

57SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CS 57/2020

In the matter between:

SIDNA UMBRICHT
(rep. by Frank Elizabeth)

Plaintiff

and

GOLDEN FLOW PTY LTD
*(herein represented by its Director
Viktoriiia Onyshchenko,*

Defendant

Neutral Citation: *Umbricht v Golden Flow Pty Ltd* (CS 57/2020) [2022] SCSC (21 January 2022).

Before: Burhan J

Summary: Plaint to lift the corporate veil and declare the directors of the company personally liable to pay the debt of the company

Heard: 10 November 2021

Delivered: 25 January 2022

ORDER

JUDGMENT

BURHAN J

[1] The Plaintiff, Ms Umbricht obtained a judgment against the Defendant, Golden Flow (Pty) Ltd (GOLDEN FLOW LIMITED as per Certificate of Incorporation), a company incorporated in Seychelles under Companies Act 1972. The Judgment was delivered on the 12th July 2016 in Rent Board Number 63/2015 whereby the Defendant was ordered to

leave and vacate the Plaintiff's property and to pay the outstanding rent amount of SCR743,000. The Plaintiff avers that despite several requests, the Defendant has failed, refused or neglected to pay the Plaintiff the judgment debt. Therefore, the Plaintiff is asking the Court to make an order lifting the corporate veil and declaring that the directors of the company are personally liable to pay the debt of the company and order the directors jointly and severally to pay the sum of SCR743,000 to the Plaintiff.

[2] The lifting of the corporate veil and declaring that the directors of the company are personally liable for the said debt referred to in paragraph [1] was requested by the Plaintiff as averred in the prayer of the plaint. Even though eventually substituted service was affected on a director of the defendant company, no effort was actually made by the Plaintiff to establish the fact that the corporate veil of the company must be lifted and the said director(s) made personally liable for the debt and not the company against whom judgment had been entered. Furthermore, firstly, the director(s) of the company are not listed as Defendants in the plaint. Secondly, the Plaintiff does not submit reasons or attempts to establish by way of evidence why the director(s) of the company should be made personally liable for the company's debt. Directors are not generally and automatically personally liable for the debts of the company, unless in certain situations where directors have breached their duties and where there are allegations of misconduct or fraud which have to be established. The Plaintiff neither alleges fraud nor any professional misconduct and/or breach of duty by the director(s) in the plaint. The Plaintiff merely states that the company has not paid the judgment debt and therefore the director(s) are personally liable; and that the director(s) should show cause as to why they should not be committed to civil imprisonment.

[3] With regards to lifting of the corporate veil, it is established law that a limited liability company is vested with a separate legal personality and its shareholders are not personally liable for the debts of the company. As per Article 4 of the Defendant's Memorandum of Association, "*the liability of the members of the Company is limited*". Corporate veil may be lifted in certain circumstances, for instance where fraud is established, in order to reach the persons responsible for misconduct who would otherwise be shielded by the company's separate legal personality (see *State Assurance*

Corporation of Seychelles v First International Financial Company Ltd (409 of 1998) [2006] SCSC 1 (13 June 2006); *Cultreri v Eible and Another* (361 of 1999) [2007] SCSC 17 (03 December 2007); *Lesperance v Ernestine & Ors* (CC 69/2015) [2018] SCSC 802 (05 September 2018)).

- [4] Instead of making submissions in relation to corporate veil and director(s)' liabilities, during the Court proceedings on the 10th November 2021, learned Counsel for the Plaintiff directed the Court to act under section 251 read with sections 252-254 of the Seychelles Code of Civil Procedure (SCCP), stating that the Court has the power to issue a warrant for arrest of the Judgment Debtor. Learned Counsel further submitted that the Court may order civil imprisonment of the Judgment Debtor until he shows cause why he should not be committed for civil imprisonment because, as averred by learned Counsel, the Defendant was already served and had not turned up to court.
- [5] With regards to learned Counsel for the Plaintiff moving for civil imprisonment under the Seychelles Code of Civil Procedure, which was not pleaded in the Plaintiff but was addressed by the Plaintiff's Counsel during the Court proceedings, the learned Counsel relied on the following sections:

Procedure for arrest and imprisonment of judgment debtor

251. *A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default or satisfaction or the judgment or order.*

Examination of judgment debtor

252. *The judgment debtor on the day on which he has been summoned to appear, shall be examined on oath as to his means and witnesses may be heard on his behalf and on behalf of the judgment creditor*

When a judgment debtor may be imprisoned civilly

253. *If the judgment debtor does not appear at the time fixed by the summons or refuses to make such disclosures as may be required of him by the court or if the court is satisfied that the judgment debtor-*

(a) has transferred, concealed or removed any part of his property after the date of commencement of the suit in which the judgment sought to be enforced was given or that after that date he has committed any act of bad faith in relation to his property with the object or effect of delaying the judgment creditor in enforcing his judgment or order; or

(b) has given an undue or unreasonable preference to any of his other creditors; or

(c) has refused or neglected to satisfy the judgment or order or any part thereof, when he has or since the date of the judgment has had the means of satisfying it, the court may order such debtor to be imprisoned civilly unless or until the judgment is satisfied.

Period of civil imprisonment

254. The imprisonment which may be ordered under the last preceding section may be for the periods specified by section 10 of the Imprisonment for Debt Act.

Section 10 to 15 of that Act shall apply to and be read with sections 251, 252 and 253 of this Code.

- [6] Under section 2 of the SCCP, ‘judgment debtor’ is defined as “*party to a cause or matter against whom a judgment or order of the court has been given*”. The Judgment in Rent Board was made against the Company, not its director(s). As noted above, director(s) in their personal capacity are not parties to the present suit and the plaint does not make reference to civil imprisonment under above cited sections.
- [7] From the above it is clear that even though the Plaintiff asks the Court to lift the corporate veil and declare director(s) of the Defendant Company (Judgement Debtor) to be personally liable to pay the judgment debt, the director(s) of the company has not been listed as separate Defendants. Further, the Plaintiff has not made any express allegations of fraud or professional misconduct against the director(s) of the company and has not submitted arguments in support of finding the director(s) personally liable for the company’s debt. This Court has not yet come to a finding that the director(s) of the Judgment Debtor Company are personally liable for the debt.
- [8] Therefore, even though the Company is liable for the judgment debt as per decision of the Rent Board, as there is yet no finding that the director(s) are personally liable this Court cannot impose civil imprisonment. While it appears that the Plaintiff’s end goal is to enforce the Rent Board Judgment, it is not clear for which reasons the enforcement should be against director(s) in their personal capacity rather than execution against the company.
- [9] On the basis of the provided evidence and submissions, the Plaintiff has not established personal liability of the director(s) and therefore the Plaint is dismissed.

Signed, dated and delivered at Ile du Port on 25 January 2022

Burhan J