

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA 16/2025

GREGOIRE'S COMPANY LIMITED

(Represented by Ms. Edith Wong)

PLAINTIFF

VS

BRIGITTE PAYET

(Represented by Mr. Guy Ferley)

DEFENDANT

Neutral Citation: *Gregoire's Company Limited vs Brigitte Payet* (MA 16/2025) [2025] (12th June 2025)

Before: Esparon J

Summary: Action by way of plaint whereby the plaintiff is alleging that the acts committed by the defendant amounted to a faute namely the tort of trespass.

Heard: 01st June 2023

Delivered: 12th June 2025

ORDER

Action by way of plaint whereby the plaintiff is alleging that the acts of the defendant amounted to a faute namely the tort of trespass which the plaintiff is claiming damages as well as an injunctive relief - The Plaint is dismissed with cost as well as the Notice of motion for injunctive relief in MA 416 of 2023. For the purpose of clarity, I also discharge the order of interim injunction ordered by this Court against the defendant in MA 236 of 2022.

JUDGMENT

ESPARON J

INTRODUCTION

- [1] This is an action by way of plaint whereby the plaintiff is alleging that the acts of the defendant amounted to a faute namely the tort of trespass.
- [2] The particulars of the fault as averred in the plaint are as follows;
- a. Appearing on the hotel's premises without permission;
 - b. Occupying the manager's House without permission;
 - c. Failing to leave the Manager's House when asked;
 - d. Changing the locks on the office door;
 - e. Insulting the members of staff of the Plaintiff; and
 - f. Causing a commotion at the hotel premises.
- [3] As a result of the above acts, the plaintiff is praying to this Court that the defendant is declared a trespasser on the Plaintiff's premises at Anse Reunion, La Digue and prohibited from entering therein. The Plaintiff is also claiming from the defendant the sum of Seychelles Rupees One Hundred Thousand being a sum of SR 50,000/- for inconvenience for dealing with the defendant and a further sum of SR 50,000/- for reputational damages.
- [4] In her defence, the defendant has denied that she has committed any fault of trespass and also has denied that the plaintiff has suffered any damages and further avers that quantum claimed is excessively exorbitant. She further avers in her defence that despite being the

her and the members of her family including her father Mr. Gregoire Payet and that she has refused to vacate the family home as she has been occupying the said home since 2017.

- [5] The defendant denies that she has changed the lock and averred in her defence that she did inform her father Mr Gregoire Payet that she wanted to have an office Space whereby the lock of the said door broke when an ex-employee of the Plaintiff Mr Barry Pool opened the said office for her and that the said employee got fired because of this. She further states in her defence that she visited her father to inform him what he was doing was wrong and further asked her father why she was treating her badly.
- [6] The defendant further denied paragraph 11 of the plaint and averred that none of the alleged instances alleged in paragraph 11 took place before the clients or guest of the Plaintiffs hotel.

THE EVIDENCE

- [7] Mr Jean Marie Moutia, a witness for the Plaintiff gave evidence that he works for ACM Associates and he is a director of Gregoire's Company Limited since 3 years ago which has a hotel namely La Digue Lodge.
- [8] He stated that he knows Brigitte Payet, an ex – director of Gregoire's Company Limited and that she is no longer a Director since 3 years ago and that she is a shareholder holding 1 share out of 1000 shares. He gave evidence that LD23 belongs to Gregoire's Company Ltd which has houses including, a one-bedroom house on it. That the 3-bedroom house is known as the manager's house and this is situated in the middle of the hotel complex and in order to access the said house you need to go through the hotel premises.
- [9] He further described the relationship between the Company and Brigitte Payet as tumultuous whereby there has been various exchanges between Miss Payet and the personnel at the hotel, previous managers, other shareholders. According to him, on the 5th September 2020, an incident was reported to him that Miss Payet came in and started

shouting and made various allegations and charges against people. As a result, the company decided to ask its legal representative to send a letter barring Ms Payet from the premises of which the said witness produced the said letter of which the Court admitted and mark the same as exhibit P1.

- [10] The witness gave evidence that she came in a couple of more times asking the staff to let her through and making a fuss at the reception, making a fuss at the Restaurant and generally bothering the guest. According to him this had a direct effect on the reputation of the hotel since a hotel having 80 rooms with a maximum of 160 people around the place and this would not look good at all. He also stated that there was a general memo sent out to all staffs informing them of such
- [11] The witness also gave evidence that Ms Andimignon, the assistant manager has gone down to the police to make statements about threats and abuses, verbal and otherwise. According to him this arose as a result of the manager's house since Miss Payet resided in it before as a hotel manager and since she was no longer the hotel manager, she refused to leave the premises of which she still uses it occasionally and does not release it back to the company.
- [12] The witness denied that the said house was a family home. According to the witness the reputation of the hotel had been affected since the staff are scared. The witness gave evidence to the fact that there has been about 4 such incidents in relation to the house whereby it was reported to the police.
- [13] According to the witness, there was a case of eviction against Miss Payet and the Court said that they have to use another way to get there. And they are simply asking the Court for the Company to recover its assets and that he doesn't want her on the premises ever again. He also gave evidence that Mr Barry Pool an ex- hotel employee is no longer working there because he opened the door of the manager's house for Miss Brigitte Payet contrary to the company's instructions.
- [14] He stated that the amount claimed by the company in the sum of SR 100,000 it should be a lot more for the inconvenience caused to the company since they are likely to lose a lot of clients and the damage to the reputation is unknown.

