

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CC31/2015

[2018]SCSC 939

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In the matter of Goodwin Company (Proprietary) Ltd. and  
in the matter of the Companies Act 1972

**IGOR KHUTORENKO**  
Represented by Robin Gabriel  
Petitioner

Versus  
**ALEXANDER KORYTNIKOV**  
Respondent

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Heard:

Counsel: Mr. Ferley for Petitioner  
Mr. Chetty for Respondent

Delivered: 8 October 2018

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**JUDGMENT**

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**F. ROBINSON, J**

- [1] The petition is brought under section 201 of the Companies Act. The petition is supported by an affidavit sworn by Mr. Robin Gabriel. The petitioner and the respondent are the directors of GOOD WIN COMPANY (PTY) LTD (hereinafter referred to as "*GOOD WIN*"), which is incorporated under the Companies Act, on 4 December, 2007.
- [2] The petitioner complained that, during his absence from Seychelles due to illness, the respondent had "*hijacked the management of the casino and the company for his own ends and is running the company in such a manner that the Petitioner's rights have been unfairly prejudiced. Further, Alexander Korytnikov has, in the method of his management of the*

*Company been guilty of serious misconduct which has prejudicially affected the interests of the Petitioner as a shareholder of the Company."*

[3] The particulars of the petitioner's complaints are contained in paragraph 6 of the petition

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- "(a) Not liaising with and consulting the Petitioner as the only other director and shareholder of the Company as to the conduct of the business of the Company;
- (b) The Respondent signed a purported judgment by consent and caused the court to enter judgment, in suit Heirs Yvon Marie (represented by Robert Marie) v/s Goodwin Company (Pty) Limited CC 05 of 2014, in the sum SR845,000 with interest at 4% per annum against Goodwin Company (Pty) Limited. The Respondent had not obtained the consent of the Petitioner to enter the said judgment.
- (c) The Court in SC 05 of 2014 declared the lease agreement between Robert Marie and Goodwin (Pty) Limited as terminated and in consequence the company cannot lawfully carry on with its business activities in the premises belonging to the heirs of Yvon Marie.
- (d) The Company is the owner of 120 slot machines which are still in the premises abovementioned. A list containing the serial numbers and model of slot machines are attached herewith as exhibit A5.
- (e) The Respondent has incorporated another company named Green Valley Casino (Pty) Limited of which he holds 60 shares and Robert Marie, the same Robert Marie mentioned above, holds 40 shares out of the 100 shares of the said company. Green Valley Casino (Pty) Limited has as one of its main objects the operation of casino business and gambling...

- (f) Green Valley Casino (Pty) Limited has obtained a license and is now operating a casino and slot machines in the premises belonging to the heirs Yvon Marie and it is using the 120 slot machines for the purposes of Green Valley Casino (Pty) Limited.
- (g) The Respondent did not obtain the permission nor was he granted the consent of the Petitioner to use the said slot machines for the purposes of Green Valley Casino (Pty) Limited.
- (h) The Respondent in using the Green Valley Casino (Pty) Limited to control the slot machines is undermining the management of the Company and causing serious prejudice to the Petitioner.
- (i) The Respondent has effectively stolen the slot machines from the company as he is using them for his sole benefit and of Robert Marie at the exclusion of the Company and the Petitioner. The Respondent's action in this regards amount to misconduct.
- (j) The slot machines are the sole and principal assets of the company and the company is being deprived of them, resulting in serious prejudice to the Company and the Petitioner."

[4] The petitioner is asking this court to make the following orders as against the respondent

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"1. as an interim and urgent measure:

- (a) an order restraining the Respondent from making use of the slot machines in the operation of the activities of Green Valley (Pty) Limited;

- (b) an order that the slot machines are removed from the premises of the heirs of Yvon Marie and placed in safe storage;
  - (c) an order authorising the Petitioner access to information having to do with the management of the company including access to information regarding the management of the Company more particularly the bank account of the company.
2. an order replacing the Respondent as a Director, and if the breaches of duty and misconduct are felt to be sufficiently grave, expelling him as a member of the Company.
  3. such other order as this Honourable Court may deem fit in the circumstances."

