

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA193/2025

(Arising in CS 124/2022)

In the matter between:

LEONARD FRANCIS GILL

Applicant

and

CHRISTOPHER GILL

Respondent

Before:	Carolus J
Heard:	29 September 2025
Delivered:	30 September 2025

ORDER

CAROLUS J

- [1] The present application is for injunctive relief, and concerns a plot of land namely PR1402, which is the subject matter of two cases - CS124/2022 and CS78/2022 - which have been consolidated. The applicant in this application, Leonard Francis Gill is the plaintiff in both CS124/2022 and CS78/2022 while the defendant in those two cases is Christopher Gill (respondent in this application).
- [2] CS78/2022 is a delictual claim concerning a hotel situated on PR1402, of which the plaintiff and defendant purportedly each own a ½ share. It is averred that up to end of December 2021 the hotel was operated by Gill Holdings Co. Ltd, a company which held a hotel license in which both parties had an interest, but that as from January 2022 the defendant wrongfully and without plaintiff's authorisation operated the hotel business entirely for the defendant's benefit, thereby depriving the plaintiff of the enjoyment of his share in the property. The plaintiff claims loss and damages arising from the wrongful act and fault of the defendant, and prays for judgment awarding him the loss of fair market

rental value of his ½ share in the property and continuing loss from July 2022 onwards, with interests and cost.

[3] CS124/2022 from which the present application arises, concerns the sale by the plaintiff/applicant to the defendant/ respondent of a ½ shares in parcels PR6824, PR1402 (excluding the development thereon) and PR6441, at a price which is purportedly less than half the value of the properties. The plaintiff therefore prays for rescission of the sale on the grounds of lesion. More particularly he prays for *“a judgment [...] [R]escinding the sale and transfer of the Properties and ordering the restoration of the plaintiff in ownership and possession of the Properties by virtue of judgment in this suit or by ordering the defendant to transfer the Properties back to the plaintiff.”*

[4] In terms of this application, the applicant seeks:

- (a) *For this application to be heard urgently, initially ex parte and subsequently inter partes, so that the properties are not left exposed to further possible dealings.*
- (b) *Grant a writ of injunction, pendent lite, preventing the Respondent/Defendant from:*
 - (i) *Entering or executing any further dealings in relation to Parcel No. PR 1401.*
 - (ii) *Signing or registering any instrument any instrument that will affect the use and/or ownership of Parcel PR1402.*
- (c) *Order the Registrar General to transcribe and register an Order pursuant to this application in accordance with the Mortgage and Registration Act.*

[5] The application is supported by an affidavit sworn by the applicant. Exhibited to it as Annex A is the transcription of an agreement dated 8th January 2019 showing that that the applicant had transferred a ½ share of the aforementioned parcels (parcels PR6824, PR1402 and PR6441) to the respondent in consideration of USD 50,000.00. The agreement was transcribed on 30th April 2019 in Volume 88 No.35 and registered in Registration Vol. B35 No.1750 Repertory Vol. 49 Nos. 364 and 365.

[6] In his affidavit, the applicant avers *inter alia* that:

- 9. *It has come to my attention that the Respondent, Christopher Gill, is preparing and making arrangements to sell and transfer his purported half share in Parcel PR1402 with the intention to defeat the claims I have made in the plaint.*

10. *The Respondent has been actively and aggressively soliciting brokers in Seychelles to seek buyers for his alleged interests such as Ms. Lydvine Passon whose family has business interests in Praslin.*
11. *This application is one of urgency since it involves immovable property and I have no alternate means to restrict any dealings with the properties pending the determination of the main suit.*
12. *I am informed by my attorney and verily believe that there is no sufficient legal remedy available to restrict any further dealings with the properties pending the determination of the main suit. Till date the properties are still registered under the Mortgage registration and therefore I cannot rely on the protective measures provided under the Land Registration Act.*
13. *I am informed by my attorney and verily believe that there are serious points of law and facts to be adjudicated upon in the main suit regarding lesion of the properties.*
14. *That my plaint is meritorious and has good prospect of success in that the value of the properties is less than half the value of the purchase price and the defendant took some unfair advantage causing the loss.*
15. *That it will be fair, equitable and necessary for an order of interim injunction against any further dealings with the properties pending the hearing and determination of this honorable court to the main suit.*
16. *That the balance of convenience lies in my favor when assessing the competing rights of the Applicant and Respondent, as if the interim injunction is not granted, I will not have any alternate remedy to protect further dealings with the properties and my plaint may be rendered null and nugatory.*
17. *I am informed by my attorney and verily believe that if an interim injunction is not granted, I will not have any protection against further dealings with the properties which may cause irreparable harm towards my right to property and of which cannot be atoned by damages.*

- [7] The applicant avers that in the circumstances it is urgent and necessary for the court, pending final determination of CS124/2022, to grant the remedies prayed for in this application.

The Law & Analysis

- [8] The applicable law in regards to the present application is sections 304 and 305 of the Seychelles Code of Civil Procedure which provides:

304. *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. Emphasis added.*

305. *Application under section 304 shall be made by way of motion in court upon due notice given to the defendant.*

- [9] The above provisions provide for the making of an application for a writ of injunction upon due notice given to the defendant. However according to established case law, such an application may be made ex-parte in cases such as the present one where there is urgency. Vide *Bonte v Innovative Publication* (1993) SLR 38, *Colling v Labrosse* (200 I) SLR 236, *Government v Ramrushaya* (2003). In my view the applicant has sufficiently shown the urgency of the situation as the respondent has taken steps for the sale of the property.
- [10] 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*" (*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.

