

**SUPREME COURT OF SEYCHELLES**

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Reportable  
[2022] SCSC 1088  
MA 255/2022  
(Arising out of CS123/2022)

**In the matter between:**

**SURFERS PARADISE SELF-CATERING CHALET LTD**

**1<sup>st</sup> Applicant**

(Trading as Paradise Chalets, Yoga & Wellness Centre,  
herein represented by its director, Jacqueline Elias, electing  
its legal domicile in the Chambers of Frank Elizabeth,  
Attorney at Law at Suite 212, Premiere Building,  
Albert Street, Victoria, Mahe, Seychelles and

**JACQUELINE ELIAS**

**2<sup>nd</sup> Applicant**

(electing her legal domicile in the  
Chambers of Mr Frank Elizabeth,  
Attorney at Law, at Suite 212,  
Premiere Building, Albert Street, Mahe, Seychelles)  
*(Present/Represented by Mrs. Alexandra Madeleine)*

**And**

**BGM ACCOUNTANTS**

**1<sup>ST</sup> Respondent**

(Herein represented by its Managing Director,  
Brenda Morin of Room 209-210,  
Micro Enterprise Complex, Leve Debourye Building,  
Providence, Mahe, Seychelles

**And**

**BRENDA MORIN**

**2<sup>nd</sup> Respondent**

(of Room 209-210, Micro Enterprise Complex,  
Leve Debourye Building, Providence, Mahe, Seychelles.

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**Neutral Citation:** *Surfer's Paradise Self Catering Chalets Pty Ltd v BGM Accountant & Brenda Morin* (MA255/2022) [2022] SCSC 1088

**Before:** B. Adeline, J

**Summary:** Application for interlocutory mandatory injunction.

**Heard:** By written Submission

**Delivered:** 9 December 2022

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## **FINAL ORDER**

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**Adeline, J**

- [1] This Court is seized of an interlocutory application, made by a notice of motion supported by an affidavit of facts and evidence dated 4<sup>th</sup> November 2022, filed in Court on the 7<sup>th</sup> November 2022 by Surfers Paradise Self-Catering Chalet Limited, a limited liability company represented by its director Jacqueline Elias, (“the 1<sup>st</sup> Applicant”) and Jacqueline Elias, (“the 2<sup>nd</sup> Applicant”) both electing their legal domicile in the law Chambers of Mr Frank Elizabeth, Attorney-at-Law.
- [2] The 1<sup>st</sup> and 2<sup>nd</sup> Applicants (“the Applicants”) have filed this application against BGM Accountant, an accountancy firm represented by Brenda, Morin (“the 1<sup>st</sup> Respondent, and Brenda Morin (“the 2<sup>nd</sup> Respondent”), both of Micro Enterprise Complex, Leve Debourye Building, Providence, Mahe, Seychelles – (“the Respondents”).
- [3] The application is made pursuant to Article 304 of the Seychelles Code of Civil Procedure read with Section 6 of the Courts Act, by which application, the Applicants seek for an urgent ex parte order of interlocutory mandatory injunction as per the terms specified herein below;
- “3. *For an order of interlocutory mandatory injunction to be granted against the Respondents, pendente lite, ordering them to hand over to the Applicants all their documents, accounts and files forthwith*”.

[4] The remedy being sought for by the Applicants who are the Plaintiffs in the suit proper, is an interim relief pending the final determination of the suit which the Applicants/Plaintiffs have instituted against the Respondents /Defendants by way of a plaint dated 21<sup>st</sup> October 2022, filed in Court on the 7<sup>th</sup> November 2022 as CS123/2022.

[5] Given that an injunction is an equitable discretionary remedy, by implication, the Applicants/Plaintiffs effectively invoke this Court's equitable jurisdiction exercisable by virtue of Section 6 of the Courts Act, Cap 52.

[6] At this juncture, it is appropriate to elaborate the law in this particular area, in order to make a just decision on the merits of this application. To begin, it is worthy of quoting Article 304 of the Seychelles Code of Civil Procedure ("SCCP") that reads as follows;

*"it shall be lawful for any Plaintiff, after the commencement of his action, and before or after Judgment, to apply to the Court for a writ of injunction to issue to restrain the Defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said Court upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just".*

[7] As regards to case law, as correctly submits by learned counsel for the Applicants/Plaintiffs, the leading case law authority for the grant of an interlocutory or interim injunction as the one being sought for in the instant application, is the case of **American Cyanamid Co v Ethicon Ltd [1975] AC 396**, in which case, Lord Diplock spells out a set of guidelines for consideration in determining whether or not to grant an interlocutory or interim injunction. Based on case law, the questions to be considered are the following:

- i) Is there a serious issue to be tried?
- ii) Would damages be adequate remedy?
- iii) Where does the balance of convenience lay? and
- iv) Are there any specific factors?