- [15] Under cross- examination by counsel for the defendant, the witness stated that he does not know the history of the house and he admitted that there are disputes between her father Gregoire Payet and her daughter Miss Brigitte Payet in relation to the Company and one of them was that Brigitte has brought a case in Court contesting her removal as a director of the Company. He also stated that previously it was Brigitte's sister and her spouse that lived there when she was the manager.
- [16] When asked under cross- examination what damages the company has suffered, his replied was that it suffered pain and suffering mostly.
- [17] Mr Pierre Agathine gave evidence to the fact that he works as a supervisor at Island Lodge and that he has known Miss Brigitte Payet, the daughter of Gregoire Payet for around 40 to 42 years and that she used to work at the hotel and now she is no longer working there. He further stated that in August last year Miss Payet came in the office of Mr Gregoire Payet and was a bit aggressive and started quarreling and threw a paper at him by saying that he was a coward and the security had to remove her.
- [18] Under cross-examination by counsel for the defendant, he described before that the relationship between the father and the daughter was a very affectionate relationship but that she has never seen her before acting this way and that there was no guest present in the office.
- [19] Mrs Emanuella Hassan (born Andibignon) gave evidence to the fact that she is currently the Assistant Hotel manager and has been holding this position since 2020. She gave evidence that she knows Miss Brigitte Payet who was previously managing the property and that she is the daughter of Mr Gregoire Payet. According to her, Miss Brigitte Payet left her employment around July or June 2020.
- [20] She testified that in October 2020, they already had communication with Mr Payet that she is no longer allowed on the property and they were having an event whereby she was alerted that she was at the security gate and then upon not seeing her at the gate she later saw in the manager's house that the lights were on. So according to her, she knocked on the door and when she opened the door, she found her in a towel of which she informed the said

Brigitte Payet that as per Mr Payet she was not supposed to be there and that is when she got really mad and said some very loud awful things. So she called Mr Moutia and according to her the defendant slapped her hand and her phone fell down. Then she had to call the police and she verbally assaulted her and was being a bit aggressive until the police came and when the police came, she still ended up staying since the police would not interfere in such family matters.

- [21] She further described where the manager's house is namely that it is inside the property and that you will have to go through the main entrance, past the reception and that it is next to the guest rooms. According to her if there was any commotion, the guest would hear.
- [22] Mrs Hassan further testified that she remembered another incident in the year 2021 when he was speaking to her previous GM as they were standing close to the main entrance when a truck came in with Brigitte which was bringing back her stuffs to the manager's house. According to her the GM went to speak to her and together with the other persons with her they proceeded to shout, throw verbal stuff around. She testified that the issue was about access to the property. She stated that it was quite a bit of a commotion and some workers came out to see what was happening. She further stated that the manager's house belongs to the company since it is in the property.
- [23] She remembered that last year she also called her on the telephone attacking her personally about being there, that she has a right to the property and then she insulted her that day. On another occasion, they had to let go of an employee since he had been given instructions to change the lock on a door to an office inside Gregoire's apartment which was part of the hotel and handed all the keys to Miss Payet.
- [24] She testified that when Mrs Payet entered the hotel premises in 2021, on the last occasion there was a mutual consent for her to enter but to only go to the house and that she was not supposed to access staff areas as she is supposed to access it through the main entrance to access her house and back. According to her, there was another incident reported to her although she was not there and that was in Mr Gregoire's office.

