

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact

[2024] SCSC ...

MA103/2024

(Arising in CS42/2024)

In the Ex-parte Matter of:

ROY LABROSSE

1st Applicant

RONA LABROSSE

2nd Applicant

(Amanda Faure)

Neutral Citation: *Exparte Labrosse & Anor* (MA103/2024) [2024] (5th July 2024).

Before: Carolus J

Summary: Interlocutory Injunction

Delivered: 5th July 2024

RULING

E. CAROLUS, J

Background

[1] On 15th April 2024 Roy and Rona Labrosse trading as Luminous Trading filed a plaint in CS42/2024 against Lise and Celine Labrosse Directors of Mahe Joinery (Pty) Ltd. In terms of the plaint the plaintiffs claim loss and damages from the defendants in the total sum of SCR4,408,000.00 for which they claim the defendants are jointly liable, as a result of denying them access to their business premises Mahe Joinery Building since 7th December 2023, when an explosion caused damage to the premises. They also pray for an order placing them in possession of the premises with immediate effect, as well as costs of the suit.

[2] On 6th May 2024 the Roy and Rona Labrosse filed the present *ex-parte* application for interlocutory injunction in MA103/2024, by way of Notice of Motion supported by an affidavit sworn by them to which are exhibited a number of documents.

- [3] On 17th May 2024, having heard Ms Faure on behalf of the applicants in MA103/2024 and after considering the application and evidence in support thereof, this Court ordered that the matter be heard *inter-partes* for reasons stated in the Ruling and in order for it to be able to make an informed decision. **This Court further ordered that in the interim, the respondents are not to interfere in any way with anything belonging to Mr Roy and Mrs Rona Labrosse Trading as Luminous Trading which are on the premises of Mahe Joinery Building; and that in particular they are not to remove or discard any items of the said Luminous Trading remaining on such premises until further order of this Court.**
- [4] On 21st May 2024 Lise and Celine Labrosse filed an affidavit sworn by them on the same date, in response to the application in MA103/2024 to which are exhibited numerous documents. The affidavit also purports to contain a counter application. The applicants in MA103/2024 filed a second affidavit dated 13th June 2024 in response.
- [5] On 20th June 2024 MA103/2024 was heard *inter-partes*. On that date, by agreement of the parties communicated to the Court through counsel, **this Court made an Interim Order that the property manager of the Mahe Joinery Building must allow the applicants to have access to the premises for the purpose of carrying out an inventory for insurance purposes, and if they so wished to remove any of their stock/goods from the premises, such access to be granted from 24th June 2024 from 9 a.m. to 5p.m. until further order of this Court. Furthermore, the applicants are responsible for ensuring that they and any other person(s) accessing the premises for these purposes wear protective gear to protect them from mould and/or fungus in the building.**
- [6] Although not raised by the respondents, this Court will address threshold issues before attempting to deal with the application proper.
- [7] In the caption of the plaint the plaintiffs are cited as **Roy Labrosse trading as Luminous Trading (1st Plaintiff)** and **Rona Labrosse trading as Luminous Trading (2nd Plaintiff)**. The defendants are cited as **Lise Labrosse Director of Mahe Joinery (Pty) Ltd (1st Defendant)** and **Celine Labrosse Director of Mahe Joinery (Pty) Ltd (2nd Defendant)**.

