IN THE SEYCHELLES COURT OF APPEAL

VISTA DO MAR LTD. **APPELLANT**

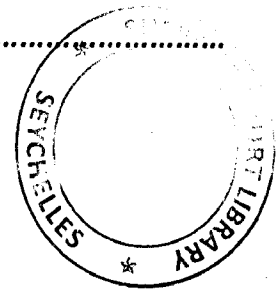
VERSUS

FRANCES C. BENNETTE **RESPONDENT**

Civil Appeal No: 7 of 2001

[Before: Ayoola, P., Pillay & Matadeen, JJ.A]

Mr. B. Georges for the Appellant
Mr. K. Shah for the Respondent



JUDGMENT OF THE COURT

(Delivered by Matadeen, JA.)

This is an appeal against a Judgment of the Learned Chief Justice dismissing an action of the appellant company whereby the latter was seeking, inter alia, a declaration that the transfers of two plots of land, namely Parcels H91 and H92, made by it on 17 May 1995 in favour of the respondent were null and void.

The facts leading to the appellant's action are not disputed. In essence the appellant, a non-proprietary company, was claiming that it had on 25 November 1980 purchased Parcels H91 and H92 from the respondent and her husband for £40,000. The appellant had paid half the purchase price and had undertaken to repay the balance in Seychelles Rupees at a fixed rate of exchange whilst at the same time creating a charge on the two plots of land for the amount due, namely SR290,000, in favour of the respondent. In 1983 there was an exchange of correspondence between the respondent and Mr. B. Etzin, a Director and Chairman of the appellant company, about the sale of the plots of land back to the respondent. In fact on 17 May 1985 the appellant company, acting through one of its Directors,

Mr. Robert Lafortune, transferred Parcels H91 and H92 to the respondent for Rs.40,000 and Rs.250,000 respectively and the respondent in turn released the charge in her favour on those two Parcels.

The contention of the appellant was that the two transfers in 1985 were not valid as they were executed by a single Director who was not the Managing Director and who had not been so authorised by a resolution of the appellant company.

The Learned Chief Justice found that the transfers, although signed by one Director, were executed with the concurrence and authority of the company and rejected the appellant's claim.

The present appeal turns on the narrow issue as to whether the act of a single Director was sufficient to transfer clear title to the respondent. Learned Counsel for the appellant has renewed before us the submission he made before the Learned Chief Justice, namely that the transfers of Parcels H91 and H92 to the respondent in 1985 should have been executed by the Managing Director or by all the Directors or by one Director of the appellant company having been so authorised by a resolution of the company. Since the transfers were executed by Mr. Robert Lafortune only and there was no evidence that he was the Managing Director or that he had been authorised by a resolution of the company, the transfers were not valid.

We have, after careful consideration of the respective submissions of learned counsel on either side, come to the conclusion that the decision reached by the learned Chief Justice cannot be impeached. True it is that the deeds of transfer of Parcels H91 and H92 were signed by one Director of the appellant company. But this per se does not mean that the Director was acting on his own and not under the

authority of the company. There was ample evidence to suggest that Mr. Robert Lafortune was acting under the authority of the company, as alluded to by the Learned Chief Justice.

First, in correspondence addressed to the respondent in 1983(Exhibit D13 and D14), Mr. B. Etzin, a Director and Chairman of the appellant company, confirmed that the company was not in a position to pay the amount owed to the respondent and suggested that the respondent explored the possibility of getting back the property, which according to Mr. Etzin had by then depreciated in value, so long as that did not involve additional expenditure for the appellant company by way of tax or otherwise.

Secondly, in previous transactions between the appellant company and the respondent, the appellant company had always been represented by a single Director. Such was the case both when the appellant company purchased the two Parcels H91 and H92 from the respondent in 1980 and when the two plots of land were charged in favour of the respondent. There was nothing to put the respondent on alert in 1985, the more so as the transfers of the two plots of land to the respondent were consonant with the suggestion of Mr. B. Etzin made since 1983.

Thirdly, the Annual Report together with the Statutory Accounts for the year ending 31 December 1985, which were presented and signed by the three Directors of the appellant company for that year, namely Messrs B. Etzin, R. Lafortune and P. Gill clearly brought out the fact that the two plots of land has been sold at a loss. These accounts show not only that what was intended in 1983 was carried out in 1985 but also that what was done in May 1985 was subsequently ratified by the company. By confirming that they had lost money on the transaction, the Directors

were confirming not only the existence of the transaction but also that it was regular. It is that very transaction which the appellant company was seeking to impugn almost ten years later, in 1995, when the two parcels had appreciated substantially in value.

Fourthly, and most importantly, the respondent as a third party or an outsider was not required in her dealings with the appellant, to enquire into the regularity of the "indoor management" of the company and was entitled to assume that there had been compliance with any procedural requirement and that everything had been done regularly: vide Royal British Bank v. Turquand (1856) 6 E & B 327. Nor could she, in view of previous transactions executed by a single director, be held to be put upon her enquiry. On the contrary, her previous negotiations with Mr. B. Etzin entitled her to assume that the board had approved the transfer and that the transfer would be binding on the appellant company, even if signed by one director.

There was no indication that the single director had exceeded his authority. Nor was there any indication that the respondent did not honestly and without reason for suspicion think that Mr. R. Lafortune was not authorised to act for the appellant, the more so as two of the three directors were aware of and approved the transfers. It is apposite in this regard to refer to what Pennington has to say in his *"Company Law"*, 3rd Edition, at page 119:-

> *"But if an act has been done by some or all of the directors, whether* ***de jure*** *or* ***de facto****, and the outsider assumes that it has been authorised at a board meeting, the weight of authority is that the outsider is protected, and can treat the company as bound."*

In the circumstances, the appellant was bound by the act of Mr. R. Lafortune under the rule in Turquand. Likewise, the respondent was entitled to rely on that rule to uphold the transfers which the appellant was seeking to repudiate.

Finally, we need also add that the burden of proof all through the proceedings rested on the appellant to show that the single director was not acting under the authority of the company. The only witness called by the appellant was Mr. B. Etzin who deposed contrary to what he had previously stated in exhibit D13 and D14 and, what is more, he was not available for a full cross-examination.

In the result, we hold that the Learned Chief Justice was right in concluding that the decision to transfer was not that of a single director but that Mr. R. Lafortune had been acting under the authority of the appellant. The appeal therefore fails and is accordingly dismissed, with costs.

E.O AYOOLA
PRESIDENT

A. G. PILLAY
JUSTICE OF APPEAL

K. P. MATADEEN
JUSTICE OF APPEAL

Dated at Victoria, Mahe, this 09th day of **August** 2001.