- [25] Under cross-examination by counsel for the defendant she changed her version from that it was her house as she stated in examination in chief to the house was the manager's house since she doesn't know if that is her house but she goes in there from time to time.
- [26] She also stated that on the first occasion she did not receive any complaints from the guest and that once the staff heard the commotion they moved the guest away from that area. According to her, as to the second incident she did not recall if any guest was there. She also stated that she was affected by all this since she is close to the staff but some of them are loyal to her and she is still being privy to information although she is no longer in employment there and that her being close to the staff they may get confuse of whom to obey and some of them may resist when you tell them not to interact with her.
- [27] She also stated during cross-examination by counsel for the defendant that these incidents were not related to her revenue or occupancy but they will impact on her moral and that she has not received any bad guest reviews because of these incidents. However, she stated that their reputation with the La Digue community has gone bad and disagreed with counsel's suggestion that the people on La Digue are not your guest but she stated that they still come to their facilities.
- [28] She further stated that she has rights to enter the property but cannot enter the staff areas. However, she does not agree that long standing she has been living in that house since when she started working there she was not living in the house since she was using the beach house then she moved there during or after Covid but agreed that since that house is 50 years old she does not know what happened in that house prior to 2019.
- [29] Mr Saheed Disu Taiow gave evidence to the fact that he is a security supervisor at La Digue Island Lodge and has been working there for 3 years. He also stated that he knows Miss Brigitte Payet and that when he first came she was the General Manager at that time. Since she is no longer a GM, a Memo was issued around July or August 2022 by a lawyer to the effect that she is not to have access to give order at the hotel.
- [30] He further gave evidence that on the 27th August 2022, while he was at the front gate, the defendant was at the front gate asking where is the memo and after they explained to her.

That after 10 to 15 minutes, he saw Miss Brigitte Payet entering Mr Payet's office which is close to the reception. At the time the driver known as Agathine was next to the door and Mr Payet was in the office. She had a paper in her hand showing like this and aggressive. Although he did not understand what she was saying since he doesn't speak creole he saw that she was angry and was just talking. So he ensured that she would not get contact with Mr Payet and he told her to go but she did not want to go. Then afterwards she left and went to the reception and she was talking in creole and there were guests in the lobby and he was trying to calm her and thereafter she left and went to Gregoire's shop.

- [31] He testified that on the 7th or 8th June 2023, Miss Brigitte Payet came back to the hotel, she came in a taxi and so he stopped the taxi at the entrance so madam can walk in since they no longer allow vehicles to come whereby she asked him where is the Court order that stops her from coming in with the taxi and reminded him that he is a foreigner and that he should not forget that he is on a GOP and that he should not be interfering with family issues, that he should remember what he is doing since she is going to win her case and that he will get fired and that he could not sleep after that.
- [32] Under cross – examination when asked whether the memo directed him as a security officer to prevent her from coming in the premises, he replied no. He also stated that for 3 years that he was working at the hotel, he has seen Miss Brigitte in that house. According to him when Miss Brigitte came to the reception she was not arguing with anyone she was just shouting a little bit aggressive at the time. He also stated that he doesn't know if any guest made a complaint about this incident.
- [33] Miss Dora Alana Morel gave evidence to the fact that she is a front office supervisor at the La Digue Island lodge and she has been working at the Island Lodge for 8 years and reports to her manager Miss Hassan. She stated that she has known Miss Brigitte Payet for 7 years and that when she started working, Miss Brigitte Payet came for about a week or two and later became the General Manager at the hotel and thereafter stopped being the General Manager during Covid during the year 2019 and that there was a memo to this effect issued by Mr Gregoire Payet, the Director.

- [34] She further gave evidence to the fact that on the 22nd August 2022, while she was working at the reception at around 7.50, she saw the defendant coming to the reception of which she was yelling and she ran as she was very scared since she was very hysterical and it was quite bizarre. According to her she was saying the following words 'Gregoire why did you do that? You put my mum outside, and Marguerite you are a *gran Piten*'. Marguerite was the secretary of Mr Gregoire Payet. According to her she was there for a while at the reception and was referring to the memo and that she was tired. She stated that when the security removed her, she left. She also confirmed that there were 2 hotel guest around in the lobby at the reception.
- [35] Under cross-examination by counsel for the defendant, she stated that her anger was directed towards her father and that the 2 guest did not make any complaint to her and that there is no record of it of which they did not cancel their bookings.
- [36] The only witness that gave evidence for the defendant was the defendant herself Miss Brigitte Payet. She gave evidence to the fact that she lives at Anse Reunion La Digue and have been in the tourism hotelier industry for over 40 years. She stated that she came back in 1988 and started working with the hotel business. According to her, she was on the hotel premises on the 5th of September not to harass anyone but she was defending herself since she was being targeted and attacked by people namely male securities who had no notion of the family history.
- [37] According to her, she came back when she was actually unlawfully removed from the company of which she came to Mahe to see lawyers and when she came back she came into her home which was a family home and when she got there she was having a shower and heard the door knock and when she opened the door she saw Emmanuella Hassan who told her she was not supposed to be in the house. She told her to leave her premises but she insisted that she moves. They called the police and after her lawyer spoke to them the police left.
- [38] She stated that the house is considered to be a family home as this house is more than 50 years old and was their main family home and that this house was given to them by their father and it has been occupied by family members and that now she is the one that is in

the house. She stated that the reason why this house is called the manager's house is because her dad when the hotel started had a German partner, he lived in this house all along while building the hotel with her father and after he left they all shared this house. According to her, she lived in the house for quite a while and then left because she got married and that in 2016, her dad told her that he needed help and so she left everything behind and hence she was then running the hotel.