- [11] In *American Cyanamid Co. v Ethicon Ltd* [1975] A.C. 396 (05 February 1975) the court developed the following guidelines regarding matters which a court should consider when determining whether or not to grant an interlocutory injunction:

1. *Whether there is a serious question to be tried;*
2. *Whether an award of damages would be an adequate remedy;*
3. *The balance of convenience; and*
4. *Whether there are any special factors.*

- [12] These guidelines have been followed by the Seychelles courts in a number of cases, to name a few: *Pest Control v Gill* (1992) SLR 177; *Delorie v Dubel* (1993) SLR 193; *Techno International v George* SSC 147/2002, 31 July 2002; *Dhanjee v Electoral Commissioner* (2011) SLR 141; *Nathalie Lefevre v Beau Vallon Properties Ltd & Ors* (MA154/2018) [2018] SCSC (27 June 2018); *Ex parte Rodionov* (CS121/2021) (CS121/2021) [2022] SCSC 300 (01 April 2022)). They are summarized as follows in *Exeter Trust Com v Indian Ocean Tuna Limited* (253 of 2009) [2010] SCSC 89 (26 May 2010):

*... 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.*

[13] This Court will now proceed to consider the factors set out in *American Cyanamid* in light of the facts of the present case, beginning with whether there is a serious question to be tried in the main case i.e. CS124/2022. In that regard, the Court is not concerned with the merits of the Plaint, but only with whether the applicant has an arguable case on the material before it. It appears to me that there is a serious question to be tried in CS124/2022, namely whether the sum of USD50,000 paid by the respondent to the applicant for the transfer of half shares in PR6824, PR1402 (excluding the development thereon) and PR6441 amounted to less than half the value of the properties. In that regard, the applicant states in his affidavit in support of the application, that:

4. *The Plaint [in CS124/2022] is regarding a purported agreement (hereinafter the 'Agreement') [Annex A] dated 8th February 2019. In the said Agreement, I purportedly sold and transferred 'undivided half shares in Parcels Nos. PR6824, PR1402 and PR6441 (hereinafter referred to as the 'Properties') to the Respondent.*
5. *That the aforesaid Agreement stated the purchase price of the Properties to be US\$50,000/- (hereinafter the 'Purchase Price').*
6. *That at the period of the execution of the sale and transfer, the Purchase Price was less than half the value of the Properties.*
7. *That the value of the Properties during and after the sale and transfer of the Properties is more than double the Purchase Price.*

[14] In his affidavit he further avers that:

13. *I am informed by my attorney and verily believe that there are serious points of law and facts to be adjudicated upon in the main suit regarding lesion of the properties.*
14. *That my plaint is meritorious and has good prospect of success in that the value of the properties is less than half the value of the purchase price and the defendant took some unfair advantage causing the loss.*

[15] It would have been desirable for the applicant to bring evidence to support his averments so as to assist the court in making a finding that he has an arguable case, for instance the price that he paid for the parent parcels from which PR6824, PR1402 and PR6441 were extracted and the sizes of the parent parcels as well as PR6824, PR1402 and PR6441. In

spite of that, his Court is satisfied on the basis of his averments in his affidavit, that he does have an arguable case.

- [16] We move on to the issues of adequacy of damages and balance of convenience. In *American Cyanamid (supra)* Lord Diplock explained the following in regards to an award of damages being an adequate remedy:

... 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 this ground to refuse an interlocutory injunction.

- [17] Lord Diplock further stated the following in regards to the balance of convenience:

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him

since he would have to start again to establish it in the event of his succeeding at the trial.”

[18] The applicant has stated in his affidavit that:

16. That the balance of convenience lies in my favor when assessing the competing rights of the Applicant and Respondent, as if the interim injunction is not granted, I will not have any alternate remedy to protect further dealings with the properties and my plaint may be rendered null and nugatory.

17. I am informed by my attorney and verily believe that if an interim injunction is not granted, I will not have any protection against further dealings with the properties which may cause irreparable harm towards my right to property and of which cannot be atoned by damages.

[19] I note that the remedy sought by the plaintiff in CS124/2022 is for a judgment “[R]escinding the sale and transfer of the Properties and ordering the restoration of the plaintiff in ownership and possession of the Properties ...”. He has made no claim for damages in his plaint. If the injunction is not granted and the defendant/ respondent disposes of the properties subject matter of the claim, this will effectively defeat the claim of the plaintiff/ applicant. If he subsequently proves successful in his claim, any judgment in his favour will be rendered nugatory. Damages will not adequately compensate him for the harm this will cause to him as the property will already have been disposed of. On the other hand, if the injunction is granted and the court decides in favour of the defendant/ respondent, it is my view that any harm caused to him by not being able to dispose of the property at this point in time can be compensated for by damages. I am satisfied therefore that the balance of convenience lies in favour of granting the injunction.

Decision

[20] For the reasons given above, the application for interlocutory injunction is granted pending final determination of CS124/2022 or until further order of this Court, preventing the Respondent Christopher Gill from:

(a) Entering into or executing any further dealings in relation to Parcel PR1402.

(b) Signing or registering any instrument that will affect the use and/or ownership of Parcel PR1402.

[21] The Land Registrar is further ordered to transcribe and register this Order in accordance with the Mortgage and Registration Act.

Signed, dated, and delivered at Ile du Port on 30th September 2025

E Carolus J

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