- [8] It is averred in the plaint (**Exhibit 1**) that the plaintiffs are the joint owners of Luminous Trading. It is to be noted that the plaintiffs are Roy and Rona Labrosse *trading as Luminous Trading* and therefore it is Roy and Rona Labrosse who are the joint owners of Luminous Trading and not Roy and Rona Labrosse trading as Luminous Trading.
- [9] It also appears that Lise Labrosse and Celine Labrosse are being sued in their capacity as directors of Mahe Joinery (Pty) Ltd, and that it is not the company itself being sued. A company has a separate legal personality distinct from its directors, and as a rule except in a number of situations it is the company which is sued although represented by its directors. If the company was being sued Mahe Joinery (Pty) Ltd would have been cited as the defendant to the plaint represented by its directors. Under section 34(3) of the Companies Act 1972 “... *each director of a proprietary company ... shall, subject to any contrary provisions of the memorandum or articles have power to do the acts specified in the Third Schedule ... on behalf of the company*”. The Third Schedule which contains “*Implied powers of directors, a managing director and a director of a proprietary company*” in its paragraph 2 includes the power “[t]o **bring or defend proceedings in any court in the name or on behalf of the company**, to intervene in the company’s name or on its behalf in any proceedings brought by other persons ...”
- [10] There are exceptions to the rule where a director can be sued by the company itself or a shareholder or group of shareholders for breach of director’s duties. Section 201 of the Companies Act further provides a remedy to the minority shareholder(s) of a company when the affairs of the company is being run in a manner that is oppressive or unfairly prejudicial to them. It is clear that Roy Labrosse is a minority shareholder of the Company as Lise and Celine Labrosse together hold more shares than him. Such minority shareholders may petition the court under that provision for orders to bring and end to or remedy the matters complained of. It is clear that the present matter is not brought under section 201 as it is commenced by way of plaint and not by petition as required by that section. Furthermore the suit is being brought by Roy and Rona Labrosse trading as Luminous Trading and not by Roy Labrosse in his capacity as a minority shareholder.

- [11] A director can also be sued personally by a third party for breach of duty or abuse of power, in which case the corporate veil is lifted and the directors are held liable for the misuse of their powers and breach of their duties (*Salomon v A. Salomon & Co Ltd [1897]*). It is not clear whether the plaintiff is suing the defendants in their personal capacity in the present case.
- [12] It is correctly averred that the plaintiffs (i.e. Roy and Rona Labrosse trading as Luminous Trading) are tenants of the ground floor and part of the first floor of Mahe Joinery Building at Providence, Mahe, which is owned by Mahe Joinery (Pty) Limited (“the Company”). It is further averred that the first plaintiff (i.e. Roy Labrosse trading as Luminous Trading) as well as the first defendant (Lise Labrosse in her capacity as director) and the second defendant (Celine Labrosse in her capacity as director) are all directors and shareholders of the Company: the first plaintiff (Roy Labrosse trading as Luminous Trading) and the first defendant (Lise Labrosse in her capacity as director) each own 47 shares and the second defendant (Celine Labrosse in her capacity as director) owns 6 shares in the Company. It is further averred that the first plaintiff (i.e. Roy Labrosse trading as Luminous Trading) is the sole signatory for Parcel V6800 on which Mahe Joinery Building is located and that the 1st defendant (Celine Labrosse in her capacity as director) is the Property Manager of the said building.
- [13] It is clear from the above that the plaint has been badly drafted and there is confusion in regards to the various capacities in which the individuals are being referred to. For example the 1st plaintiff is Roy Labrosse trading as Luminous Trading and the 2nd plaintiff is Rona Labrosse trading as Luminous Trading. They are collectively referred to as the plaintiffs. While it is correct to state that the plaintiffs (i.e. Roy and Rona Labrosse trading as Luminous Trading) are tenants of the Mahe Joinery Building which is owned by Mahe Joinery (Pty) Limited (“the Company”), it is incorrect to state that the first plaintiff (Roy Labrosse trading as Luminous Trading) is a director and shareholder of the Company as it is Roy Labrosse the individual and not trading as Luminous Trading who is a director and shareholder of the company. Furthermore Roy Labrosse trading as Luminous trading could not have signed the lease agreement for the land on which the Mahe Joinery Building stands. He must have done so as a director of the Company. I do

not believe it is necessary to go into further detail or give further examples of the confusion which arises from the poor drafting of the plaint.