[39] She further stated when she moved back, her brother was occupying the house since her brother was the one working at the time and when he moved back, her father asked her to go to the house and stay there. According to her, she was staying there until she was unlawfully removed. She further testified that sometimes when they were not there, if the hotel was full her dad would just put people in there namely family members working at the hotel.

[40] According to her, Gregoire's company, was always a family business owned by her mum and dad and she currently holds one share in the company. She further stated that when she received the letter from their lawyer to move from the house, she did not vacate the house since she saw no reason to vacate the house that belongs to her family as there had been no rent or no contract was made with her and that she was never told that she had no right to be there since it was their right to be there.

[41] She stated that one day she went to Mahe and that the judgment was already delivered by Judge Carolus that they were not supposed to remove her from the house and that she was informed while she was on Mahe that they broke into her house and started removing all her personal belongings and put in cartons and they put it on a boat. When she went up to the hotel, they started barricading the place so that she would not get in and that they were the one harassing her by not allowing her to get into the place namely Mr Roland Georges, Miss Andibignion. According to her, the incident happened in the inside while she was walking on the small road to go inside to her house and also to the hotel and that there was no guest around at the time. She denied threatening any employees at that time and that she told them that she will report them to the police.

- [42] In her evidence, the defendant denies that she had changed one of the locks on the office door without the permission of Gregoire Company Limited since according to her she still considers herself as a director since her case is still in Court since according to her she was unlawfully removed. She stated that she only wanted to clean one of the offices.
- [43] She said that after that she managed to see her father after they had him sign another memo that she was no longer part of the company and that she cannot come in. That morning, her dad was coming in his office in a wheel chair and so she went into the office and there were his two carers who cared for him since her dad is incapable and there was the driver namely Mr Pierre Agathine. According to her, she just leaned on her father's desk and said 'Papa what are you doing and she took the memo and pushed it on the table and according to her she said 'what is this. Why are you sending this' why are they sending these memos to me? I am part of this place. She stated that at that time her dad just looked at her and she stated that at the time she was only talking to him as her father. Then according to her she had gone a little bit angry with him and said 'you have caused many issues with the family. My mum's cases are in Court. What are you doing? Why are you letting these people manipulate you? She also stated that she had gone to see her father to sort out why he was sacking Mr Barry Pool who had allowed her access in one of the offices before that.
- [44] According to her, after that she got very frustrated and angry and she went outside and she said a few things but there was nothing to do with anybody else since this had to do with her father and about the same family issues. Then she was talking on the phone with her brother and while she was walking, she ended up in a shop strangely it was her father's shop and she was saying something on the phone and she got out of the shop quickly.
- [45] According to her, the harassment she was facing with these people of course she had to defend herself because these people want to take over the company and that her dad has parkinsons disease and has a heart disease and his health is now deteriorating. She denies appearing at the hotel premises without permission since she is a director and a shareholder and an heir and most important she is her father's and mother's daughter. As to what is referred as the manager's house she stated that she didn't need permission since it was a family home.

- [46] She denies that she committed any fault and denies that as a result the company suffered any damages. Furthermore, she denies being a trespasser and prohibited from entering the premises. She further stated that she is still a shareholder and legitimately a director.
- [47] During cross-examination by counsel for the plaintiff she admitted that she only holds one share in the company and that her father is the majority shareholder and that he is a director of the company. She also admitted that she doesn't currently have a case in Court for what she alleges as her unlawful removal as a director of the company and that the case was withdrawn for technical reasons but supposed to be refiled back in Court and denies that she is no longer a director since according to her, she was unlawfully removed.
- [48] She clarified that since they were all at school her father allowed family members to stay in the house when they come to work. She also admitted that she has a house which is a business on Mahe and when she will be occupying the so called 'managers house she would come and go and sometimes she will be on Praslin and sometimes she will be on La Digue. She also stated that she stayed in the house with the consent of her father which cannot talk now. She maintained that it was not her place for Mrs Hassan to ask her to leave the premises. She also admitted that she has tried to have her father interdicted since her father does not have a saine mind.

SUBMISSIONS OF COUNSELS

- [49] The Plaintiff humbly submits that as the Civil Code of Seychelles Act is based on French law, French authorities are highly persuasive. On the 15th of May 2012, the *Cour de cassation*, found that corporate bodies could claim for moral damage by holding that it was incorrect for the lower Court to have a blanket denial of moral damages to a corporate body. This was in relation to a case where one corporate body sued another for violation of a non-compete clause; the matter was not brought as a breach of contract but rather as a breach of obligation under article 1382. The Court held that to hold that corporate bodies could not claim moral damages was incorrect.

