

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2025]

MA 83/2024
(Arising in CS 39/2024)

In the matter between:

EURO AVIATION LIMITED
(rep. by Mr. Basil Houareau)

Applicant

and

GARRY ALBERT
(rep. by Mr Ryan Laporte)

1st Respondent

SEYCHELLES CIVIL AVIATION AUTHORITY
(rep. by Mr. Rajasundaram)

2nd Respondent

Neutral Citation: *Euro Aviation Ltd v Garry Albert & Anor* (MA 83/2024) [2025] (17 February 2025)

Summary: Application for Interlocutory Injunction
Before: Carolus J
Delivered: 17 February 2025

RULING

Carolus J

Background

[1] This Ruling arises out an application for orders of Interlocutory Injunction (MA83/2024) which application arises from Civil Suit 39/2024. By way of background, the relevant pleadings in CS69 are set out below.

The Complaint (CS39/2024)

[2] On 22nd March 2024, the applicant Euro Aviation Limited, a company incorporated under the provisions of the Companies Act 1972, filed a complaint in CS39/2024 against Garry Albert

as the 1st defendant and the Seychelles Civil Aviation Authority (“SCAA”) as the 2nd defendant. Garry Albert is the Chief Executive Officer of the SCAA.

- [3] In terms of the plaint Euro Aviation Limited claims that it had entered into an agreement with the SCAA, which authorised it to provide fixed base operation services to general aviation operators and private aircraft operators including military aircraft at the Seychelles International Airport, and that since it started to carry on its business it had provided such services to both military and other aircraft, including six military aircrafts, without any objection and opposition from either Mr Albert or the SCAA. However, contrary to the agreement, a landing permit which the SCAA had issued to a US military aircraft at the request of Euro Aviation Limited, which had received a request from the aircraft to provide it with fixed base operation services, was subsequently revoked on the ground that Euro Aviation Limited is not permitted to handle military flights and provide fixed base operation services to military aeroplanes.
- [4] It is also averred in the plaint that the shareholders of Euro Aviation Limited are Mr Abdul Jalil Mohamad who is the legal and beneficial owner of forty-nine of the hundred shares making up the company’s share capital and Mr Dobin Samson who holds the remaining 51 shares which are registered in his name as the nominee of Mr Abdul. Mr Samson is the father of Mr Albert, the 1st defendant. It is further averred that a dispute has arisen between Mr Abdul and Mr Samson resulting in a suit instituted by Mr Abdul against Mr Samson in the Supreme Court on 23rd February 2024. The dispute arises from Mr Samson attempting to unilaterally revoke and cancel the nominee agreement entered into by Mr Abdul and Mr Samson and to illegally and fraudulently claim the majority shares as his property.
- [5] It is averred that Mr Albert has committed a fault in law by the revocation of the landing permit issued to the US military aircraft on the grounds stated which is contrary to the agreement, unlawful, and without basis; by not informing Euro Aviation Limited of the revocation of the landing permit and directly informing its client instead which client then informed Euro Aviation Limited of the revocation and the reason therefor; by attempting to illegally and without any authority and justification, seize and take possession of the Entry Airport Permit of Mr Abdul, the director and representative of Euro Aviation

Limited, so as to deny him entry into the Seychelles International Airport; and by taking the acts and decisions as set out above which are motivated by malice and ill will in view of the dispute and disagreement between Mr Abdul and Mr Samson - the father of Mr Albert – which is an abuse of the 1st Defendant's office, position, and authority.

- [6] In the alternative it is averred that the acts and decisions of Mr Albert constituting the fault as aforementioned, are acts and decisions of the SCAA as they were done and taken by Mr Albert in his capacity of CEO of the SCAA, and consequently the fault has been committed by the SCAA itself.
- [7] Further in the alternative it is averred that at the time Mr Albert committed the faults attributed to it, he was acting within the scope of his employment with the SCAA, thereby rendering the SCAA vicariously liable for his fault.
- [8] It is averred that as a result of the fault of Mr Albert and/or the SCAA, Euro Aviation Limited was unable to provide the fixed base operation services to the US military aircraft, which caused it damage in the sum of USD 8,144.32 being *“loss and profit from being unable to provide the fixed base operation services to the United States military aircraft”*, for which it claims Mr Albert and the SCAA are jointly and severally liable. In terms of its plaint Euro Aviation Limited seeks the following remedies from the Court:
- (a) *order the 1st and 2nd Defendants [Garry Albert and SCAA] to jointly and severally pay damages to the plaintiff in the sum of USD 8,144.32, along with interests at the legal rate thereon;*
 - (b) *issue the following permanent prohibitory injunctions against the 1st and/or 2nd Defendants [Garry Albert and/or SCAA] prohibiting the 1st and/or 2nd Defendants from*
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 - (i) *preventing the Plaintiff from providing fixed base operation services to military aircrafts; and*
 - (ii) *seizing and taking possession of the Entry Airport Permit issued to the Director and representative of the Plaintiff – Mr Abdul – and from denying Mr Abdul entry into the Seychelles International Airport;*

