

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC  
MA 281/2022  
Arising in CM24/2022

In the matter between:

**BELIER CAR HIRE**  
*(rep. by Daniel Cesar)*

**Petitioner**

and

**SEYCHELLES CREDIT UNION**  
*(rep. by Manuella Parmantier)*

**Respondent**

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**Before:** Dodin J  
**Heard:** 25 January 2023  
**Delivered:** 17 February 2023

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**RULING**

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**DODIN J**

- [1] This ruling pertains to a Petition by Brian Maria, owner of parcel number V17983 situated at Bel Air, Mahe upon which a charge was entered to secure a loan to Belier Car Hire which repayment is now in arrears and the property is now subject to a sale by levy at the instance of the Seychelles Credit union, the Execution Creditor and Respondent in this Petition MA 281/2022. Parcel V17983 is valued at SCR 9,280,000.00 as it has 5 buildings thereon. The total debt due together with expenses by the Execution Creditor is SCR 2,135,153.55.
- [2] That as a result of the aforesaid arrears of payment, the Respondent (Execution Creditor in the main case) proceeded to serve a Commandment on the Petitioner on the 18<sup>th</sup> May 2022. The charged property was seized by the Process Server and placed in his custody on the 13<sup>th</sup> July 2022. That the Petitioner was subsequently summoned by the Court to

examine the Memorandum of Charges as filed by the Respondent/Execution Creditor on the 5<sup>th</sup> October 2022.

- [3] The Petitioner avers in his Petition that Taciana Louise, the borrower of the loan from the Respondent/Execution Creditor must be joined as an Execution Debtor as she was the beneficiary of the said loan which initially was for One Million Eight Hundred Thousand Rupees as stated in paragraph 1 of the Memorandum of Charges. That the property of the Petitioner was charged for the sole purpose of facilitating the loan to assist Taciana Louise and her car rental business.
- [4] The Petitioner further averred that alternatively, he has submitted a Business Plan to the Execution Creditor with a proposal to subdivide the land parcel into two plots. The plot where the buildings stand would remain charged with the Execution Creditor. A Day Care Centre shall be operated and part of the rents generated shall be utilized to pay off the debt with the Execution Creditor.
- [5] The Petitioner further avers that he is ready and willing to offer the full payment of the outstanding loan amount by monthly instalments of twenty thousand Rupees to the Execution Creditor.
- [6] The Execution Creditor objects to the Petition and including the alternative proposal of the Petitioner maintaining that the application before this Court is for the execution of a charge document by way of seizure of Land parcel V17983 belonging to Brian Maria and not Taciana Louise. Taciana Louise does not have locus standi to be made party to this case as she is not a party to the charge document signed between the Execution Creditor and debtor.
- [7] The Execution Creditor further avers that the payment sum of SR 20,000 is unacceptable to the Execution Creditor as this sum is lower than the agreed monthly loan repayment of SR 21,694/- as per the loan agreement. Additionally, the sum of SR20,000 would not be sufficient to cover both the monthly payment due and the arrears already accrued.
- [8] I find that the Execution Creditor has done all that is necessary under the Immovable Property (Judicial Sales) Act for this Court to proceed with the reading of Memorandum

of Charges and fix a date for sale. The Court is not empowered to refuse or even postpone that reading of Memorandum of Charges when all pleadings by the Execution Creditor are in order and service has been effected on the Execution Debtor although in this case in view of the difficulties of Counsel, the court has allowed certain adjournments. The Court may postpone the sale as per section 36 of the Act on strong grounds of necessity or expediency. Of course, as has been done in this case, the Court must deal with incidental demands under section 53 of the Act.

[9] The incidental demands in this case are:

1. Addition of one Taciana Louise as a Co-Defendant/Co-Execution Debtor;
2. Order that the Execution Debtor pays the sum of SCR 20,000 per month until he can settle the whole debt after allowing him to subdivide the land and run a day care to pay the debt out of the business.

[10] With regards to the 1<sup>st</sup> point, whilst I agree that Taciana Louise was the beneficiary of the loan, Belier Car Hire or Taciana Louise are not the owner of the land charged and the only interested party to be affected by this application for sale of parcel V17983 is Brian Maria who charged the land in question. Hence this ground of the Petition cannot be granted.

[11] The 2<sup>nd</sup> ground in the alternative is not within the province of the Court to decide as it concerns the privity of contract between the Execution Creditor and the Execution Debtor. The Court is not empowered to alter any clause of the contract between the Execution Creditor and the Execution Debtor unless the claim is in respect of the validity of the contract or the clause. Any such proposal for variation of the contract has to be between the parties. This alternative proposal cannot be decreed by the Court without the agreement of the parties.

[12] I wish to observe en passant that there is much room for negotiation, in good faith of course considering that the property sought to be sold is worth over SCR9,000,000 whilst

the debt is just over SCR2,000,000, and the repayment was set at just over SCR21,000 and the Execution Debtor is offering the lesser sum of SCR 20,000. Both sides have ample room to make reasonable adjustments so that they can both have satisfactory outcomes.

[13] Nevertheless, as per paragraphs 10 and 11 of this Ruling, this Petition cannot be sustained and is dismissed accordingly. The Court shall set the date for reading of Memorandum of Charges.

[14] The parties are not estopped from continuing negotiation to reach an agreeable settlement should they so wish.

[15] I make no order for costs.

Signed, dated and delivered at Ile du Port on 17<sup>th</sup> day of February 2023.

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G. Dodin

Judge