- [50] The Plaintiff humbly submits that it has proved that the Defendant did actions that caused harm to it. The Plaintiff respectfully submits that the testimony of Mr Jean-Marie Moutia, a director of the Plaintiff shows that the Defendant has committed acts of nuisance and trespass despite the clear instructions of the Plaintiff on the Plaintiff's premises.
- [51] Counsel for the Plaintiff also humbly submitted that the testimony of Mr Agathine indicates that it was clear that the Defendant, after her altercation with the other director of the Plaintiff, headed towards the reception area of the hotel and was visibly upset and continued to shout.
- [52] That as per the proceedings, Defendant has admitted being on the hotel premises, she accepted that she was in the house, accepted that she had an employee of the Plaintiff open a lock for her without permission of the Plaintiff. These, she claimed, were because she was a shareholder and still believed herself to be a director of the Plaintiff. This is despite the fact that she accepted that since 2020 she had been informed that she had been removed as a director of the Plaintiff but which she claimed was illegal. The Plaintiff therefore humbly submits that having accepted being on the premises, despite knowing full well that the Plaintiff had asked her to vacate the house, she has accepted that she trespassed.
- [53] According to counsel for the Plaintiff, the argument by the Defendant that the house is a family house does not, with respect hold any water. The Defendant, being a shareholder, is only entitled to dividends that her shares provide her. The house, being on the land of the Plaintiff, a fact accepted by the Defendant in paragraph 3 of her defence, shows that the Defendant could never have had a right to live and occupy there unless with the consent of the Plaintiff. Such consent had been withdrawn and therefore every other instance since the issuance of the letter to the Defendant.
- [54] On the other hand, counsel for defendant submitted to the Court that it is evident from the pleadings and the evidence in the matter that the plaintiff seeks to gain possession of the premises known as the manager's house and that the plaintiff did not bring a possessory action in terms of the Civil Procedure Code. That instead the Plaintiff pleaded *faute*. Counsel for the defendant relied on Article 1382 of the Civil Code of Seychelles Act 2020

and submitted to the Court that there are three elements necessary to establish delictual liability which are fault, damage and causal link.

- [55] Counsel also relied on Article 1149 (2) of the Civil Code of Seychelles Act and the case of **Civil Construction Limited V/S Leon and Ors SCA 36/2016** which relied on the case of **Barbe V Laurence CS 118/ 2013** which dealt with the classification of damages.
- [56] Counsel for the defendant submitted to the Court that the plaintiff has not proved that any of the averments as alleged in the plaint amounted to a fault and that the said caused any damages to the plaintiff. That the plaintiff could not prove damages in that the plaintiff did not produce any evidence that it suffered economic loss. The Plaintiff being a corporation and not a natural person, the only loss would have been economic loss. Counsel for the Defendant submitted to the Court that the loss and damage pleaded at paragraph 13 i.e inconvenience for dealing with the defendant and reputational are not recognized by the law of delict. That the loss of reputation, which is basically in the realm of defamation is governed by specific legislation namely Article 1390 of the Civil Code of Seychelles Act, 2020.
- [57] Counsel for the defendant further submitted that the prayer to declare the defendant as a trespasser is not maintainable in the present case because the action is not a possessory action. The evidence led by the Plaintiff in the case was specific to the alleged disturbances committed by the defendant.
- [58] Counsel for the Plaintiff submitted that the Defendant stated that since the Plaintiff is a corporate body and therefore it is not entitled to any damages and that reputational damages are defamation. The Plaintiff humbly submits that defamation would not be the correct action as defamation is in relation to statements written or said that cause injury to reputation. The situation in this matter is not the same. These were acts of disturbance done by the Defendant that caused harm to the Plaintiff.
- [59] The Plaintiff humbly submits that whilst it is correct that corporal damages are not available to the Plaintiff by way of being a legal and not natural person, that does not extend to the fact that inconvenience is not available to the Plaintiff. To suggest otherwise would

imply that whenever a company had to deal with matters that cause inconvenience by requiring it to cause employees to be diverted away from their duties would never be entitled to any damages for the loss of time and resources in dealing with those inconveniences

- [60] Counsel for the plaintiff further submitted that in his testimony, Mr Jean Marie Moutia, a director of the Plaintiff, explained that as Defendant was occupying a house that belonged to the Plaintiff and which, as a hotel, they require every room possible. This also includes a room for staff and housing. He indicated that the Plaintiff suffers economic loss owing to the lack of use of the house.
- [61] He further explained that the acts of the Defendant, given that they occur in the presence of staff, clients of the Plaintiff and the public, the risk of reputational damage is high. The inconvenience of dealing with her, having to call the police, issuing memos, having investigations done are all matters that cause nuisance and inconvenience to the Plaintiff and disrupts its day to day operations.
- [62] According to counsel for the plaintiff, the reputational damage was also shown through the testimony of the assistant manager, Ms Emmanuella Hassan, at pages 42 and 43 of her testimony that the commotion caused by the Defendant was able to be heard by the guest and staff when the Defendant came to the reception. This reputational damage, as per the *Cour de Cassation*, is claimable.
- [63] Counsel for the Plaintiff further submitted that corporate bodies can obtain moral damages. Accordingly, the Plaintiff prays this Honourable Court to declare that the Defendant is a trespasser and prohibited from entering the premises of the Plaintiff, that she pays a sum of SR100,000 for inconvenience and reputational damages, and interest from the date of filing, all with the costs of this suit.