- (c) *issue a permanent mandatory injunction against the 1st and/or 2nd Defendants [Garry Albert and/or SCAA compelling the 1st and/or 2nd respondents to respect and comply with the agreement;*
- (d) *order the 1st and/or 2nd Defendants [Garry Albert and/or SCAA] to jointly pay costs to the plaintiff; and/or*
- (e) *make any other order for the benefit of the Plaintiff, as this Court considers just and necessary in the circumstances of this case.*

Statements of Defence of 1st and 2nd Defendants (Respondents in MA83/2024

- [9] Both respondents contested the plaintiff's claim and filed statements of defence both filed on 12th July 2024.
- [10] The defence of the 2nd defendant, the SCAA, filed on 12th July 2024 is essentially based on the expiry of the contract/agreement between Euro Aviation and itself. It denies that the plaintiff is carrying on fixed base operations and avers that in view of the expiry of the contract, Euro Aviation "*is stopped from carrying out such operations much earlier to this suit*". It is also averred that the said agreement dated 16th April 2018, by virtue of its validity period of five years, "by effluxion of time", remains expired as from 16th April 2023, and thus is no longer valid. It is further averred that renewal of the agreement is not automatic upon its expiry as averred in the plaint, but is subject to compliance with certain terms and conditions set out in the agreement, and in any event the SCAA has not renewed the agreement after its expiry on 16th April 2023. It is averred that even if the agreement could be considered to have been renewed for another year, it would still have expired on 15th April 2024. On the basis of the above, it is averred that Euro Aviation was only allowed to carry on its fixed base operations during the validity of the agreement.
- [11] The shareholding of Mr Abdul Jalil Mohamad and Mr Dodin Samson in Euro Aviation as well as the status of the latter as nominee of the former is also disputed. It is averred that Mr Samson is a necessary party to these proceedings insofar as it concerns the representation of Euro Aviation, and that he was purposely omitted to be added as a party to the suit.

- [12] It is denied that Garry Albert in his capacity as the CEO of the SCAA and the SCAA itself committed any *faute*. It is averred that the SCAA's acts and decisions (specifically the revocation of landing permit) through its CEO were done purely in his administrative and corporate capacity and had nothing to do with his personal affairs. Further this was within the law and also due to the expiry of the agreement between the SCAA and Euro Aviation. The issues of "national security" and "safety interest" were also advanced as reasons to disallow landing of certain aircrafts at the airport and to restrict entry inside the airport to employees and representatives of Euro Aviation.
- [13] The SCAA denies both liability for and quantum of damages and states that the impugned decisions were taken "*in accordance with the law and in the exercise of its statutory duties, obligations relating to the expired FBO.*" and accordingly prays for dismissal of the plaint and for exemplary costs.
- [14] In his statement of defence Garry Albert raises four pleas in *limine litis* and essentially adopts the same stance as the 2nd respondent, on the merits. He requests dismissal of the suit against him with costs "*due to the misjoinder of parties*" (by his inclusion as a defendant to the case in his personal capacity) and "*the failure of the Plaintiff to disclose a reasonable cause of action against him personally*". He also requests dismissal of the suit on substantive grounds "*asserting that any action he would undertake (sic) as public officer of the 2nd Defendant, he acted in good faith within the legal boundaries of his role as CEO of the 2nd Defendant and not in his personal capacity, consistent with all applicable regulations and in the interest of public safety and security*". On the merits, he essentially adopts the same stance as the 2nd respondent

Notice of Motion for Interlocutory Injunction (MA 83/2024)

- [15] On 4th April 2024, Euro Aviation Limited filed a Notice of Motion in MA 83/2024 against Garry Albert (the 1st respondent in the motion and 1st defendant in the plaint), and the SCAA (the 2nd respondent in the motion and 2nd defendant in the plaint), seeking:

(i) *an interlocutory injunction prohibiting the 1st and 2nd respondents from:*

- (a) *preventing the Plaintiff [applicant] from providing fixed base operation services to military aircrafts; and*
- (b) *seizing and taking possession of the Entry Airport Permit issued to the Director and representative of the Plaintiff – Mr Abdul Jalil Mohamad – and from denying Mr Abdul Jalil Mohamad entry into the Seychelles International Airport; and*
- (ii) *an interlocutory injunction compelling the 1st and/or 2nd respondents to respect and comply with the agreement dated 26th April 2018, entered between the Applicant and the 2nd Respondent by virtue of which the Applicant was granted the right, permission and authority by the 2nd Respondent to carry on its fixed base operation business at the Seychelles International Airport.*

[16] The Notice of Motion is supported by an affidavit affirmed by Abdul Jalil Mohamad on 3rd April 2024 which contains the grounds for the orders of interlocutory injunction prayed for. In his affidavit he basically rehearses the facts and matters contained in the plaint, and in addition he avers the following:

- 7. *I aver that if the interlocutory injunctions are not granted, the Applicant would suffer irreparable damage since, as a result of the company being prevented from providing fixed based operation services to military aircrafts the Applicant is not only losing business and incurring damages, but the goodwill and reputation of the Applicant is also being affected. The goodwill and reputation of the Applicant is being affected as the Applicant would be considered to be misleading its clients and there is a limitation on the fixed-based operation services that the Applicant is able to provide.*
- 8. *On the basis of all the facts averred above, there is a real urgency for the hearing, and the granting, of the interlocutory injunctions.*
- 9. *I further aver neither the 1st and 2nd Respondents would suffer any damage by the granting of the interlocutory injunctions being sought herein and in any event any inconvenience, that may be caused to the Respondents, by the granting of the interlocutory injunctions, may be compensated by damages.*
- 10. *In the event that this Honourable Court were to decide that the granting of the interlocutory injunctions would cause inconvenience which cannot be sufficiently compensated in damages, to the Respondent, I aver that on the basis of all the*

above, the balance of convenience demands that the interlocutory injunctions ought to be granted.

11. The Applicant is willing and ready, and hereby provides an undertaking, to pay any damages that may be caused to the Respondent in the event that the interlocutory injunctions are granted and the suit is eventually dismissed.

12. I aver that based on all the matters and facts averred in this affidavit, I, as the Plaintiff in the suit, have a good cause of action against the Respondent.

[17] The following supporting documents are exhibited to the affidavit:

- (a) **Exhibit AM1** - the plaint in CS39/2024;
- (b) **Exhibit AM2** – a payment receipt as proof that CS39/2024 has been filed.
- (c) **Exhibit AM3** – the Fixed Base Operation (FBO) Agreement entered into between the SCAA and Euro Aviation Limited concluded on 26th April 2016, and made effective 16th April 2018 together with its Schedule (Concession Charges).

Affidavit in Reply of 2nd Respondent (SCAA)

[18] The SCAA has filed a Reply Affidavit on 15th May 2024 sworn by Garry Albert, in his capacity as Chief Executive Officer of SCAA on the same date. In the affidavit Mr Albert raises some points of law and also deals with the merits of the application while also stating that “*at the outset I wish to reserve my rights to file additional reply*” on the basis that the contents of the affidavit of Abdul Jalil Mohamad dated 3rd April 2024 in MA 83/2024 “*are nothing but a replica ... of the Complaint dated 22nd March 2024 for which our request for further and better particulars are yet to be answered ...*”. The points of law were dealt with by a ruling of this Court dated 30th July 2024 together with other points of law raised by Mr Garry Albert’s counsel by way of a document dated 3rd June 2024 and filed on 4th June 2024.

[19] Mr Garry Albert’s counsel also stated that Mr Albert as the 1st respondent would be relying on Mr Albert’s Reply Affidavit sworn on behalf of the SCAA on 15th May 2024 (see proceedings of 15th May 2024 at Pg 2).

[20] In the Reply Affidavit, on the merits of the injunction application, Mr Gary Albert on behalf of the SCAA, avers that whatever operations claimed to have been carried out at the premises of the International Airport by Euro Aviation, are no longer enforceable and the company is therefore prohibited and barred from carrying out any future operations and activities in view of the following:

a. *The agreement between Euro Aviation and Dobin Samson, by efflux of time is no more valid and the agreement ceases to be in effect as the said agreement is expired and more specifically, the said agreement is not renewed by the SCAA. Thus fixed based operations are already stalled and prohibited in pursuance of the operation of law. In essence, the company Euro Aviation does not have any legal capacity to sue the SCAA.*

b. *The agreement between Euro Aviation and Dobin Samson on one hand would have direct impact with the SCAA in that the effect of the lapsed agreements amounts to the cancellation of all the incidental effects connected to the agreement.*

[21] He avers that until the issues between Dobin Samson and Abdul Jalil Mohamad are resolved and or restored, the company Euro Aviation “*does not have enjoy any legal entity for its eventual claims, rights, and or benefits on the SCAA, out of the agreement between them*”.

