

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact

[2022] SCSC 258
MA23/2022
(Arising in CS125/2021)

In the ex parte matter of:

JOSETTE SOCRATE
(*Rene Durup*)

Applicant

Neutral Citation: Ex parte Socrate (MA23/2022) [2022] SCSC (22 March 2022).
Before: Carolus J
Summary: Urgent Ex-Parte Interlocutory Injunction
Heard: 23 February 2022
Delivered: 22 March 2022

ORDER

The Application for Urgent Ex-Parte Interlocutory Injunction is granted.

RULING

E. CAROLUS, J

- [1] This ruling arises from an application made by Josette Socrate for an urgent *ex-parte* injunction pending determination of the principal suit in CS125/2021, filed by the said Josette Socrate against Daniel Socrate. The application is made by way of Notice of Motion supported by an affidavit of the applicant with relevant documents exhibited thereto.
- [2] It is averred both in the plaint and in the applicant's affidavit in support of the application that a conditional order of divorce has been granted to dissolve the marriage between the parties in the principal suit.
- [3] The facts as they appear from the plaint are that the parties are joint owners of Title No. LD319 on La Digue, on which stand:

- (i) Pension Fidele – a self-catering tourism establishment licensed in the name of, and operated by, the applicant/plaintiff. Pension Fidele is made up of two parts namely Pension Fidele Main comprising 5 bedrooms and Pension Fidele Apartments comprising 2 bedrooms. Pension Fidele was a going concern until 22nd November 2021, when the matters giving rise to the principal suit, as recounted below, occurred;
- (ii) the matrimonial home which the applicant/plaintiff and the parties' children have occupied for the past two years; and
- (iii) Karambol – a self-catering apartment, which the respondent/defendant has occupied for the past two years.

[4] On 22nd November 2021, the respondent/defendant came into Pension Fidele Main and removed all the kitchen windows of the building. The applicant/plaintiff reported the matter to the police who attended the scene but informed her that they could not intervene in a civil matter. On the same day, after the police left, the respondent/defendant locked the whole building of Pension Fidele Main preventing the applicant/plaintiff from having access thereto and disrupting the operation of the tourism business. The applicant/plaintiff also has a locked storage area in that building which she is unable to access. The respondent/defendant moved into Pension Fidele Main a few days later where he is still residing to date.

[5] In terms of the plaint the applicant/plaintiff avers that as a result of the actions of the respondent/defendant she has suffered damages in that she cannot operate her tourism business from Pension Fidele Main and had to cancel all bookings from clients during the 2021/2022 festive season which is prime time for the business. Accordingly, she seeks a judgment ordering the respondent/defendant to vacate Pension Fidele Main; allowing her to break the lock and anything else placed by the defendant on the building to prevent her from having access thereto; allowing her to have access to and to operate her business in Pension Fidele Main; and a permanent injunction preventing the respondent/defendant from accessing and interfering with Pension Fidele Main and Pension Fidele in general.

[6] The same facts are rehearsed in the affidavit in support of the application. The remedies sought in terms of the application are as follows:

- (c) *For an order of a Writ of Injunction, pendent lite,*
 - (i) *Ordering the respondent/defendant to vacate Pension Fidele-Main, and*
 - (ii) *restraining and prohibiting the respondent/defendant from accessing and interfering with Pension Fidele-Main and the operation of the tourism business therewith; and*
- (d) *Allowing the applicant, pendent lite, to:-*
 - (i) *Break the lock, and any other preventive measures by the defendant or otherwise, placed by the respondent/defendant on the building on Pension Fidele-Main;*
 - (ii) *Allow the plaintiff access to Pension Fidele-Main and to operate the tourism business thereon; and*
- (e) *Any other Order which the Honourable Judge deems appropriate in the circumstances.*

[7] In addition the applicant avers in her affidavit that she will suffer more inconvenience/hardship if the Court does not grant her application for a writ of injunction, than the defendant would if the application is granted. She also avers that the defendant continues to be in possession of Karambol where he can have all his residential amenities, and further that his acts have and continue to destabilise the business operations of Pension Fidele.

[8] Exhibited to the affidavit in support of the application are:

- (a) a Certificate of Official Search dated 14th December 2021, in respect of Title LD319 showing that the proprietors as Daniel Socrate and Josette Lesperance;
- (b) an Accommodation, Catering, Entertainment (Self Catering Establishment) License issued by the Seychelles Licensing Authority to Josette, Marie-Therese Socrate to operate the business "Pension Fidele". The validity period of the license is 04-Nov-2017 to 03-Nov-2022;
- (c) a Certificate of Registration of Pension Fidele as a business name under the Registration of Business Names Act in the name of Josette Marie-Theresia Socrate with BS No. 640772-5; and

(d) A court Order dated 12th November 2020 granting a conditional Order of Divorce to the parties.

