

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC
CS55/2020

In the matter between:

ZAKIYA HOLDINGS LTD
(rep. by Serge Rouillon)

Plaintiff

and

BEAU VALLON PROPERTIES LTD
(rep. by Alexandra Madeleine)

Defendant

AND

MA88/2021

ZAKIYA HOLDINGS LTD
(rep by Serge Rouillon)

Petitioner

and

BEAU VALLON PROPERTIES LTD
(rep. by Alexandra Madeleine)

Respondent

Before:	Burhan J
Heard:	20 th May 2021
Delivered:	21 st May 2021

ORDER

BURHAN J

[1] Section 74 of the Seychelles Code of Civil Procedure (SCCP) reads as follows:

“If the plaintiff sues upon a document other than a document transcribed in the Mortgage Office of Seychelles, he shall annex a copy thereof to his plaint. If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall annex a list thereof to his plaint and shall state where the same may be seen a reasonable time before the hearing.”

[2] It is imperative therefore that when a plaint is filed in respect of a loan agreement that a copy of the said agreement be filed with the plaint.

[3] Learned Counsel for the plaintiff filed plaint on behalf of Zakiya Holdings Ltd against the defendant Beau Vallon Properties Ltd (BVP) on the 15th of June 2020. No documents were attached to the plaint but at the bottom of the plaint was listed the documents relied on by the plaintiff namely,

- 1 Contracts between parties (including loan agreement, Addenda to it and Assignment agreement); and
- 2 Financial documents showing the particulars of the defendants business.

[4] Thereafter learned Counsel for the plaintiff filed several Miscellaneous Applications. The first application MA 77/2020 dated 1st June 2020 moved Court for a prohibitory order against the defendant prohibiting the defendant from depleting and removing any money from his accounts referred to in paragraph 4 of the application for a period of three months. Learned Counsel for the defendant did not object to the said application. The application was granted accordingly.

[5] Thereafter learned Counsel for the defendant filed a Miscellaneous Application, MA 97/2020, dated 30th June 2020 moving for a variation in the prohibition order to authorize the applicant to pay salaries and wages to its employees. Learned Counsel for the plaintiff did not object to the said application. The application was granted accordingly.

[6] Thereafter on the 17th of August 2020 another application was filed by the defendant, MA 137/2020 for variation of the prohibitory order to make payment under the said loan

agreement. Learned Counsel for the plaintiff did not object and the application was granted accordingly.

[7] On 19th March 2021 two applications were filed by the plaintiff MA 58/2021 seeking an Order for Inhibition under section 76 of the Land Registration Act in respect of land bearing titles V409, V584, V862 and V863 situated at Beau Vallon until the total debt is paid and MA 59/2021 seeking a provisional attachment order on the movables of the defendant under section 280 of the Seychelles Code of Civil Procedure. Once again learned Counsel for the defendant did not object to the application and the applications were granted accordingly.

[8] On the date set for Pre-trial hearing on the 8th of April 2021, it was observed that learned Counsel for the plaintiff had failed to file his documents especially the loan agreement which was a mandatory requirement as per section 74 of SCCP. On this being brought to the notice of learned Counsel for the plaintiff he had this to say;

“Well, the documents were in the possession of my learned friend here, so I am waiting-“

It appears learned Counsel for the plaintiff is relying on the defence to prove his case. Finally on the 19th of April 2021, learned Counsel for the plaintiff filed his documents which were listed as follows:

- 1 Copy of the Original Loan Agreement dated 20th May 2021 between Caxton Trading Ltd and Beau Vallon properties.
- 2 Claim Assignment Agreement dated 30th March 2016 between Caxton Trading Ltd and Zakiya Holdings Ltd.
- 3 Acceptance Transfer Act to Claim Assignment Agreement dated 30th March 2016 between Caxton Trading Ltd and Zakiya Holdings
- 4 Notification of Claim Assignment Agreement dated 30th of March 2016 undated addressed to Directors of Beau Vallon Properties Ltd
- 5 Zakiya Reconciliation report dated 31st December 2019.

- [9] On perusal of the documents filed, this Court is of the view that the loan agreement document filed is incomplete and does not contain the Addendums referring to the main issues in the case as set out in paragraphs 4 and 5 of the plaint which is being challenged by the defendant. The trial is to commence on the next working date 24th May 2021, no further time can be given. I am satisfied that sufficient additional time has been given to the plaintiff to file his documents, despite his failure to annex them to the plaint at the time of filing his plaint as mandated by section 74 of the SCCP. He has obtained several interim orders meanwhile in the absence of this vital document, mainly due to learned Counsel for the defendant kindly conceding. In my view he has been in total breach not of practice directions but a mandated provision of the SCCP.
- [10] It is also apparent that several other documents which would be necessary for the trial have not been filed by the plaintiff. The financial documents and addendums have been listed in the plaint but not filed by the plaintiff. The certificate of incorporation and names of the directors of both the plaintiff and defendant companies have not been tendered. This is essential, especially in the light of the findings made in respect of Beau Vallon Properties Ltd in the case of *Lefevre v Beau Vallon & Ors* [2020] SCSC 69 where at paragraph 39 of the said judgment it was stated: “*In this respect I order that both Mr. Zaslouov and Mr Khlebnikov be removed from the post as directors of the BVP and that other directors as approved by the court be appointed to BVP within 6 months hereof.*”
- [11] I observe from the documents filed by the defence that Mr. Khlebnikov is still a signatory even to affidavits in this case (MA 97/2020 and MA 137/2020) even as at 17th August 2020 despite the aforementioned lefevre judgment dated 3rd February 2020. In the Lefevre case too, the loan agreement was not produced. However it was concluded that the loans are not fictitious. In this case the production of the Addendums is essential to decide on the issue of what is owing to the plaintiff and therefore is an essential part of the loan agreement which the plaintiff from the very outset has failed to annex to his plaint as required by section 74 of the SCCP.

[12] The plaintiff has not complied in full with the above requirements set out in section 74 of the SCCP and those referred to herein. The plaint is dismissed. Considering the fact that the defence conceded to all applications, noting the circumstance peculiar to this case, no costs is ordered.

[13] As the plaint has been dismissed the necessity to make an order in the recent MA 88/2020 does not rise. The Inhibition Orders issued in MA 58/2021 on the 31st of March 2021 in respect of land bearing titles V409, V584, V862 and V863 situated at Beau- Vallon is set aside and will cease to exist with immediate effect. The Provisional Attachment Order issued in 59/2021 is also set aside and will cease to exist with immediate effect. Copy of this order to be filed in the said MA 58/2021, MA 59/2021 and MA 88/2021.

[14] Registrar Supreme Court to serve a copy of this order to the Registrar Land Registry.

Signed, dated and delivered at Ile du Port on 21st May 2021

M Burhan J