

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MC 85/14
(arising in CC37/2014)**

[2015]SCSC 98

BLUEBIRD INVESTISSEMENTS S.A.R.L
Petitioner

Versus

VAITHINATHASAMY RAMADOSS
First Respondent

EMERALD HOLDINGS COMPANY LTD
Second Respondent

SARAH ZARQANI RENE
Third Respondent

**SEYCHELLES INTERNATIONAL SPECIALIST
MEDICAL CENTRE LTD**
Fourth Respondent

Heard: 10th March, 2015

Counsel: Mr. Francis Chang-Sam together with Mr. Georges Robert for the petitioner
Mr. Guy Ferley for the 1st respondent
Mr. Basil Hoareau together with Mr. Elvis Chetty for the 2nd, 3rd and 4th
respondents

Delivered: 31st March, 2015

ORDER ON PLEA IN *LIMINE LITIS*

Robinson J

[1] **The parties**

[2] The following facts are not in dispute.

[3] The 4th respondent, Seychelles International Specialist Medical Centre Ltd, was incorporated on the 15th November, 2006, (hereinafter referred to as "the Company"), under the Companies Act, 1972, (hereinafter referred to as "the Companies Act").

[4] The Company is a limited liability company.

[5] Mr. Mark Inch is the "*gérant*" of Blue Bird Investissements S.A.R.L of "*Numéro d'immatriculation 332 652 148 R.C.S. Paris*", the Petitioner.

[6] On the 27th March, 2009, the petitioner was issued with a share certificate for 500 shares of the Company of nominal value of Seychelles rupees ten (10) each.

[7] The 1st and 2nd respondents, Dr. Vaithinathasamy Ramadoss and Emerald Holdings Company Ltd, respectively, incorporated the Company on the 15th November, 2006.

[8] The 1st and 2nd respondents hold between them the majority of the shares of the Company.

[9] The 1st and 3rd respondents, Dr. Vaithinathasamy Ramadoss and Mrs. Sarah Zarqani Rene, respectively, are the sole directors of the Company.

[10] **The proceeding**

[11] **Background**

[12] The petition by the petitioner is brought under section 201 of the Companies Act. The petition is supported by an affidavit sworn, on the 4th September, 2014, by Mr. Mark Inch, exhibiting miscellaneous documents marked "BB1" through "BB9".

[13] The petitioner complains that the affairs of the Company are being conducted by the 1st and 2nd respondents as the majority shareholders and the 1st and 3rd respondents as the sole directors of the Company, in a manner, which has, as a result, prejudicially affected the interest of the petitioner/applicant and that of the other shareholders.

[14] The particulars of the petitioner's complaints are that, since its incorporation, the Company has failed to comply with the following requirements of the Companies Act by, among others —

- "(i) not obtaining the authorisation of a general meeting to increase the share capital of the Company and to dispose of its leasehold title no. V12348 that is substantially the whole asset of the Company;
- (ii) not holding annual general meetings;
- (iii) not submitting annual returns;
- (iv) not properly altering the nominal share capital of the Company;
- (v) not lodging a return of allotment within the prescribed time;
- (vi) generally withholding information from the shareholders; and
- (vii) managing the affairs of the Company as if it were their private affairs."

[15] The petitioner is seeking the following orders from this court —

- "(a) for an order appointing a person to investigate into the affairs of the Company and the conduct of the directors of the Company and to report to this Honourable Court;
- (b) for an order requiring the Respondents and any other person having in his or her possession or control any record, information or document belonging to or relating to the affairs of the Company to disclose the same to the inspector and to allow the inspector to make copies or take extracts from the same;