[22] It is averred that Euro Aviation ought to have planned well ahead of the expiry of the agreement, given that it had knowledge of such expiry date but failed to even attempt to renew the agreement.

[23] It is also averred that in its application for interlocutory injunction, Euro Aviation has not shown prima facie proof of the alleged loss of US\$8,144.32 by disclosure of documents, and that a simple averment is insufficient for it to be granted an injunction.

[24] Further that there is no prima facie case in favour of Euro Aviation for the application for interlocutory injunction to be granted, in the absence of any proof of loss, suffering, prejudice, and/or hardship caused to it. Hence it has not approached the court in good faith and there is no bona fide claim against the SCAA.

- [25] It is also averred that Euro Aviation fails to show how its goodwill and or reputation is being affected as such averment are not supported by any documents such as claims, complaints, and/ or allegations from its clients.
- [26] Furthermore, that if there was a real urgency as claimed by Euro Aviation, the plaint and the Injunction application ought to have been filed together but the Injunction application was filed a week after the plaint, showing that there is no real urgency.
- [27] In view of the above it is averred on behalf of the SCAA that the Interlocutory Injunction application is vexatious and frivolous and it is prayed that it is dismissed with costs.

Submissions

Applicants Written Submissions

- [28] Euro Aviation filed its written submissions dated 4th November, 2024 in respect of the application. It relied on the case of *American Cyanamid v Ethicon* [1975] A.C 396 where the House of Lords laid down guidelines to be adopted by the court when determining an application for an interlocutory injunction.
- [29] On the issue of a serious question to be tried, Counsel representing Euro Aviation averred it has established that there is a serious question to be tried for the following reasons:
- a) *the fact that 2nd Respondent has not disputed the fact, that the 1st and/or 2nd Respondent did revoke the landing permit of the United States military aircraft on the basis that the Euro Aviation was not permitted to handle military flights and provide fixed base operation services to military aeroplanes; and*
 - b) *the fact that it was the 1st and/or 2nd Respondent's intention - which subsequent and despite institute of the suit and of the Euro Aviation has now been placed into action - to seize and take the Entry Permit of Mr. Mohamad so as to deny him entry at the airport.*
- [30] Euro Aviation contends that if the interlocutory injunction is not granted, their goodwill, reputation and business will suffer irreparable harm. Counsel argues that the damage to goodwill and reputation is difficult to quantify, making the loss irreparable and damages as a remedy would not be adequate in the event they succeed at trial.

- [31] It is submitted that the balance of convenience favors granting the injunction, as it would face greater disadvantage/hardship if it is denied than the respondents would if it is granted. Euro Aviation's business would suffer loss of revenue, goodwill and reputation.
- [32] Counsel for Euro Aviation argued that the injunction aims to temporarily restrain the SCAA from undertaking new actions pending the suit's determination. Emphasizing the importance of maintaining the status quo in assessing the balance of convenience, he cited Lord Diplock's judgment in *American Cyanamid v Ethicon* [1975] A.C 396, which supports preserving the status quo when the balance of convenience is evenly balanced. Relying on *Injunctions* (9th edition) by David Bean, Counsel submitted that the relevant status quo is the state of affairs immediately before the initiation of proceedings or, in cases of delay, the period just before the injunction application.
- [33] Counsel submitted that the relevant status quo to be maintained is the state of affairs immediately preceding the institution of the current suit and notice of motion, filed within one month of the first breach of contract. At that time, the Euro Aviation was conducting its business without interference from the respondents. This state prevailed until 6th March 2024, when the Euro Aviation's operations were unlawfully disrupted.
- [34] Lastly, counsel submitted that Euro Aviation's case is stronger than that of the respondents thus the interlocutory injunction order ought to be granted.

