement dated the 6th April 2019.

Applicant's case

[2] The basis of the application is that the defendant is being sued by the plaintiff for the above-mentioned breach due to delay and poor workmanship for renovation of two houses located at Anse Boileau.

Further, that the defendant is defending the claim brought against it as per filed statement of defence of the 6 October 2020. That as part of the defence of the defendant is that it had sub-contracted with Anna Gonthier to perform the renovation work on the houses of the plaintiff and any breach of contract falls under Anna Gonthier' sole responsibility.

[3] The defendant thus moves the court that to enable the court to properly assess responsibility for the breach of contract, that Anna Gonthier be joined in the present proceedings as third party. That this will enable any liability and damages recoverable by the plaintiff to be fairly apportioned between those responsible for the breach.

Respondent's case

[4] Learned counsel for the plaintiff, Mr. W. Herminie, submitted in response to the application in a gist as follows. Namely, that the plaintiff has no knowledge of the sub-contracting and did not authorize the same and the only person know to the plaintiff is the defendant and that should the claim of the plaintiff succeed and damages awarded the edefendant should pay.

[5] It is to be noted that Counsel Dick furnished court with Authorities and *Order 16 Third party and similar proceedings of the The Rules of the High Curt (Cap 4A)*, in support of her application.

Legal analysis and findings

[6] The relevant provision of the Seychelles Code of Civil Procedure surrounding the application of the applicant revolves around the provisions of sections 112 entitled

‘Misjoinder, adding od parties, etc..’ and 116 of the Seychelles Code of Civil Procedure entitled ‘Joinder of sureties’.

[7] Under section 112 of the Code:

“No cause or matter shall be defeated by reason of the misjoinder or nonjoinder or parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court efctually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added”

[8] Section 116 in its turn provides that:

“If on the day the plaint is made returnable, the defendant to a suit moves for leave to join as parties to the suit one or more persons alleged to be liable as sureties, the curt shall grant the defendant a reasonable time within which to join such persons. In such case the defendant shall serve upon the person alleged to be so liable a copy of the plaint but it shall not be necessary to serve upon such a person a copy of the order of the court directing him to be joined as a party.”

[9] In the above regards, the court notes the ruling on the case of (**Chetty v Ah-tive & Anor (1976) SLR page 199-201**))(Reported).

[10] Further, I note the Ruling in the case of (**Ian Davidson & Ors v Cerf & Surf Properties Limited [2014] SCSC 303 CS No. MA 189/2014 (arising in CS No. 41/2014)**), wherein the court granted leave to issue a third party notice by virtue of section 4 of the Courts Act allowing the supreme court to exercise all the powers and functions of the High Court of England in matters of this nature, particularly invoking Order 16 of the White Book, to issue third party notice.

[11] Now a careful consideration of the Applicant’s case in line with the relevant provision of the law as indicated at paragraphs [7 to 11] (supra), I find that albeit not being mentioned in the plaint, Anna Gonthier of Roche Caiman Mahe, being subject matter of this

application, could have been easily joined by the Court as a defendant by virtue of section 112 of the Seychelles Code of Civil Procedure (supra) but the Applicant did not move in line with that provision of the Code hence not being considered here. Neither is the provisions of section 116.

[12] On the otherhand, the Applicant is moving as per section 4 of the Court's Act for exercise of the Supreme Court's discretion to issue a third party notice as per Order 6 of the White book to issue a third party notice on the said Anna Gonthier to be joined as a third party 'as guarantee' to the claim if it succeeds against it.

Conclusion

[13] This Court noting the provisions of section 116 of the Seychelles Code of Civil Procedure and its discretionary powers by virtue of section 4 of the Court's Act as clearly outlined in the authority of *Ian Davidson case*, hereby grant the application, allowing leave to the defendant to serve upon Anna Gonthier, the third party sought to be joinded, a copy of the plaint.

[14] It is to be clearly noted that reason for the joinder is necessary to enable the court to effectually and completely adjudicate upon and settle all the questions involved in suit Cs No. 62 of 2020.

[15] Copy of the plaint is to be served on the third party within a period of one month as of today's date ie: the 12th February 2021. The dates will be filled in the third party notice submitted by the defendant and accordingly be served on the third party hereinbefore mentioned.

[16] Matter is to be mentioned on the 12th February 2021 at 9:30 a.m.

[17] Costs of the joinder is to be borne by the defendant/applicant.

Signed, dated, and delivered at Ile du Port on 18th day of January 2021.

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ANDRE J