[5] The respondent denied each and every singular allegation contained in paragraph 6 of the petition. By way of further answer to paragraph 6 of the petition, the respondent averred

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- "(i) the Petitioner had since 2012 abandoned, neglected and/or abdicated his duties and obligations as a Director of the Company;
  - (ii) except that it is denied that the judgment was a "*purported*" judgment, Paragraph 6(b) is admitted;
  - (iii) Mr. Robert Louis Marie, instituted proceeding against the Company before the Supreme Court for non-payment of rent and demanded that the Company paid arrears of rent;
  - (iv) the Respondent was the only Director who was at the relevant time managing the affairs of the Company. The Respondent entered into judgment by consent, in the best interest of the Company as the Company owed arrears of rent in the sum of SR845,000 to the

Heirs of Yvon Marie represented by Mr. Robert Louis Marie. It was not in the best interest of the Company to continue to accumulate arrears of rent in the sum of SR845,000 to the Heirs of Yvon Marie represented by Mr. Robert Louis Marie and further it was in the best interest of the Company to terminate the agreement for a lease;

- (v) Paragraph 6 (c) of the Petition is admitted;
- (vi) The Respondent is the only Director managing the affairs of the Company took the decision to sell and transfer the 120 slot machines as payment in the sum of SR600,000 being part payment of the judgment debt. The Company did not have money to pay the judgment sum or any other asset and the Respondent acted in the best interest of the Company. The Petitioner has in a previous matter before the Supreme Court claimed that the Company was not the owner of the 120 slot machines;
- (vii) The Company has ceased to operate its casino and slot machines business since the year 2013. Its licence was revoked and consequently the substratum of the Company ceased to operate then; and
- (viii) Paragraph 6 (c) and (f) are admitted.

[6] *The evidence of Mr. Gabriel.* This court refused to admit a copy of a power of attorney authorising Mr. Gabriel to issue this petition on behalf of the petitioner because the Apostille on it is not in the language of the court and Mr. Gabriel did not present this court with a certified translation of the Apostille. In addition no signature appears on the copy of the power of attorney.

[7] With respect to the merits, this court has reproduced only the evidence that is relevant to the matters in dispute. Mr. Gabriel testified that he has known the petitioner for about two

years. He worked for the petitioner as head of casino security at Au Cap, until its closure. The petitioner and the respondent were the directors of GOOD WIN at the relevant time.

- [8] The petitioner and the respondent would argue every day. The casino closed down and the petitioner left Seychelles. He is unaware of whether the petitioner and the respondent were in contact at the relevant time. Green Valley Casino (Pty) Ltd., incorporated on 1 July, 2014, took over the running of the casino (hereinafter referred to as "*Green Valley Casino*"). The respondent has sixty percent of the shares of Green Valley Casino and one Robert Marie has the remaining forty percent of the shares. He has heard about the case Robert Marie and Alexander Korytnikov, however, he does not know what it is about. He does not know what has become of the bank account of GOOD WIN. The machines on the premises of Green Valley Casino belonged to GOOD WIN. He described the machines as follows "*A: The brand of the machines is Gaminator there are 120 pieces inside and there is a small controller behind that controls the machine, one controller for three machines.*" A detailed description of the machines is before this court as exhibit P2.
- [9] When cross-examined, he stated that the petitioner has not come to Seychelles since December, 2012, because, according to what the petitioner has told him, the petitioner has been declared a prohibited immigrant. Later during the proceedings, he added that the petitioner had not returned because he is ill. Then he added that the petitioner has a Seychellois passport. This court interjects to state that it is not clear to it what illness the petitioner is suffering from and whether the petitioner is a prohibited immigrant.
- [10] He mentioned that he is aware of the case Yvon Marie v Goodwin Company Pty Ltd.; and that the premises from which GOOD WIN was running its business was leased from the heirs Yvon Marie. When asked whether he was aware that "*Goodwin has not been paying rent to the estate of Yvon Marie*", he answered "*Me. Personally I was the one who made payment every month*". GOOD WIN kept the receipts on the premises of the casino. He is not aware as to whether GOOD WIN owed an outstanding rent to the estate of Yvon Marie in the total sum of 845,000.00/.