- (c) for an order preventing the disposal of or dealing with any assets including but not limited to any bank account or rights in land belonging to the Company until after the report of the investigation;
- (d) for an order declaring any transfer of assets of the Company made without proper authority of the Company void and that the assets be returned to the Company forthwith and in the case of the leasehold title in V12348 that the land Registrar rectifies the Register accordingly;
- (e) for an order that all persons holding any assets of the Company shall forthwith return the same to the Company;
- (f) for an order that any person found to have acted contrary to law with regard to the conduct of the affairs of the Company be dealt with as the law prescribes and for any person who has suffered in consequence of the conduct of the first-mentioned person to be paid compensation by the first mentioned-person;
- (g) for an order for the Respondents, jointly and severally, to refund the Petitioner the amount it invested in the Company together with interest at the rate to be determined by this Honourable Court from the date of the Investment;
- (h) for an order that the Respondents shall jointly and severally be liable for costs of this petition;
- (i) for any other order as the court may deem fit in the circumstances.”.

[16] The 1st, 2nd, 3rd and 4th respondents were served with the petition on the 10th October, 2014.

[17] The 1st, 2nd, 3rd and 4th respondents have opposed the petition.

[18] The 1st respondent has filed affidavit in reply, dated the 24th February, 2015, sworn by Dr. Vaithinathasamy Ramadoss. Mr. Guy Ferley, for the 1st respondent, has raised a plea in *limine litis*, in the answer. Mr. Guy Ferley did not pursue the plea in *limine litis* at the hearing of the petition.

[19] The 3rd respondent has sworn to an affidavit dated the 14th January, 2015. Mr. Basil Hoareau, for the 2nd, 3rd and 4th respondents, has raised a plea in *limine litis*, in the answer.

[20] *The case for the parties*

[21] At the hearing of the petition, Mr. Georges Robert, for the petitioner, relied on the affidavit evidence of the petitioner and submitted orally for it.

[22] Mr. Georges Robert informed this court that the petitioner is seeking only orders (a) and (b) of the orders recited in para [15], of this Order.

[23] At the hearing of the petition, Mr. Guy Ferley, for the 1st respondent, relied on the affidavit evidence of the 1st respondent and submitted orally for him.

[24] At the hearing of the petition, Mr. Elvis Chetty, for the 2nd, 3rd and 4th respondents relied on the affidavit evidence of the 3rd respondent and submitted orally for the 2nd, 3rd and 4th respondents.

[25] The substantive issue of whether or not this court will grant orders (a) and (b) is meant for an eventual determination. For the present, this court is concerned with the plea in *limine litis* that has been raised by Mr. Basil Hoareau for the 2nd, 3rd and 4th respondents. The plea in *limine litis* is to the effect that —

"The Petition is not in accordance with the mandatory provisions of the Companies (Supreme Court Proceedings) Rules, 1972 (S.I 94 of 1972)."

[26] *Submission and discussion*

[27] Section 201 of the Companies Act, so far as relevant provides —

- "201—(1) 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 (including himself) or, [...] may make an application by way of petition to the court for an order under this section.
- (2) If on the hearing of the application the court is satisfied either: —
- (a) that the applicant, either alone or together with other shareholders, has been treated oppressively in one or more respects over a period of time, or that action has been taken by the persons who are or were in control of the affairs of the company, being action which was known by them to be likely to prejudice unfairly the interests of the applicant, either alone or together with other shareholders; or
 - (b) the persons who are or were in control of the affairs of the company have been guilty of serious misconduct or breaches of duty which has or have prejudicially affected the interests of the applicant, either alone or together with other shareholders;

the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any shareholders of the company by other shareholders of the company or for the acquisition of any such shares by the company and, in the case of such an acquisition by the company, for the reduction accordingly of the company's capital, or otherwise."

[28] Section 340 of the Companies Act, so far as relevant provides —

"340 — The Chief Justice may make rules of court for regulating proceedings under this Ordinance (other than proceedings under Part VI thereof) [...]."

[29] The Companies (Supreme Court Proceedings) Rules, 1972 (S.I 94 of 1972) (hereinafter referred to as the "Supreme Court Rules"), were made by the Chief Justice in exercise of the powers conferred on him under section 340 of the Companies Act.