ANALYSIS AND DETERMINATION

[64] This Court hereby reproduces Article 1382 of the Civil Code of Seychelles Act, 2020 which reads as follows;

1382.

- (1) Every human act that causes harm (*dommage*) to another requires the person by whose fault the harm occurred to repair it.
- (2)(a) Fault is an error of conduct that would not have been committed by a prudent person in the circumstances.
- (b) Fault may be the result of an act or an omission.
- (c) Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.

[65] In delictual actions, in order for the plaintiff to prove liability of the defendant under Article 1382, the plaintiff has to prove the following;

- a) There was a damage to the Plaintiff or to the Plaintiff's property;
- b) There is a causal link between the alleged acts of the Defendants and the damage that occurred to the Plaintiff's property; and
- c) The Defendant failed to take all reasonable care to ensure that the acts would not cause damage to the Plaintiff (**vide: Shani Properties V Oliaji Trade**)

[66] It is evident from the pleadings that the defendant's cause of action is based on fault more particularly the tort of trespass as per the averments in the plaint. The concept of fault although has somewhat been defined in Article 1382 (2) of the Civil Code of Seychelles

Act as an error of conduct that would not have been committed by a prudent person in the circumstances and that Fault may be the result of an act or an omission, there is no exhaustive definition of the concept of fault in Article 1382 (2). As a result, this Court has to turn to local Jurisprudence and also that of French law in appreciating the concept of *faute* and apply it to the particular circumstances of the case.

- [67] Fault can be defined as a violation of a general duty not to harm another person unjustly (vide: Remy Cabrillac, Droit des obligations (Daloz 14th Edition 2020 para 241. This broad definition is perfectly in line with article 1382 and 1383 of the Civil Code which does not define the notion of Civil Fault; both provisions only mention two types of it namely intentional fault on the one hand, and negligence and imprudence, on the other hand (vide: Goran GeorGijevic and Jonas Knetsch , Tort law of Mauritius) of which our tort law is similar to that of Mauritius. The said Authors went further and stated the following:

‘As the test set out below seems to be unfair to the victims and too lenient for the tortfeasor in Mauritius, civil fault is evaluated in abstracto (vide: Stephanie –Simon, Droits des obligations 2022, Daloz 14th Edition, 2021 para 798). The behavior of the tortfeasor is compared to what an average and careful individual would have done in identical circumstances. Reference is made to an abstract model of an ‘average and careful individual’, which is usually a higher standard than the defendant’s standard of care used in the in concreto test. The in abstracto test has been applied in the casdes **Neron Publications Co Ltd V/S Sentinelle Ltd & ors 2020, SCJ 63, Hurnam V Dabee 2010 INT 244, Beloguet and Anor V Mungur & Ors 2019 SCJ 218, Cundasawmy V Government of Mauritius 2001 SCJ 69; 2001 MR 25 and Ungnoo & Anor V State of Mauritius 2005 SCJ 89.**

[68] Since this matter concerns tort of trespass as pleaded in the Plea of the plaintiff, this Court seeks guidance to local case laws. In the case of **Gresle V Sophola & or (2002) SLR 139** Perera J stated the following;

‘As regards ‘to trespass to Land’ not every entry upon the property of another, gives right to a delictual claim. Delictual liability is based on damages caused by the act or omission of a person. Hence mere entry for a lawful purpose is not actionable. So also, is entry with notice or with express and implied authority. Trespass is an invasion of privacy or of property rights over property. However, if the dominant purpose of entry is to cause harm or damage to the property, even if it appears to have been done in the exercise of a legitimate interest, would constitute fault within the meaning of Article 1382(3) of the Civil Code’.

[69] In **Belize V Nicette (2001) SLR 264** Perera J stated the following;

‘Damages, including moral damages claimed under Article 1149 of the Civil Code are compensatory. Whether the rights of the aggrieved party were infringed deliberately, negligently, inadvertently or mistakenly is immaterial. For damages for trespass. The trespass must be accompanied by loss or damage to the owner of the land; and punitive damages are not available for the trespass’.

[70] Turning to the facts and circumstance of the case, the evidence as led by the defendant is that she has received the consent of her father to stay in the said house be it explicit or implied consent since she has started to work as the manager for the said hotel. According to her the said house known as the manager’s house is seen to be a family home whereby her and other members of the family when coming to work at the hotel was allowed to stay and this house has a long history of them using this house as a family home since the house itself is 50 years old and they’ve been using it ever since they had demolished the old

family home albeit she admitted that during the construction of the hotel, the said house was being used by his father's partner in the business. I find the said witness Miss Brigitte Payet to be a credible witness in respect to this issue when observing her demeanor and her evidence about the history of the house that stands unrebutted during cross-examination by counsel for the Plaintiff and the evidence led by the plaintiff.