Garry Albert (1st Respondent)'s written submissions

- [35] Mr Albert opposed Euro Aviation's application for an injunction, submitting that it amounts to compelling specific performance of an expired contract, which is contrary to established equitable principles. He emphasized that mandatory injunctions which compel specific actions are granted only in exceptional circumstances. He Cited *Execujet Aviation v Euro Aviation & SRC*(CS54/2024) and *Warren v Mendy* [1989] 1 WLR 853, to support this.
- [36] Referring to *Lumley v Wagner* [1852] EWHC Ch J96, counsel noted that while courts may restrain a party from breaching a negative obligation, they cannot compel the performance of contractual obligations. Granting the injunction would in effect resolve the substantive

issue of whether the agreement remains enforceable without a full trial, which would deny the Respondents a fair adjudication of the matter.

- [37] On the issue of whether there is a serious question to be tried, counsel acknowledged that the threshold for such a finding is low. However, he argued that finding that there is a serious question to be tried alone does not justify granting an injunction. He submitted that the dispute concerns the alleged expiration of the contract and whether the Respondents acted unlawfully, issues that require proper judicial determination but do not necessarily justify interlocutory relief.
- [38] Counsel further argued that damages would be an adequate remedy in this case. Additionally, vague claims of reputational damage, unsupported by evidence, fail to meet the threshold of irreparable harm, as noted in *Dhanjee v The Electoral Commission (2011)* SLR 141. On balance of convenience, counsel submitted that the Euro Aviation must establish that damages would not be sufficient to compensate for the harm caused by the Respondent and repeated the assertions made in support of damages being an adequate remedy in this case.
- [39] Contrary to the Euro Aviation's submission, Mr Albert's counsel submitted that the status quo in this matter is cessation of operations following the expiration of the contract. Citing *Execujet Aviation*, counsel contended that granting the injunction would alter rather than preserve the status quo, as it would reinstate disputed rights.
- [40] Counsel submitted that granting the interim injunction would conflict with public interest, emphasizing the Respondents' statutory and regulatory responsibilities at the Seychelles International Airport. It was counsel's contention that while private rights are important, they must be balanced against broader public interests. Potential risks were highlighted, including undermining security oversight, disrupting operational integrity and weakening regulatory consistency. Counsel asserted that enforcing such agreements could interfere with national and international aviation standards, compromise security-sensitive operations like military aircraft handling and set a harmful precedent that undermines the Respondents' authority in regulating the aviation sector effectively.

- [41] Counsel submitted that the Euro Aviation's request for an injunction prioritizes private interests over the public interest. Granting relief would therefore undermine regulatory authority, set a harmful precedent and compel de facto specific performance of an expired contract, which courts generally disfavor. Citing *Sunrise Brokers LLP* and *Warren v Mendy*, counsel asserted that the Euro Aviation has failed to demonstrate a strong case or that the balance of convenience favors it.

SCAA (2nd Respondent)'s written submissions

- [42] The SCAA's counsel submitted that the contract between the parties expired in April 2023 and was neither renewed explicitly nor through tacit approval. Euro Aviation cannot therefore claim that the contract was in effect beyond its expiration, as no renewal was agreed upon. Even if the contract was renewed, the contract would only have been valid for one additional year, lapsing in April 2024. He further submitted that the Respondent in its capacity as the lessor had the power to revoke whatever permissions allegedly granted and hence the Applicant cannot as a matter of fact claim an indefinite right.
- [43] Counsel further contended that the Euro Aviation's representative, Mr. Abdul Jalil Mohamad, lacks the authority to represent Euro Aviation due to an ongoing dispute with another director, Mr. Dobin Samson. This dispute is the subject of another case (CS 26/2024), and no board resolution or document has been provided to validate Mr. Mohamad's capacity to act on behalf of the company.
- [44] It was Counsel's argument that the relief sought through the injunction application mirrors the relief sought in the main suit, which seeks permanent injunction and damages. Granting the temporary injunction will prematurely grant the main relief and cause irreparable loss and prejudice which would not be easy to undo if Euro Aviation later fails in the main suit. Conversely, refusal to grant the injunction would maintain the status quo without causing any prejudice to Euro Aviation, as any loss therein can be compensated monetarily. As per counsel, from the date the contract expired, Euro Aviation has not been allowed to continue with its operations, therefore no fresh prejudice will be caused to it.

- [45] The Seychelles Civil Aviation Authority, has the authority and responsibility to ensure safety and security, including denying landing rights to flights deemed unsafe.
- [46] Counsel submitted that the Respondent has sufficient means to compensate the Applicant if it succeeds in the main suit while the injunction has been denied.
- [47] Moreover, counsel contended that injunctive relief should be assessed under Section 304 of the Seychelles Code of Civil Procedure, not under Section 6 of the Courts Act, which applies only when no legal remedy exists.
- [48] Lastly, counsel emphasized that the matter is contractual, not equitable and monetary damages are an adequate remedy if the Applicant succeeds. Counsel concludes that there is no serious issue to be tried and urges the court to dismiss the injunction application.

