# IN THE SUPREME COURT OF SEYCHELLES

**Bargellini Daniella** **1st Petitioner**

**Ligabue Paolo** **2nd Petitioner**

**Albarelli Alessandra** **3rd Petitioner**

**Platani Enrio** **4th Petitioner**

**vs**

**Gianlucca Valentino** **1st Respondent**

And

**Pricipane Village Management (Pty) Ltd**

**(**Represented by Gianlucca Valentino

Of C'ote D'Ore, Praslin**)** **2nd Respondent**

**Civil Side No.331 of 2003**

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**Mr. Derjaques for the Petitioners**

**Mr. C. Lucas for both Respondents**

***D. Karunakaran, J.***

## RULING

The petitioners herein are the shareholders of a company known as **"Pricipane Village Management (Pty) Ltd",** hereinafter called the "company", whose total issued share capital consists of 350 shares. The petitioners are holding 210 shares in aggregate, out of the said 350 issued shares of the company. The 1st Respondent is also a shareholder cum director owning 70 shares; he is also the Managing Director of the company and as such looking after the business operations of the company in Praslin. The company itself is pleaded as the 2nd Respondent in this matter. All parties to the instant petition -except the 2nd Respondent – are presently the shareholders or shareholder cum directors of the company.

In December 2003, the petitioners jointly filed a petition under Section 201 of the Company Act, seeking a judgment in the sum of Euro 64,496/- for their supply and shipment of goods from Italy to the company (the 2nd Respondent) in Seychelles. The petitioners in the same petition have also alleged that the 1st Respondent, the Managing Director of the company is not conducting the affairs of the company in a manner benefitting the shareholders, but is oppressive and acting to the prejudice of the petitioners as shareholders. Having thus, raised a hybrid of cause of action, the petitioners in the final prayer seek a judgment on their money-claim in the sum of Euro 64,496/- against both Respondents jointly, presumably attributing joint responsibility for the payment of the sum in respect of goods supplied to the company.

On the other side, Mr. C. Lucas, Learned Counsel for the respondents raised *a plea in limine litis* contending that the instant action is bad in law and liable to be dismissed *in limine*, since the matter does not fall within the purview of Section 201 of the Company Act. It is the contention of counsel

that Section 201 applies only to protect the interest of the minority shareholders. In the instant case, the petitioners are not minority shareholders. They are majority shareholders as they hold in aggregate 210 shares out of 350 shares. Moreover, according to Mr. Lucas, the Company ought not to be made a party (the 2nd Respondent) to the petition as it does not disclose any cause of action or wrong-doing against it. Hence, Mr. Lucas submitted that the petition is bad and untenable in law. Thus, Counsel urged the Court to dismiss the petition *in limine.*

In reply to the above, Mr. Derjaques, learned counsel for the petitioners submitted that any shareholder of a company who complains that the affairs of the company are being conducted in a manner which is oppressive or unfairly prejudicial to some part of the shareholders, may come to Court for a remedy under Section 201 of the Company Act. Hence, Mr. Derjaques submitted that the instant petition is tenable in law. Also Counsel cited the case of ***Sheila Smith and another Vs. Panorama (Pty) Ltd and Ms. Mary Rakia CS No. 325 of 1998,*** and contended that this Court has on a previous occasion entertained a similar petition under Section 201 of the Company Act and also granted the relief sought by the petitioners. In the circumstances, Mr. Derjaques contended that Court should dismiss the *plea in limine* and proceed to hear the case on the merits.

I diligently analyzed the arguments advanced by both counsel on the plea in *limine litis*. The pleadings in the petition obviously, disclose a cause of action based on a debt the Company allegedly owes to the petitioners for the supply of goods. As far as this particular transaction is concerned, the petitioners are only third party-suppliers. As such they simply have the right to recover the debt from the Company only by way of filing a plaint under the provisions of the Code of Civil Procedure.

Having said that, they may be the shareholders of the Company and have the right to complain under Section 201 of the Company Act about the

manner in which the affairs of the Company are being conducted. However, these facts have nothing to do with their individual rights to sue the company to recover the debt from the Company following the normal Civil Procedure.

Needless to say, the petitioners have in their personal capacity, supplied the goods to the Company. The transaction pertaining to supply of goods and the debt the Company owed to the suppliers, have nothing to do with the affairs of the company in relation to its shareholders. It is evident that Section 201 is intended to protect the interest of the shareholders, not that of third parties who have simply supplied or sold goods to the Company. The suppliers in this matter, are by coincidence, happened to be the shareholders of the company. Their status as suppliers of goods to the Company and their status as shareholders of the Company are two different and distinct status. They cannot and should not be mixed up or misconstrued as interchangeable. Hence, I find the petitioners being suppliers of goods to the Company, in their personal capacity as such, have no *locus standi* to invoke Section 201 of the Company Act to recover the debt from the Company. Besides, I also note, as rightly submitted by Mr. Lucas, Section 201 has been designed and intended only to protect the interest of the minority shareholders, when the affairs of the company are being conducted in a manner which is oppressive or unfairly prejudicial to them. Undoubtedly, the petitioners in the present case are majority shareholders, they cannot jointly, invoke Section 201, which provides a remedy only to the minority shareholders.

I meticulously, perused the case of ***Sheila Smith*** (supra) cited by Mr. Derjaques. Evidently, in the ***Sheila Smith*** the dispute arose, consequent to a dispute between the shareholders over certain transfer of shares made by the minority shareholders. The petitioners in that particular case alleged illegality and irregularity of the resolutions passed by the Board

and the records maintained by the Company. However, in the case on hand the cause of action, the nature of the claim and capacity in which the parties have petitioned the Court are completely different. The facts of the instant case are very distinguishable from that of ***Sheila Smith***. Hence, I decline to accept the precedent quoted by Mr. Derjaques in this respect as there is a world difference between the two cases in terms of the facts, the capacity or status of the parties and the cause of action.

Therefore, in my final analysis, I conclude that the instant petition is not maintainable in law under 201 of the Company Act. Accordingly, I dismiss the petition in limine. I make no order as to costs.

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**D. Karunakaran**

**Judge**

**Dated this 16th day of February 2010**