[71] However, I find the evidence of the witnesses for the Plaintiff being unconvincing as they gave evidence that the said house was used and known as the manager's house and that the defendant should vacate the said house since it belongs to the Plaintiff. Mr Jean Marie Moutia also stated under cross-examination by counsel for the defendant that he does not know the history of the house and that previously it was Brigitte's sister and her spouse that lived there when she was the manager. Emanuella Hassan, the assistant manager gave evidence during her evidence in chief that it was her house and under cross-examination by counsel for the defendant she changed her version from that it was her house as she stated in examination in chief to that of the manager's house since she doesn't know if that is her house but she goes in there from time to time. She further stated that she has rights to enter the property but cannot enter the staff areas. However, she does not agree that long standing she has been living in that house since when she started working there she was not living in the house since she was using the beach house, then she moved there during or after Covid but agreed that since that house is 50 years old she does not know what happened in that house prior to 2019.

[72] Mr Saheed Disu Taiow gave evidence under cross-examination by counsel for the defendant that when asked whether the memo directed him as a security officer to prevent her from coming in the premises, he replied no. He also stated for 3 years that he is working at the hotel, he has seen Miss Brigitte in that house. Hence such contradiction between their evidence in chief and cross-examination and between the said witnesses themselves coupled with all these witnesses not knowing the history of the house, I find their credibility to be wanting and hence I proceed to accept the evidence of the defendant on this issue and reject the evidence led by plaintiff on this issue. Hence without going into the merits of the ownership of the house and that the house is located on the same property of the hotel, I find that Miss Brigitte Payet had a right to occupy the said house known as the manager's

house during the period where it is alleged that the purported acts as averred in the plaint where according to the plaintiff the defendant allegedly committed the tort of trespass.

[73] I say that taking into consideration that the defendant had just stopped working as an employee of the hotel of what she described as she was unlawfully removed as a director and she was at the time contesting this in Court. According to both Mr Moutia and Miss Emanuella Hassan born Andibignon, Miss Brigitte Payet left her employment around July or June 2020 and that the first incident had occurred in September or October 2020 which was quite close to the date she officially stopped working there although she terms it as she was unlawfully removed as a director. The other incidents in 2021, Mrs Hassan has given an explanation in her evidence that when Miss Payet entered the hotel premises in 2021 on the last occasion, there was a mutual consent for her to enter but to only go to the house and that she was not supposed to access staff areas as she was supposed to access it though the main entrance to access her house.

[74] Since this Court has already determined that the defendant had a right of occupation of the said house at the time of the incident, it cannot be said that the defendant had committed a fault namely the tort of trespass since it is the view of this Court that the defendant was merely trying to gain access to the house she was occupying at the time. Hence, it could not be said that the dominant purpose of entry on the said property by the defendant was to cause harm or damage to the property in order for the acts of the defendant to constitute a *faute* under Article 1382 of the Civil Code of Seychelles Act. That being said, it is this Court's view that the defendant had received the express or implied consent from her father to stay in the said house before or during the time of her employment at the hotel of which she was still in occupation at the time of the incidents.

[75] The memos, visiting the defendant at the house and asking her to leave and stopping her at the gate amounted to harassment of which it is evident that the agents of the plaintiff were taking the law in their own hands instead of coming to Court which prompted the defendant in the circumstances to react in such a way by defending herself by going to her father to talk and ask why he was doing this and to bring back her things to the house after the agents of the plaintiff had unlawfully entered the house and removed her belongings and put it on

a boat of which it is simply taking the law in their own hands, a fact that this Court will not condone.

[76] Hence, as a result, I find that the Plaintiff has not proved on a balance of probabilities that the defendant had committed a fault namely what the plaintiff termed as the tort of trespass. The evidence indicates that the defendant had express or implied consent to occupy the house in question, which she has consistently referred to as a family home. There is no credible evidence that her presence or conduct was intended to cause damage or that it constituted an unlawful trespass

[77] As to the issue of damages claimed by the plaintiff, the Plaintiff is claiming from the defendant the sum of Seychelles Rupees One Hundred Thousand being a sum of SR 50,000/- for inconvenience for dealing with the defendant and a further sum of SR 50,000/- for reputational damages. The issue to be decided is as to whether a legal person such as a company can claim moral damages namely for reputational damages. Guidance in this respect is sought from French law. The Authors Francois Terre, Philippe Simler, Yves Lequette, Francois Chenede (*Droit civil-Les obligations*, 13ème édition, *Precis Dalloz*, states the following at page 1069 para. 939;

‘L’on s’est demandé si une personne morale, qui est dans son essence une être abstrait pouvait obtenir réparation d’un préjudice morale. En se référant à ce que peut être à l’égard d’un groupement doté de la personnalité une atteinte à l’honneur et à la considération de celle-ci ou encore aux conséquences, à son égard, d’une concurrence déloyale, une réponse positive s’est imposée (com. 9 fevr. 1993. Bull. Civ no. 53;15 Mai 2012 D. 2012. 2285, note B. Dondero. Rev soc.2012.620 note PH stoffel- Munck, JCP,6004, obs, PH Soffel-Munck, RTD civ. 2013,85, obs. J. Hauser)’.

