

**WATERFRONT HOLIDAYS COMPANY LTD v RODRIGUES WATERFRONT
HOLIDAYS LTD & ANOR**

2023 SCJ 290

Record No. SC/COM/WRT/000693/2022

**THE SUPREME COURT OF MAURITIUS
(Commercial Division)**

In Chambers

In the matter of:

Waterfront Holidays Company Ltd

Applicant

v

- 1. Rodrigues Waterfront Holidays Ltd**
- 2. The Registrar of Companies**

Respondents

RULING

As at 18 May 2023, the applicant has prayed for leave of the Judge in Chambers to put in a third affidavit to reply to the second affidavit dated 22 November 2022 put up on behalf of respondent No. 1 in order to establish through emails that there has been a business relationship between the applicant and respondent No. 1 which dates as far back as 24 February 2021 and the third affidavit, if allowed, would give the lie to respondent No. 1.

Whilst respondent No. 1 is objecting to leave being granted to the applicant, respondent No. 2 has no objection that the applicant be allowed to file a third affidavit. Counsel for respondent No. 2 has been dispensed from offering submissions on the matter.

Arguments on behalf of respondent No. 1

Respondent No. 1 is objecting that leave be granted to the applicant inasmuch as the application dates back to 15 September 2022 and there have been exchanges of affidavits, the last one from respondent No. 1 dates back to 22 November 2022. It has been submitted that there are no new averments in this latter affidavit that would warrant a third affidavit from the applicant. It is also the contention of respondent No. 1 that the applicant has not stated why it took almost six months to realise that it has documents in its favour that would allegedly give the lie to respondent No. 1. The latter has stated that the emails were within the knowledge of the applicant when it filed its second affidavit on 22 November 2022 but it chose not to make use of the emails and the case was fixed for hearing to 30 May 2023 so that requesting for leave to file a third affidavit twelve days before the hearing will delay the outcome of the case.

Learned Counsel for respondent No. 1 has also referred me to the cases of **CEB Facilities Co. Ltd v Redundancy Board [2022 378]** to illustrate the point that the Court should always be alert to the danger and possibility of new evidence being adduced by way of additional affidavit to suit a specific need which becomes apparent only after a party has raised an objection.

Learned Counsel for respondent No. 1 has submitted that the applicant would need to establish that there are exceptional circumstances to justify the exercise of discretion by the Judge in Chambers to allow the filing of a third affidavit on behalf of the applicant after the case has been fixed for hearing in line with Rule 8(b) of the Supreme Court (Judge in Chambers) Rules 2002. I have also been referred to the case of **Flexi Investment Ltd v Devdassingh Ramdenee & Ors [2023 SCJ 19]** to canvass the point that there are no exceptional circumstances warranting the filing of an additional affidavit.

Arguments on behalf of the applicant

Learned Counsel for the applicant has submitted that under Rule 4(e) of the Supreme Court (Judge in Chambers) Rules 2002, the Judge in Chambers has a discretion to allow a third affidavit to be put in. I have been referred to paragraph 8 of the second affidavit of respondent No. 1 where the latter has flatly denied the averments contained in paragraphs 4(a) to 4(d) of the applicant's second affidavit and, therefore, the applicant is left with no choice than to

actually seek leave to put in an affidavit to put in two documents, namely, the first one pertaining to an exchange of emails between the director of the applicant and the director of respondent No. 1 in support of a booking made by respondent No. 1 and the second one in relation to a booking confirmation. It has been argued that it is necessary to put in these documents because it was not reasonably expected that respondent No. 1 would deny same.

Findings

I have given due consideration to the submissions offered by learned Counsel.

The applicant's contention that it could not have reasonably expected respondent No. 1 to flatly deny averments to the effect that it had been in a business relationship with the applicant since 24 February 2021, is not convincing since as per Rule 4(a) of the Supreme Court (Judge in Chambers) Rules 2002, an applicant is called upon to disclose all relevant facts in his initial affidavit in support of his application. One would have reasonably expected the applicant to have stated such a crucial averment since its initial affidavit. I, therefore, cannot exercise my discretion to grant leave to the applicant to file a third affidavit as the latter has not been able to demonstrate any exceptional circumstance that would warrant the exercise of such discretion. The objection of respondent No. 1 is sustained and the case is sent back to the e-filing system for common dates to be uploaded at latest by 02 August 2023 for the case to be heard.

P. D. R. Goordyal-Chittoo
Judge

19 July 2023

For Applicant : **Mr. N. Rama, Attorney-at-Law**
: **Mr. A. Ramdass, of Counsel**

For Respondent No. 1 : **Mr. J. Gujadhur, Senior Attorney**
: **Mr. R. Yerrigadoo, of Counsel**

For Respondent No. 2 : **Principal State Attorney**

: **Mrs. N. Dauharry-Jeewa, Principal State Counsel**