

SUPREME COURT OF SEYCHELLES

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**Reportable**

[2023] SCSC ...<sup>364</sup>  
MA199/2023  
CS131/2023

In the matter between:

**ALMAX GROUP (SEYCHELLES) (PTY) LTD**  
*(rep. by Mr. Frank Elizabeth)*

**APPLICANT**

*Versus*

**ROBERT NODDYB**  
*(Unrepresented)*

**RESPONDENT**

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**Neutral Citation:** *Almax Group (Sey) (Pty) Ltd v Robert Noddyn (MA199/2023)* [2023] SCSC <sup>364</sup>(19<sup>th</sup> May 2023)

**Before:** A. Madeleine, J

**Summary:** Application to for leave to issue and serve summons outside the jurisdiction.

**Heard:** Affidavit

**Delivered:** 19 May 2023

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**ORDER**

Application is granted. I therefore grant leave to issue and serve summons on the Respondent (and Defendant in the main suit) Robert Noddyn, outside the jurisdiction at Euewfeestlaan 40, B-8301 Knokke-Heist, Belgium by DHL courier at the costs of the Applicant. The Respondent (and Defendant in the main suit) Robert Noddyn shall appear before this court in answer to the plaint, in person or by his attorney and agent on 6<sup>th</sup> September 2023 at 3:30 pm.

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**ORDER**

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**MADELEINE, J**

**APPLICATION**

- [1] This is an application under sections 47 and 49 of the Seychelles Code of Civil Procedure for leave to issue and serve summons in the main suit *CS 31/2023 Almax Group (Seychelles) (Pty) Ltd v Robert Noddyn* (“main suit”) upon the Respondent herein (and Defendant in the main suit) outside the jurisdiction by DHL courier service at the costs of the Applicant.
- [2] The application is made by way of notice of motion supported by the affidavit of Daria Todorova who is authorized to represent the Applicant in these proceedings pursuant to a power of attorney.
- [3] The affidavit in support of the application shows as follows. The Applicant and Respondent are the Plaintiff and Defendant in the main suit. The Defendant resides outside the jurisdiction at Eeuwfeestlaan 40, B-8301 Knokke-Heist, Belgium. The Applicant has a good case against the Respondent in the main suit, and this case is a proper one for the court to order service outside the jurisdiction. The time within which the Respondent should appear in court after service upon him should be limited by three months failing which the hearing of the main suit should proceed *ex parte*.
- [4] Ex-facie, the plaint filed in the main suit and attached to the present application alleges that Applicant and Respondent had agreed on the sale of the land comprised in title no. T676 situated at Baie Lazare, Mahe, Seychelles to the Applicant for the consideration of Euro. 1,500,000/-. The Respondent is the owner and fiduciary of the said land parcel T676. The plaint seeks, inter alia, a declaration that there has been a sale of T676 to the Applicant by operation of the law and an order for the Respondent to transfer the said T676 to Applicant upon payment of the consideration.

## **LAW AND ANALYSIS**

- [5] The following provisions of the Seychelles Code of Civil Procedure are relevant to the present application:

*“47(1) No summons in civil and commercial suit shall be issued or served upon any defendant, whether a citizen or Seychelles or not, outside the jurisdiction of the Supreme Court, without leave of the court.*

48. *The issue and service out of the jurisdiction of a summons may be allowed whenever –*

*(a) the whole subject matter of the suit is land or immovable property situated within the jurisdiction (with or without rents or profits); or*

*(b) any act, deed, will, contract, obligation, or liability affecting land or immovable property, situated within the jurisdiction is sought to be construed, rectified, set aside or enforced in the suit; or.....*

*(d) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which ought to be performed within the jurisdiction; or*

49. *Every application for leave to issue and serve a summons on a defendant out of the jurisdiction shall be supported by affidavit stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in which country the defendant is or probably may be found, and whether such defendant is a citizen of Seychelles or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficient to appear to the court that the case is a proper one for service out of the jurisdiction.*

50. *An order giving leave to effect such service shall limit a time after such service within which such defendant is to appear to answer the claim. The time so limited shall not (unless the Judge sees fit to order otherwise), in the first instances, exceed –.....three months, where the defendant is in Europe or Australia.”*

[6] Having considered the facts deponed in the affidavit in support of the application and the above cited provisions of the SCCP, I am satisfied that the application complies with section 47(1) read with section 49 of the SCCP, and that this is a proper case for service out of the jurisdiction. I am further satisfied in terms of section 48 (a), (b) and (d) of the SCCP, the that whole subject matter of the main suit is the land comprised in

parcel T676 situated at Baie Lazare, Mahe, Seychelles of which the Defendant, who is resident outside the jurisdiction, is the owner and fiduciary and, that the main suit seeks to enforce a contract affecting the said land parcel T676 and is founded on an alleged breach of the said contract.

[7] I am further satisfied pursuant to section 50 of the SCCP that since the Defendant is in Europe, the time for appearance in court after service of the summons shall be limited to three months.

### **ORDER**

[8] The Application is granted. I therefore grant leave to issue and serve summons on the Respondent (and Defendant in the main suit) Robert Noddyn, outside the jurisdiction at Eeuwfeestlaan 40, B-8301 Knokke-Heist, Belgium, by DHL courier services at the costs of the Applicant. The Respondent (and Defendant in the main suit) Robert Noddyn shall appear in court in answer to the plaint in the main suit, personally or by his attorney and agent, on 6 September 2023 at 3:30 pm.

Signed, dated and delivered this 19<sup>th</sup> day of May, 2023.

*A. Madeleine*

**A. Madeleine**  
**Judge**

