

IN THE SEYCHELLES COURT OF APPEAL

ORANGINES PTY LTD

APPELLANT

VERSUS

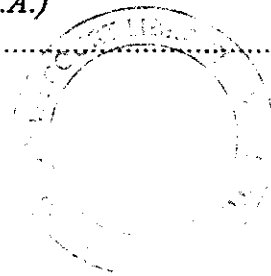
SOCIETE IMMOBILIERE SEYCHELLES (SIS) LTD

RESPONDENT

Civil Appeal No. 29 of 1995

*(Before A.M. Silungwe, J.A, E.O. Ayoola, J.A, L.E. Venchard, J.A.)*

Mr. P. Boulle for the Appellant  
Mr. B. Georges for the Respondent



**JUDGMENT OF THE COURT**

The issue raised in this appeal is a narrow one namely was the loan of Rs.400,000 to the Appellant made by the Respondent or by Mr. Ricci in his personal name.

We have reached the conclusion that the loan was made by the Respondent for the following reasons -

- (a) The cheque was drawn to the order of the Appellant and was debited from Respondent's account. That debit could only have been made after the cheque had been endorsed by the Appellant.
- (b) Since the cheque signed by Mr. Ricci was honoured it follows that Mr. Ricci had been empowered to draw company cheques as an authorised signatory without need for another signatory.
- (c) In law, the Respondent company represented by Mr. Ricci was a distinct legal person from Mr. Ricci in his private capacity and when he draws a company cheque he binds the company and not himself.

- (d) It is an elementary accounting principle that the funds of a company and those of directors or shareholders have to be kept separately. Accordingly, if the loan was intended to be a <sup>loan</sup> ~~long~~ from Mr. Ricci personally, the cheque should have been drawn in the name of Mr. Ricci who in turn would endorse it in the name of the Appellant. This, however, was not the procedure followed in this instant case.
- (e) The direct evidence of Mr. Morel at p.49 of the record clearly established that the amount of Rs.400,000 was a loan from the Respondent company which had not been repaid.

Mr. Boulle, for the Appellant, strenuously argued that we should act on the direct evidence of witness Lairo, the General Manager of Respondent who stated (at p. 41 of the record) that the loan was a personal loan of Mr. Ricci. It is obvious that Mr. Lairo was mistaken. He could have made that statement only if he had an indication that the money was intended for a project unconnected with the activities of the Respondent. However, as the letter at page W4 clearly demonstrates it was a "kindness" loan; how could Mr. Lairo know that the kindness was being shown by Mr. Ricci in his private capacity or as representative of the Respondent? In any event how could Mr. Ricci have shown from company funds.

Mr. Boulle also submitted that the accounts of the Appellant did not show the Respondent as a creditor. This however cannot be of assistance to the Appellant as it would be self-serving.

We hold that the loan was made by the Respondent and accordingly dismiss this appeal with costs.



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A.M. Silungwe, J.A.,



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E.O. Ayoola, J.A.,



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L.E. Venchard, J.A.

Delivered on this 1st day of March 1996.