

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 572
MA 19/2023
(Arising in CS 139/2022)

In the matter between:

**EASTERN EUROPEAN ENGINEERING
LIMITED**

(rep. by Serge Rouillon)

Petitioner

and

TORTRADE LIMITED

(rep. by Joshua Revera)

1st Respondent

**VIJAY CONSTRUCTION (SEYCHELLES)
PROPRIETARY LIMITED**

(rep. by S. Rajasundaram)

2nd Respondent

Neutral Citation: *Eastern European Engineering Limited v Tortrade Limited & Anor* (MA 19/2023 [2023] SCSC 572 (28 July 2023)).

Before: Dodin J.

Summary: Third party intervention – legitimate interest in matter on trial.

Heard: Written submissions

Delivered: 28 July 2023

ORDER

EEEL is granted leave to intervene in the proceedings between Tortrade and Vijay.

EEEL is given 21 days to file its statement of demand stating the material facts on which it is based and supply a copy of such statement to the other parties to the within seven days of filing the same.

RULING

DODIN J.

- [1] On the 7th December, 2022, the 1st Respondent, Tortrade Limited (hereinafter referred to as “Tortrade”), filed a plaint CS 139/2022 against the 2nd Respondent, Vijay Construction (Seychelles) Proprietary Limited, (hereinafter referred to as “Vijay”) claiming a sum of

US\$ 2,714,784.39 with interest at 8% from 31st December, 2021. On the same day, in MA 289/2022, Tortrade filed a Petition against Vijay for an ex parte order of provisional seizure and attachment of vehicles and other construction plants and machineries of Vijay's company with details of the vehicles, machineries and plants listed. On the 8th February, 2023 the 2nd Respondent as Defendant (Vijay) in case CS 139/2022 and Respondent in MA 289/2022, through learned counsel Rajasundaram informed the Court that the Vijay would not be defending the claim and moved for judgment by consent. Since the Court only had the pleadings and no evidence had been adduced, the Court directed that the case is heard ex parte.

- [2] On the 27th January, 2023, Eastern European Engineering Limited, (hereinafter referred to as "EEEL"), filed a motion for intervention in MA 289/2022 maintaining that the Application for injunction involves a list of vehicles, plants and machinery, (the listed assets) impinged on the execution of the judgment in favour of EEEL in case SCA28/2020 Vijay Construction (Pty) Limited v Eastern European Engineering Limited. EEEL further avers that it has filed a case CS 129/2022 Eastern European Engineering Limited v Vijay Construction (Pty) Limited and Vijay Construction (Seychelles) Proprietary Limited aiming to prove that Vijay Construction (Pty) Limited and Vijay Construction (Seychelles) Proprietary Limited are one and the same entity operating under the same umbrella.
- [3] In the Affidavit in support by Vadim Zaslouov a director of EEEL, it is also further pleaded that Tortrade is not entitled and was not at any point in time entitled to any asset of Vijay and that it is up to the Court to determine how the assets of Vijay should be distributed but only after the case CS129/2022 (Unity case) has been decided by the Court. EEEL averred further that this case is a clear attempt of collusion by the Plaintiff and Defendant in CS139/2022 and Applicant and Respondent in MA289/2022 intended to misrepresent or defraud creditors and customers.
- [4] Vijay objected to the motion for leave to intervene maintaining that the other suits filed by EEEL had nothing to do with the current case between Tortrade and Vijay and that the motion is simply harassment and only serves to multiply proceedings against Vijay.

- [5] Tortrade also objected to the motion to intervene claiming that EEEL has no interest in the matter between Tortrade and Vijay. Further that EEEL has no privity of contract in respect to the main suit and therefore can only file a separate suit against the relevant party but cannot come in as an intervener. Tortrade also averred that the motion by EEEL is aimed at delaying the pending suit CS139/2022 which should not be permitted since Vijay had already admitted the claim and was awaiting a judgment by consent.
- [6] The same arguments raised by EEEL, Tortrade and Vijay in their respective affidavits in support were further elaborated in this final submissions hence it is not necessary to repeat the same.
- [7] First and foremost it is essential to clarify the stage the suits had reached on the date the motion for intervention was filed. On the 8th February 2023, Vijay had admitted to the claim CS 139/2022 through its learned counsel and proposed entering a judgment by consent. However, EEEL had already filed a motion for leave to intervene in both CS 139/2022 and MA 289/2022 on the 27th January, 2023. Hence since the motion for intervention was already live before the Court, it was determined by the Court that the motion for leave to intervene must be dealt with first before either entering judgment by consent or having an *ex parte* hearing.
- [8] Intervention is governed by the following provisions of the Seychelles Code of Civil Procedure:

117. Who may intervene and at what time

“Every person interested in the event of a pending suit shall be entitled to be made a party thereto in order to maintain his rights, provided that his application to intervene is made before all parties to the suit have closed their cases.”

118. Application to be by motion

“An application to intervene in a suit shall be made by way of motion with an affidavit containing the grounds on which the applicant relies in support thereof.”

119. Notice to be given

“Notice of such motion shall be served upon all the parties to the suit.”

120. Intervener must file statement of demand

“If leave to intervene is granted by the court, the intervener shall, within the period fixed by the court, file a statement of his demand and of the material facts on which it is based and shall at the same time supply a copy of such statement to the other parties to the suit.”

At present this Court is only concerned with articles 117, 118 and 119 of the Code.

- [9] Article 118 has been complied with by the Applicant and so has article 119. Article 117 is the contentious one as the Respondents’ arguments are that Vijay had submitted to judgment and that the Applicant is not an interested party to the case between Tortrade and Vijay.
- [10] The contention that the Defendant in case CS 139/2022 (Vijay) has already submitted to judgment prior to the Applicant filing for leave to intervene is not borne out by the facts of this case. EEEL filed for leave to intervene on the 27th January, 2023. Learned counsel for Vijay informed the Court that Vijay would not be contesting the case on the 8th February, 2023. It is noted that in a Ruling delivered on the 29th December, 2022, the Court had already ordered the provisional seizure of the vehicles, plants and machineries in CS 289/2022. However in respect of the main case, CS 139/2022, pleadings had not been closed and the Application by EEEL was timely and met the time requirement of article 117 of the Civil Code of Seychelles Act.
- [11] As to whether EEEL has sufficient interest to intervene the Court is guided by the various definitions of interest that could be derived from decided cases. In the case of Hoareau & anor v Karunakaran & anor Constitutional Appeal SCA CP 03/2017 Renaud JA stated the following:

“It is my considered judgment that the Intended Intervenors are entitled to be heard in the pending Petition for the simple reason that they ought not to be denied the opportunity to be heard in the petition without being given the opportunity to explain how, what and when they “considered” the

complaint against the Petitioner prior to appointing the Tribunal. As such, in the light of the rule of audi alterem partem” or the rule of natural justice or fair hearing, they are entitled to be given a right of reply. Their reply to that specific issue will assist the Court in its determination of the fundamental matter in issue.” [Emphasis mine].

- [12] In the case of Ministry of Land Use v Stravens Civil Appeal SCA 24/2014 the Court of Appeal was of the unanimous view that when it comes to third party intervener the Court should be minded “*to adopt a very generous approach to locus standi.*” An intended intervener should not be restricted to one who is a party to an agreement. Equally, the principle of privity of contract should not prevent a person who is likely to be affected by the determination of a contractual dispute from taking a stand in the proceedings to protect that third party’s interest. I find Tortrade’s argument that EEEL does not have an interest in the contractual dispute between Tortrade and Vijay by virtue of the doctrine of privity of contract to fall short of and fail to reflect the modern approach to the standing of third party interveners.
- [13] As a consequence of the above findings, I find that EEEL can indeed intervene in the proceedings between Tortrade and Vijay. Leave is granted accordingly.
- [14] I give EEEL 21 days to file its statement of demand as well as stating the material facts on which it is based and supply a copy of such statement to the other parties within seven days of filing the same.
- [15] I make no order for cost.

Signed, dated and delivered at Ile du Port on 28 July 2023.


Dodin J.

The seal of the Seychelles Supreme Court is a circular emblem. It features a central crest with a bird, possibly a frigatebird, perched on a branch. The words "SEAL OF THE SEYCHELLES" are inscribed in a circle around the top, and "SUPREME COURT" is inscribed around the bottom. A small star is located at the bottom center of the seal.