Applicant's Oral submissions

- [49] On 17th January, 2024, Counsel representing Euro Aviation made oral submissions in reply to the 1st and 2nd respondents written submissions.
- [50] Counsel criticized counsel for Mr Albert's reliance on English case law such as *Execujet Aviation*, *Warren v. Mendy*, and *Lumley v. Wagner*, arguing that these cases involve contracts of a personal nature, where a high degree of trust and confidence is essential. He emphasized that the present case does not involve a personal services contract, distinguishing it from the cited precedents. He submitted that in England, specific performance is an equitable and discretionary remedy granted only in exceptional circumstances, unlike Seychelles, where the legal framework differs, making it inappropriate to directly apply English principles.
- [51] He made reference to the English case *Cooperative Insurance Society v. Argyll Stores* to illustrate the discretionary nature of specific performance in England, contrasting this with Seychelles' legal position. He argued that in England, damages are the primary remedy for breach of contract, while specific performance is granted only when damages are insufficient. However, Seychelles does not share this restrictive approach, as its legal principles on injunctions and equitable remedies are more flexible. He further submitted

that the principles advanced by Mr Albert's counsel, based on English case law, are not directly applicable to Seychelles' jurisdiction and must be analyzed in the context of local laws and practices.

- [52] Counsel challenged the arguments presented by Mr Albert's counsel relying on cases such as *Warren v Benn* and *Sunrise Brokers LLP v Rogers*. He pointed out that the interpretation of these cases by the respondents is flawed and inaccurate. In *Warren v Benn*, while it is acknowledged that courts are reluctant to grant interim injunctions that effectively dispose of substantive issues without a full hearing, the case itself does not explicitly articulate this principle. Instead, this general reluctance exists in broader jurisprudence but does not apply in the present case since granting an interim injunction would not resolve the core issue of the contract's validity. Similarly, the reliance on *Sunrise Brokers LLP v Rogers* is misplaced as the case concerns prohibitory, not mandatory, injunctions. Counsel emphasized that the interim relief sought is limited to allowing Euro Aviation to continue its operations, which does not resolve the substantive matters, such as the validity of the contract.
- [53] He further criticized Mr Albert's counsel's reliance on *Dhanjee v The Electoral Commission*, arguing that the reference to "vague assertions of harm" and "public interest" is inappropriate and unsupported by evidence. In *Dhanjee* public interest was a significant factor because it involved postponing elections, an issue of national importance. However, such considerations are irrelevant in the current dispute where no statutory powers are at play. Counsel highlighted that claims regarding security oversight, public interest and regulatory concerns raised by the respondents lack evidentiary support, as they are not substantiated by affidavit evidence and have only been introduced in the submissions.

Analysis

- [54] Section 304 of the Seychelles Code of Civil Procedure Act makes provision for applications for writs of injunction. It provides:

It shall be lawful for any plaintiff, after the commencement of his action and before or after judgment, to apply to 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 a 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.

- [55] According to local authorities “*The power to grant an interlocutory injunction is a discretionary remedy inherited from the jurisdiction of the High Court of England. Vide (Seychelles National Commodity (1983) SLR 133; Air Seychelles v Seychelles Civil Aviation Authority (2008) SLR 93).* In that regard section 6 of the Courts Act further provides:

6. *Equitable powers*

The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.

- [56] In *D’Offay v The Attorney General (1975) SLR 118*, Sir Georges Soyave C.J. stated that “[i]n matters of injunction, although the application is made pursuant to section 304 of the Seychelles Code of Civil Procedure, this Court should be guided by precedents of the Courts in England.

- [57] The Court, in *American Cyanamid Co v Ethicon Ltd [1975] A.C 396* developed the following guidelines regarding matters which a court should consider when determining whether or not to grant an interlocutory injunction:

- a) *Whether there is a serious question to be tried;*
- b) *Whether an award of damages would be an adequate remedy;*
- c) *The balance of convenience; and*
- d) *Whether there are any special factors.*

- [58] These guidelines were summarized in *Exeter Trust Com v Indian Ocean Tuna Limited (253 of 2009) [2010] SCSC 89 (26 May 2010)* as follows:

... I note in matters of interlocutory injunctions, the Court must be satisfied prima facie that the claim is bona fide, not frivolous or vexatious; in other words, that there is a

serious question to be tried vide: *American Cyanamid Co v Ethicon Ltd* [1975] UKHL 1; [1975] 1 All ER 504 at p. 510. Unless the materials available to the court at the hearing of the application for an 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 favour 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 remedies in damages available to a party, the court would lean to such measures as are calculated to preserve the status quo.