[78] The position of the Mauritian law is similar to that in France on the issue. Goran Geogijevic and Jonas Knetsch in their book *Tort Law of Mauritius* states the following at page 114 para 236;

‘Moral harm may be defined as the violation of a legally protected interest that cannot be directly evaluated in money such as reputation, dignity, ect. Moral harm consists of victim’s suffering, both psychological and physical’.

The said authors state the following at page 115 paragraph 237;

‘Moreover in the case of **Police V Bundhoo Mohamed Ali Dilshad and Anor 2007 INT 296**, the Intermediate Court held that even a company, which is a legal entity, has the right to be compensated for moral harm caused by violation of its dignity and reputation. An employee of the company has forged the exportation visas and when the forgery has been discovered by US customs, the reputation of the company has been seriously compromised, which led to the compensation of this moral harm’.

- [79] Any loss suffered by the plaintiff, if proven, can be compensated through an award of damages, which remains the appropriate remedy under these circumstances.
- [80] In the present matter, the plaintiff’s claim for reputational damages was not adequately substantiated. Although the company argued that the defendant’s actions caused significant disruption and harm to its reputation, the evidence did not demonstrate that the Plaintiff being a company suffered damages as regards to its operations or client relationships. The plaintiff’s witnesses who gave evidence did not substantiate the claims for inconvenience and reputational damage in a sufficient manner: Mr Moutia lacked objective proof and remained largely speculative; Mrs Hassan while her testimony described tension, it did not demonstrate economic loss or that company had suffered any reputational damage since she stated that the people from La Digue still use their facilities. Mr Taiow’s testimony supported that the incidents occurred, but again no measurable harm or inconvenience to

the business was shown. As for Ms Morel whilst confirming an emotional outburst, no reputational damage or inconvenience quantifiable to the business was established.

- [81] The moral and reputational damages are generally not applicable unless direct harm to the company's dignity and reputation can be clearly shown, which in the present case this Court is of the view that this has not been convincingly presented by the plaintiff in view of the evidence adduced by the plaintiff. As a result, I find that the plaintiff has not proven on a balance of probabilities that it has suffered any damages as alleged in its plaint being inconvenience and reputational harm.
- [82] The Plaintiff also filed an Application for injunction against the Defendant namely MA 416 of 2023 together with the plaint in relation to an action for faute. Previously the Court had granted an order of an interim Injunction in MA 236 of 2022. This Court has power under the provisions of Section 316 of the Seychelles Code of Civil Procedure to grant or deny an injunction upon such terms as shall seem reasonable and just. (vide: **Laporte & Anor V Lablache SLR 1961**)
- [83] Moreover, this Court is guided by the principle that injunctions are an equitable remedy and should only be granted in exceptional circumstances specifically where there is urgent necessity to protect against irreparable harm that cannot be adequately compensated by damages.
- [84] In the case of *Central Dock Company v Colonial Dock Company*, 1891 M.R. 49 at page 51 it was decided that "in matters of injunction this Court is guided entirely by precedents of the Courts in England". As emphasized in *London and Blackwall Ry. Co. v. Cross* (1886) 31 Ch. D. 369, the "very first principle of injunction law is that, prima facie, you do not obtain injunctions to restrain actionable wrongs for which damages are the proper remedy."
- [85] Further, in *Rajabally v Seegobin* (1938) M.R. 10, Nairac C.J. stated that "the fundamental principle underlying the grant of an injunction is the urgent necessity of protecting parties against irreparable infringement of or trespass on their rights."

[86] This Court further finds that in the present matter the prerequisites for granting an injunction have also not been substantiated to the degree necessary to justify an injunctive relief, the more so that in the present matter, this Court has already determined that the plaintiff has not proven on a balance of probabilities that the defendant had committed a fault. Accordingly, the plaintiff's application for an injunction is denied.

[87] For the above reasons, I accordingly make the following orders;

- i) I dismiss the plaint with cost.
- ii) I dismiss the Application in MA 416 of 2023.
- iii) For the purpose of clarity, I accordingly discharge the order of interim injunction granted against the defendant by this Court in MA 236 of 2022.

[88] The plaintiff has a right of Appeal within 30 days from the date of this Judgment.

Dated, Signed and delivered at Ile du Port on the 12th June 2025.



D. Esparon J.