[8] Learned counsel cites few cases in which these questions or principles were put to a test, notably, **Pest Control v Gill [1992] SLR 177**, **Delorie v Dubel [1993] SLR 193**, **Techno International v George SSC 147/2002, 31 July 2002**, and **Dhanjee v Electoral Commissioner [2011] SLR 141**.

[9] Learned Counsel also cites the case of **Exeter Trust Company v Indian Ocean Tuna Limited 253/2009, [2010] SCSC 89 (26 May 2010)** with particular reference to the following extract of the ruling:

*“...in matters of interlocutory injunctions, the Court must be satisfied, prima facie, that the claim is bonafide, not frivolous or vexatious, in other words, that there is a serious question to be tried vide ...unless the materials available to the Court at the hearing of the application for interlocutory injunction, disclose that the Petitioner has a real prospect of succeeding in his claim at the trial, the Court should not go on to consider whether the balance of convenience lies in favor of granting or refusing the interim relief that is sought. In considering the balance of convenience, the governing principle is whether the Petitioner would be adequately compensated by an award of damages, which the Respondent would be in a financial position to pay, and if so, the interim injunction should not be granted. Where there is doubt as to the adequacy of the remedies in damages available to a party, the Court would lean to such measures as are calculated to preserve the status quo”.*

[10] Learned counsel adds, that the case of Exeter Trust Company (supra) confirms that, an injunction is an equitable remedy, and quotes an additional passage in the Ruling, the Court having said that;

*“the possibility of irreparable loss, hardship and injury if any, the Applicants may suffer during the inevitable interval between the commencement of the action and the Judgment in the main case, should also be taken into consideration as an important factor in the determination of the injunction”.*

[11] In essence, the case of Exeter Trust Company, (supra) illustrates quite clearly what should be the Court’s approach in deciding whether to grant or not to grant the interlocutory or interim mandatory injunction order being sought for. The first step is that the Court must establish that the claim is bonafide, in that, there must be a serious question or issue to be tried. I have thoroughly read the Applicants’/Plaintiffs’ pleadings as regards to the suit, and is satisfied, that this requirement is met. I am equally satisfied, that damages would not be adequate remedy.

[12] Furthermore, on account of the materials put before this Court in respect of this application, without the Respondents/Defendants having yet filed a statement of defence, the Court is satisfied, that the Applicants/Plaintiffs have a real prospect of success. The Court having thus formed such an opinion based on the Exeter Trust Company approach, has now to establish, whether the balance of convenience lies in favour of granting or refusing the interim relief in the form of an interlocutory mandatory order being sought for.

[13] It is clear, based on the Applicants'/Plaintiffs' pleadings in the suit, that there are special or specific factors that ought to be considered. That is to say, as it was pointed out in Exeter Trust Company (supra) *"the possibility of irreparable loss, hardship and injury if any, the Applicants may suffer during the inevitable interval between the commencement of the action and the judgment in the main case"*. In the supporting affidavit to the motion, at paragraph 18, the Applicants make the following averment;

*"18. I aver that I need the files, accounts and documents from the Respondents for me to file the Applicant's tax returns, and that the 1<sup>st</sup> Applicant will suffer irreparable harm and damage as well as fines from the Seychelles Revenue Commission if the files, documents and accounts are not handed over by the 1<sup>st</sup> Respondent forthwith as requested"*.

[14] I have given the utmost consideration to the application having carefully perused the affidavit in support of the same and other relevant documents on record, as well as the pleadings in respect of the Plaint. I am satisfied, that on the face of the affidavit evidence, the Applicants/Plaintiffs do have a bonafide claim against the Respondents/Defendants. Having perused the affidavit in support of the motion and the supported documents, I am also satisfied, that the Applicants have a bonafide case against the Defendants. It is also clear from the affidavit evidence that, the Applicants/Plaintiffs have a real prospect of success, and that the balance of convenience lies in favour of granting the motion.

[15] In the circumstances, I find that this is an appropriate case where the Court should make an urgent ex parte order of interim mandatory injunction against the Defendants as sought for by the Plaintiffs. In addition, I am satisfied, that such an injunction ought to be granted in the interest of justice. (see **Mareva Companies S.A v International Bulk Carriers S.A [1980]** ALLER at page 215).

[16] Therefore, for the reasons discussed in the preceding paragraphs, and having given due consideration to all the facts and circumstances of this case, I hereby make an urgent interim injunction mandatory order in the following terms;

- i) An order of interlocutory mandatory injunction is made against the Respondents/Defendants, *pendente lite* ordering them to hand over to the Applicants all of their documents, accounts and files.
  
- ii) In pursuance of this order, I direct the Registrar of the Supreme Court to cause service of a copy of this Order accompanied by a copy of the Complaint on the Defendants forthwith.

Signed, dated and delivered at Ile du Port on the 9 December 2022.

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B Adeline

**Judge**