[14] The question also arises as to whether the suit has been brought against the correct parties, that is against **Lise Labrosse Director of Mahe Joinery (Pty) Ltd (1st Defendant)** and **Celine Labrosse Director of Mahe Joinery (Pty) Ltd (2nd Defendant)**, as opposed to against the company represented by its directors, given that the plaintiffs are complaining that they are being denied access to Mahe Joinery Building of which they are a tenant and which is owned by the Company. In that regard it is worth noting paragraph 7 of the plaint which states that the 1st and 2nd plaintiffs have been denied access to their business premises *by the 1st and 2nd defendant*. Are the plaintiffs alleging that Lise and Celine Labrosse, acted in excess of their powers or in breach of their duties as directors in doing so? It is not clear to this Court.

[15] It does not end here. On 6th May 2024 the applicants filed MA103/2024, a Notice of Motion supported by an affidavit sworn by Roy and Rona Labrosse to which are exhibited a number of documents. The caption of the Notice of Motion reads in relevant part as follows:

IN THE SUPREME COURT OF SEYCHELLES

IN THE MATTER of Roy Labrosse (1st Plaintiff) Trading as Luminous Trading ... and Rona Labrosse (2nd Plaintiff) AGAINST Lise Labrosse ... Director of Mahe Joinery (Pty) (1st Defendant) and Celine Labrosse ... Director of Mahe Joinery (Pty) (2nd Defendant) ...

AND IN THE MATTER OF:-

*AN EX-PARTE APPLICATION FOR AN ORDER OF INTERLOCUTORY INJUNCTION
IN VIEW OF URGENCY”*

*Roy Labrosse
Rona Labrosse*

*1st Applicant
2nd Applicant*

[16] In terms of the aforementioned application, the 1st and 2nd Applicants moved the Court for an an urgent order of interlocutory injunction ordering the respondents (who are not named in the motion given that the motion is made ex-parte) to “*restore the Applicants’*

access and possession of premises on the Respondent's Building ... pending the final disposal of the ... Plaint ...”.

[17] It is my view that the applicants should have been named in the caption as Roy Labrosse *trading as Luminous Trading* (1st Applicant) and Rona Labrosse *trading as Luminous Trading* (2nd Applicant), although it can be argued that this can be reasonably inferred given that MA103/2024 arises from CS42/2024 in which the plaintiffs were correctly cited.

[18] At paragraphs 1 & 2 of the affidavit the deponents (Roy and Rona Labrosse) aver as follows:

1. *We are the deponents above-named and the 1st and 2nd Applicants in the above application for an order of interlocutory injunction against the 1st and 2nd Respondents.*
2. *We are the 1st and 2nd Plaintiffs in the attached Plaint (Exhibit 1) between the 1st and 2nd Respondents and we before the Supreme Court of Seychelles whereby we are, inter alia, praying this Honourable Court to declare that we have access and possession on the premises on the Respondent's building upon which as the 1st Applicant, myself Roy Labrosse am a shareholder and tenant alongside with Rona Labrosse, thereof comprised in title V6800 situated at Providence, Mahe.*

[19] In the above paragraphs, Roy and Rona Labrosse do not mention that they make the affidavit *trading as Luminous Trading*. Furthermore they incorrectly refer to themselves as the plaintiffs in CS42/2024 whereas it is Roy and Rona Labrosse *trading as Luminous Trading* who are plaintiffs and not simply Roy and Rona Labrosse. As stated they (Roy and Rona Labrosse) should also not be referred to as the applicants in the application for interlocutory injunction as the applicants should have been cited as Roy and Rona Labrosse *trading as Luminous Trading*. The building is also not the respondents' building but the building of the Company, and Roy Labrosse (alongside with Rona Labrosse) is not a tenant thereof. It is Roy Labrosse and Rona Labrosse *trading as Luminous Trading* who are the tenants.

[20] It is not necessary to go any further or do point out any further deficiencies in the plaint and the application for interlocutory injunction and supporting affidavit arising from the poor drafting by counsel. Suffice it to say that it makes it difficult for this court to take a proper decision in this matter.

[21] However I do not feel that justice will be done by dismissing the matter outright. I therefore grant counsel for the plaintiffs an opportunity to amend the plaint and Notice of Motion for interlocutory injunction.

Signed, dated and delivered at Ile du Port on 5th July 2024.

E. Carolus J