- [11] He stated that he was not a director of GOOD WIN; that he was not involved in the management of GOOD WIN; and that he had no knowledge that the machines had been transferred to the estate of Yvon Marie as payment in the sum of 600,000.00/- rupees being part payment of the judgment debt because GOOD WIN did not have any money to pay the judgment sum.
- [12] *The evidence of the respondent.* The respondent who is a director and shareholder of GOOD WIN stated that the petitioner was the other director of the company. When the petitioner came to Seychelles on 20 June, 2013, he closed the casino and gave the key to Mr. Gabriel. After having closed the casino, the petitioner left Seychelles.
- [13] The casino was being operated on the premises belonging to the heirs of Yvon Marie. GOOD WIN rented two premises from the heirs of Yvon Marie in consideration of 45,000.00/- rupees. GOOD WIN paid rent to Robert Marie and then stopped. The court ordered GOOD WIN to pay rent to the heirs of Yvon Marie in the sum of 845,000.00/- rupees. He signed a judgment by consent on behalf of GOOD WIN because he was the only director managing the affairs of GOOD WIN at the material time. GOODWIN could not pay the judgment sum because it had no money. In settlement of the judgment sum of 845,000.00/- rupees, GOOD WIN agreed that part of the judgment sum, in the sum of 600,000.00/- rupees, be paid to Robert Marie in his capacity as the executor of the estate of Yvon Marie, by a transfer, to the estate of Yvon Marie, of the 120 slot machines, owned by it, contained on the premises of the estate of Yvon Marie. He added that he signed the judgment by consent and concluded an agreement with Robert Marie in the best interest of GOOD WIN. He stated that Green Valley Casino is using the same machines which were initially being used by GOOD WIN.
- [14] When cross-examined, he stated that he signed the judgment by consent and sold the machines in the best interest of GOOD WIN. He was then asked, "...*You have 60 % of the shares in the company and Robert Marie, your partner holds 40 % of the shares. This very company is today operating those machines that you purportedly transferred the interest of GOOD WIN to Robert Marie. These machines were being used in the company of which you have 60 % shareholder, isn't that your interest when you transfer those machines*". He

answered, *"I do not know. We opened together with Robert Marie and a company. And we have agreement 60 % for me and 40 % for him"*.

- [15] The evidence of Jeanine Lepathy. Mrs. Lepathy is the Deputy Registrar of the Supreme Court. Mrs. Lepathy produced the court records of a suit instituted before the Supreme Court by the heirs Yvon Marie represented by Robert Marie v GOOD WIN Company Pty Ltd. CC4/2014. The plaint signed by Robert Marie asked the Supreme Court for payment of arrears of rent in the sum of 845,000.00/- rupees.
- [16] This court has considered section 201 of the Companies Act, the papers filed and the evidence of the parties. Both Counsel did not file written submissions.
- [17] Having considered the evidence of Mr. Gabriel it is clear to this court that the petitioner has not proven the allegations listed in the petition. It is noteworthy that Mr. Gabriel came to know of the respondent when the casino was closed down. He admitted that he was unaware of whether the petitioner and the respondent were in contact at the relevant time. It is also not clear to this court why the petitioner was not in Seychelles at the relevant time.
- [18] The petition mentioned a judgment by consent entered into between GOOD WIN and the heirs of Yvon Marie represented by Mr. Robert Louis Marie. Mr. Gabriel admitted in evidence that he does not know about the facts and circumstances of this judgment by consent. In the final analysis this court concludes that Mr. Gabriel was, at the relevant time, completely unaware of the affairs of GOOD WIN and, therefore, it cannot rely on his testimony in this matter.
- [19] In the light of all the above, this court dismisses the petition with costs.

Signed, dated and delivered at Ile du Port on 8 October 2018.



A handwritten signature in black ink, appearing to read 'F Robinson', with a large, stylized initial 'F'.

**F Robinson**

**Sitting as a Judge of the Supreme Court**