[59] The Court in *Dhanjee versus Electoral Commission*, 2011, SLR 141, interpreted the balance of convenience test to include consideration of the following factors:

- c) *whether more harm would be done by granting or refusing the injunction;*
- d) *whether the risk of injustice is greater if the injunction is granted than the risk of injustice if it is refused; and*
- e) *whether the breach of the appellant's rights would outweigh the rights of others in society.*

[60] I will now proceed to consider the present application for Interlocutory Injunctions in light of the established principles laid down in the *American Cyanamid* case (supra).

Serious question to be tried

[61] The first issue to be considered is whether there is a serious question to be tried. In *American Cyanamid* Lord Diplock stated at pg 541:

Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as "a probability", "a prima facie case", or "a strong prima facie case" in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

[62] As seen from the above, in order to make a finding that there is a serious question to be tried, the court need only be satisfied that the claim is not frivolous or vexatious.

[63] In the present case, it is not disputed that the agreement dated 26th April 2018 was entered into by the Euro Aviation and SCAA. What is in dispute is whether the agreement remains in force. Euro Aviation contends that it is still in force as although the agreement is stated to be for a period of five (5) years commencing 16th April 2018 and ending on 15th April 2023, it contains an automatic renewal clause. It avers that the respondents unlawfully interfered with its operations by revoking the landing permit authorizing a military aircraft to land at the Seychelles International Airport and preventing it from providing fixed base operation services to that aircraft, and thereafter to all military aircrafts, and seeking to deny access to the airport to the director and representative of Euro Aviation. The respondents, on the other hand, argue that the agreement expired in April 2023 and was not renewed.

[64] Clause 1 of the Agreement reads:

1. *TERM*

1.1 The term of this Agreement shall be for a period of five (5) years, commencing on 16 April 2018, and ending on 15 April 2023, unless earlier terminated under the provisions of this Agreement. This Agreement shall be automatically renewed from year to year in accordance with and acceptance of the terms and conditions herein specified. Such renewal of this Agreement shall be conditional upon the satisfactory performance of the terms and conditions contained herein, by it, during the term of this Agreement as determined by the SCAA.

1.2 Both parties shall have the option to negotiate changes in this Agreement if the FBO exercises its option to renew.

[65] The dispute between the parties turns on the interpretation and application of the automatic renewal clause in clause 1.1 of the agreement, more specifically whether the conditions for renewal were met (i.e. satisfactory performance of the terms and conditions of the agreement) and whether the contract was automatically renewed. This represents a legitimate legal question. The parties' different interpretations of the term of the agreement and the actions taken by the respondents show that there is a genuine issue to be determined at trial. I therefore find that the first threshold is satisfied and that there is indeed a serious question to be tried.

Adequacy of damages

- [66] In assessing the adequacy of damages, the court must first determine whether, if the injunction is not granted and the applicant wins its case, the potential harm to the applicant is of such a nature that damages would not adequately compensate it for the loss sustained. In *American Cyanamid* (supra) Lord Diplock explained the following in that regard:

...the governing principle is that the court should first consider whether, if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable would be [an] adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If the damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in such a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

- [67] At this stage therefore, the court has to determine whether, if the Interlocutory Injunctions are not granted, an award in damages would adequately compensate Euro Aviation if it were to succeed in its claim. In that regard, at paragraph 7 of the affidavit in support of the application for Interlocutory Injunctions, Abdul Jalil Mohamad avers that:

7. *I aver that if the interlocutory injunctions are not granted, the Applicant will suffer irreparable damage, since as a result of the company being prevented from providing fixed base operation services to military aircrafts the Applicant is not only losing business and incurring damages, but the goodwill and reputation of the Applicant is also being affected. The goodwill and reputation of the Applicant is being affected as the Applicant would be considered to be misleading its clients and there is limitation on the fixed base operation services that the Applicant is able to provide.*