[30] Rules 3, 4 and 5 (1) of the Supreme Court Rules provide —

"3. Except in the case of applications by way of appeal to the court from a decision, order, act or omission of the Registrar of Companies and of applications made in proceedings under Part VI of the Ordinance, every application to the court under the Ordinance shall be made by petition in accordance with these rules.

4. The petition, which must be filed in the registry, shall be signed by the petitioner or his attorney. It shall contain a short statement of the facts and of the points of law which are for determination by the court.

5. (1) At any time after the filing of a petition the court, may, by order, give such directions as to the proceedings to be taken or the procedure to be followed before or at the hearing of the petition as it thinks fit including, in particular, directions —

- (a) as to who should be made respondent to the proceedings;
- (b) as to the manner in which service shall be effected on any party, including service by newspaper advertisement;
- (c) for the publication of notices; and
- (d) for the making of any inquiry."

[31] Mr. Elvis Chetty, therefore, submits that Rules 3, 4 and 5 (1) of the Supreme Court Rules require an applicant that makes application under section 201 of the Companies Act for an order, to make application in accordance with the Supreme Court Rules, *ex parte*. This court, after filing of the petition, may, by order, give such directions as to the proceedings to be taken or the procedure to be followed before or at the hearing of the petition as it thinks fit including, in particular, directions in terms of Rule 5 (1) of the Supreme Court Rules. Mr. Elvis Chetty, therefore, moves that the application be dismissed with costs. He submits that such an order should follow because the Supreme Court Rules are to be regarded as mandatory.

- [32] Mr. Guy Ferley, for the 1st respondent has adopted the submissions, with respect to the plea in *limine litis*, made on behalf of the 2nd, 3rd and 4th respondents.
- [33] Mr. Georges Robert, for the petitioner, submits that the approach adopted by the 1st, 2nd, 3rd and 4th respondents is not the correct approach. In short, Mr. Georges Robert submits that Rules 3, 4 and 5 (1) of the Supreme Court Rules do not require an applicant that makes application under section 201 of the Companies Act for an order, to make the application, *ex parte*. He opines that Rule 5 (1) of the Supreme Court Rules only empowers this court, on its own motion, after the filing of a petition, to direct, among others, who should be made respondent to the proceedings, in terms of the said Rule 5 (1). On the same issue, he added that the proper parties/respondents are before this court.
- [34] I have considered the plea in *limine litis* and the submissions of counsel. It is my considered view that the position of the respondents is not the correct position. In short, Rule 3 of the Supreme Court Rules provides that an application shall be made by petition in accordance with the said Rules. Rule 4 of the Supreme Court Rules provides for the contents of a petition. Rules 3, 4 and 5 (1) of the Supreme Court Rules read together are silent on whether or not a petition can be filed *inter partes* or *ex parte*. A reasonable inference can be drawn, therefore, that a petition can be filed *inter partes* or *ex parte*, in accordance with the Supreme Court Rules. I agree with Mr. Georges Robert, for the petitioner, that procedural fairness and justice will be ensured by this court to join respondents to the proceedings that need to be joined in accordance with Rule 5 (1) of the Supreme Court Rules. In light of the above, this court is satisfied that there has been no breach of the Supreme Court Rules.
- [35] I have considered the affidavit evidence, in this case, in light of the submissions of counsel. This court observes that the respondents are asking that they be given the opportunity to have their defence to the case properly canvassed and determined. Be that as it may, I say, in my judgment that the Registrar of Companies and Mr. Mukesh Valabhji should be made respondents to the proceedings so that this court may be able to properly decide on the merits of the application.

[36] **Decision**

[37] I direct the petitioner that the Registrar of Companies and Mr. Mukesh Valabhji should be made respondents to the present proceedings. I, further, direct the petitioner to make the necessary amendments to the petition so as to bring it in line with the direction of this court.

[38] Save for the orders made, by this court, in para [37], of this Order, the plea in *limine litis* is dismissed.

[39] I make no order as to costs.

Signed dated and delivered at Ile du Port this 31st March 2015.

Fiona Robinson
Judge of the Supreme Court