

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC 23/2017

[2018] SCSC 271

**1. TAMER ABBAS EMAD
2. PRISCHILLA URANIE**

Petitioners

versus

**1. SIMING ZHAO
2. TRUST FOR CONSTRUCTION (PROPRIETARY) LIMITED**

Respondents

Heard: 1 March 2018

Counsel: Mr. Serge Rouillon for Petitioner

Respondents absent and unrepresented

Delivered: 19 March 2018

JUDGMENT

M. Twomey CJ

[1] The Petitioners are the Shareholders and Directors of the Second Respondent Company. They held between them 67 shares therein and the First Respondent the remaining 33 shares.

[2] The objects of the Company were inter alia the construction of houses, bridges and other buildings.

- [3] On 21 April 2014 the First Respondent was elected director of the Second Respondent and appointed as the Company procurement officer. He was also made a signatory of the Company account.
- [4] The Petitioners aver that the First Respondent breached his duties as a director by inter alia misleading the Company that he was outsourcing materials overseas for Company projects, by personally using and failing to keep accounts of Company funds advanced to him for the procurement of materials and for shipping goods.
- [5] Further, the Second Respondent caused them to take on and keep extra staff in anticipation of the said projects.
- [6] They aver that as a result they have suffered damages in the sum of SR8, 635,818.64 and pray for the removal of the Second Respondent as a signatory to the account, as a director and shareholder of the Company.
- [7] At the trial, the First Petitioner testified as to the averments above and produced a report of the actions of the First Respondent together with the consequential financial loss to the Company. Email and postal communication from the Petitioners was also produced showing the First Respondent's lack of response.
- [8] Sections 181-182 of the Companies Act (the Act) exempt officers of a Company from liability for acts of negligence of the officer if he acted reasonably. There is no such evidence of reasonable behaviour on the part of the Respondent.
- [9] On the other hand, section 28 of the Companies Act provides in relevant part that:
- (1) Any member of a proprietary Company may apply to the Court for an order that another member shall be expelled from membership of the Company.*
- (2) An application may be made under this section on any of the following grounds, namely:*
- (a) that the member whose expulsion is sought:*
- (i) has been guilty of serious or persistent breaches of the provisions of the memorandum or articles of the Company; or*

(ii) has been guilty of conduct seriously detrimental to the interests of the Company or its members as a whole; or...

(b) that the member whose expulsion is sought is a director of the Company and:

(i) has been guilty of serious breaches of duty as such a director; ...

(3) If the Court in its discretion accedes to the application, the member whose expulsion is sought shall forthwith cease to be a member, and section 27 of this Ordinance shall thereupon apply as though he had become an outgoing member.

(4) If offers to acquire all the shares of an expelled member are not made within the time limited by section 27(4), the continuing members of the Company shall be deemed to have offered to take the shares not bid for at a price equal to their fair value as estimated by the Company's auditor under section 27(6) and (7), and the auditor shall make an estimate in like manner as if the outgoing member had notified the secretary under section 27(6) that he was unwilling to transfer the said shares."

[11] I am satisfied from the evidence adduced that this is a matter necessitating the exercise of the discretion of the Court. I do so in favour of the Petitioners and order that the First Respondent is forthwith removed both as a director and shareholder of the Second Respondent.

[12] I further order the First Respondent's 33 shares be redistributed according to the provisions of section 27 of the Companies Act by the secretary of the Company.

Signed, dated and delivered at Ile du Port on 19 March 2018.

M. Twomey, CJ

Chief Justice