- [68] It is submitted on behalf of Euro Aviation that if the injunction is not granted, its business will suffer irreparable harm from loss of business as well as damage to its goodwill and reputation. It claims that the damage to its goodwill and reputation cannot be adequately assessed and consequently cannot be adequately compensated by monetary damages, thereby causing it to sustain irreparable loss. It is submitted that *“although an applicant might suffer financial loss, yet damages would not be considered to be an adequate remedy if it is not capable of precise calculation such as loss of profit to a business”*.
- [69] Reference is made to para 29/1/3 of the White Book where it is stated that *“[d]amages may not be sufficient if the wrong is (a) irreparable, or (b) outside the scope of pecuniary compensation or (c) if damages would be very difficult to assess; ibid. (damage to business reputation is difficult to assess); ...”*
- [70] The Respondents on the other hand contend that damages would be an adequate remedy, as any losses suffered by the Applicant could be quantified and compensated monetarily and that claims of reputational harm are vague and unsupported by evidence.
- [71] It is submitted on behalf of Euro Aviation that there is uncontroverted evidence that if the interlocutory injunctions are not granted, the applicant’s goodwill and reputation is being and will be affected, in addition to the loss of business. Further that it has been established that damages will not provide an adequate remedy for the applicant in the event of it succeeding at trial. I do not find that to be the case. The only documents exhibited to the affidavit in support of the application for interlocutory injunctions are the plaint in CS39/2024 (Exhibit AM1), a payment receipt as proof that CS39/2024 has been filed (Exhibit AM2) and the Fixed Base Operation (FBO) Agreement entered into between the SCAA and Euro Aviation Limited on 26th April 2016 (Exhibit AM3). No evidence (other than the affidavit evidence of Mr Mohamad) has been brought in support of his averments in regards to the issue and subsequent revocation of the landing permit for the military aircraft, or the loss of revenue arising from such revocation. Similarly the only evidence regarding the seizure or intended seizure of the Entry Permit issued to Mr Mohamad is what is averred by Mr Mohamad in his affidavit. In my view it is not sufficient that these

facts have not been disputed by the respondents. They still have to be proved by the applicant.

- [72] As far as loss of revenue is concerned (i.e. losing business and incurring damages), of which no evidence has been brought, Euro Aviation has not demonstrated why monetary damages would be inadequate to compensate for any proven harm. It has not shown or even claimed that the respondents would be incapable of paying any eventual damages ordered in the event that they lose the case. In the circumstances, I find that Euro Aviation has failed to convince this court that damages would not serve as an adequate remedy. The burden lies on it to prove the same.
- [73] In terms of damage to its goodwill and reputation, while such damages can be difficult to quantify, I find these claims to be indistinct and also unsupported by evidence. Euro Aviation is simply relying on the averment in Mr Mohamad's affidavit that "*[t]he goodwill and reputation of the Applicant is being affected as the Applicant would be considered to be misleading its clients and there is limitation on the fixed base operation services that the Applicant is able to provide*". In my view this is not sufficient to show such damage to its goodwill and reputation, and consequently for the court to make a finding as to whether such damages are irreparable or not. The reference to the White Book para 29/1/3 without more, is also not sufficient.
- [74] In the circumstances, I do not find that enough evidence has been placed before this Court to satisfy it that irreparable harm will be caused to Euro Aviation if the interlocutory injunctions are not granted and therefore damages will not be an adequate remedy if it wins its case. Euro Aviation has simply failed to bring evidence to show that the alleged acts of the respondents affect their reputation and goodwill.
- [75] In view of the above finding, I do not find it necessary to consider whether, if the respondents were to win the case and the suit against them dismissed, damages would adequately compensate them for any loss they may have suffered if the interlocutory injunctions were granted. For that reason, it is also irrelevant that Mr Albert has not made any averments in his Reply Affidavit on behalf of the SCAA to the effect that the granting of the injunctions would cause any loss to the SCAA, and that there is no evidence that the

SCAA would suffer any loss if the injunction was granted, as submitted on behalf of Euro Aviation.

Balance of convenience

[76] In considering the balance of convenience, the Court has to determine the potential prejudice liable to be suffered by the applicant if the injunctions are not granted and balance this against any prejudice to the respondents if it is granted.

[77] For the reasons stated at paras [74] and [75] herein, the issue of balance of convenience to the parties does not even arise for consideration. Euro Aviation has failed to bring any evidence in support of its claim that its goodwill and reputation is being affected and will further be affected if the injunctions are not granted.

Decision

[78] Accordingly, the application for interlocutory injunctions is hereby dismissed. Costs of the application are to follow the main suit.

Signed, dated and delivered at Ile du Port on 17th February 2025.

A handwritten signature in blue ink, appearing to read 'Carolus J.', is written over a horizontal line.

Carolus J