[9] This matter came before the Court on 23rd February 2022 and the application having been made *ex-parte*, no notice of the proceedings had been given to Mr. Daniel Socrate and as a result he was neither present nor represented in the proceedings. The applicant who was present, in addition to her affidavit evidence also testified and her counsel moved as per his motion.

[10] The law applicable to interlocutory injunctions is set out in sections 304 and 305 of the Seychelles Code of Civil Procedure Cap 213. Sections 304 and 305 of the Seychelles Code of Civil Procedure provide for the making of an application for a writ of injunction upon due notice given to the defendant. However according to established case law, such an application may be made *ex-parte* in urgent cases. Vide *Bonte v Innovative Publication* (1993) SLR 138, *Colling v Labrosse* (2001) SLR 236, *Government v Ramrushaya* (2003) SLR 94, *Ex Parte: Giovanni Rose* (2006) SLR 133.

[11] The applicant has averred in her affidavit that because the respondent is occupying Pension Fidele Main she cannot operate her tourism business from there and had to cancel all bookings from clients during the 2021/2022 festive season which is prime time for the business. She also testified that her business is her only source of income and that in the current situation, she can only rent out the 2 bedrooms Pension Fidele Apartments. She states that even this is a problem because everything for the use of those apartments are stored in the main building to which she has no access. Furthermore most of her income was derived from the bigger Pension Fidele Main which is more popular with clients because the price for the rooms there is cheaper than the Pension Fidele Apartments. She stated that Pension Fidele Main is crucial to her business. In the circumstances I am satisfied that there is urgency in determining the application, and hence that the application was properly made *ex-parte*.

[12] In determining whether to grant an interlocutory injunction or not, this court is guided by the case of *American Cyanamid Co. v Ethicon Ltd* [1975] A.C. 396 (05 February 1975) that requires (1) a serious question to be determined in the main suit; inadequacy of damages

to compensate the applicants and (3) the balance of convenience. These same matters were taken into consideration in *Techno International v Georges* SSC 147/2002 (31 July 2002), *Laporte & Anor v Lablache* [1956 -1962] SLR 41 and *France Bonte v Innovative Publication* (1993) SLR 138.

[13] As to whether there is a serious issue to be tried, I am satisfied that the applicant appears to have a bona fide claim against the respondent in the main suit on the face of the pleadings therein, and on the applicant's oral and affidavit evidence. I note that the land on which the Pension Fidele Main stands is jointly owned by the parties, and that the applicant does not state how the construction of the Pension Fidele was financed – whether solely by her or the respondent or by both of them. However the building Pension Fidele Main which is the subject matter of this application consists of business premises which the applicant is licensed to keep and manage as a self-catering establishment. In fact the business Pension Fidele which comprises both Pension Fidele Main and Pension Fidele Apartments is registered solely in the name of the applicant. She has testified that although initially she and Daniel Socrate worked together in the business with him doing mainly the maintenance work she has always been the one taking decisions in regards to the business. Furthermore since they separated five years ago, he has not been contributing in any way towards the business which since then has been run solely by her. The applicant has stated that she is being hindered in running the business by the respondent's occupation of Pension Fidele Main which has five rooms and was more popular with clients, whereas she can only operate the apartment with two bedrooms at present. Moreover the business is her sole source of income.

[14] Given that the applicant is being hindered in the running of her business which as stated is her only source of income, I am further satisfied that unless the Court grants the Interlocutory Injunction she will suffer irreparable loss, hardship and damage while only minimal inconvenience will be caused to the respondent by having to move out of Pension Fidele Main until final determination of the main suit. The applicant has stated that she has no objection to the respondent occupying Karambol another a self-catering apartment on the same property which has all necessary amenities and where the respondent has been living for the past two years prior to taking up occupation in Pension Fidele Main.

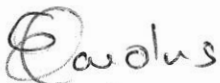
[15] For these reasons I find that the balance of convenience lies in granting the application for interlocutory injunction pending the determination of the main suit.

[16] Accordingly I issue a writ of injunction against the respondent pending final disposition of the main suit:

- (a) ordering the respondent to remove any locks or other things placed by him on the building of Pension Fidele-Main which would prevent the applicant from having full and free access thereto, and to allow the plaintiff full and free access to Pension Fidele Main, forthwith;
- (b) ordering the respondent to vacate Pension Fidele-Main forthwith;
- (c) prohibiting the respondent from accessing and interfering with Pension Fidele-Main and the operation of the tourism business of the applicant.

[17] The applicant is further ordered to allow the respondent to occupy Karambol apartment.

Signed, dated and delivered at Ile du Port on 21st January 2022.



E. Carolus J