

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 427
MA275/2018
(Arising in 275/2018)

KHI (SEYCHELLES) 01 LTD

Petitioner

TRADING AS RAFFLES PRASLIN

(rep. by Serge Rouillon)

and

ELITE CLUB LIMITED

1st Respondent

(unrepresented/absent)

DANNY BONTE

2nd Respondent

TITE MORIN

3rd Respondent

(both represented by Basil Hoareau)

Neutral Citation: *KHI (Seychelles) 01 Ltd vElite Club and others* (MA275/2018) [2019] SCSC 427
(30th May 2019).

Before: Vidot J

Summary: Petition for summons to show cause for default of a judgment debt, liability of directors for debt of the company and matters to be contained in affidavit

Heard: 12 March 2019

Delivered: 30 May 2019

RULING

VIDOT J

- [1] By a judgment dated 28th September 2017 in case no. CC13/2017 (2017 SCSC 884) between the same parties, this Court ordered the 1st Respondent to pay the Petitioner the sum of €118,315.65 plus interest in the sum of €4235.58 and continuing at 12% per annum on a compound basis with cost of the suit. Cost was taxed at SR17,923.00.
- [2] The 1st Respondent failed to pay the judgment debt. The Petitioner has filed a petition asking for
- (i) the execution of the judgment against the 1st Respondent who are controlled by their directors, the 2nd and 3rd Respondents by the issue of summons to the to the 1st Respondent and their directors the 2nd and 3rd Respondents to appear and show cause why the directors of the 1st Respondent should not be committed to civil imprisonment for its failure to pay the said judgment debt; and
 - (ii) the 1st Respondent who are controlled by their directors be directed to pay the costs of the proceedings.
- [3] The Petition is supported by an affidavit sworn by Grant Weaver, Director of Finance with the Petitioner company. The affidavit rehearses the fact that the parties had been before court and that judgement was entered against the 1st Respondent in favour of the Petitioner and that the former has defaulted in satisfying the judgment debt. The Petitioner wants to enjoy the fruits of the judgment. It calls on the court to issue summons on the Respondents and the 2nd and 3rd Respondents to show cause as to why they should not be committed to civil imprisonment.
- [4] The 2nd and 3rd Respondents in an Affidavit in Reply objected that a summons to show cause should be issued against them on 4 grounds. They are;
- (i) The 1st Respondent is a company registered under the Companies Act;
 - (ii) That as directors they cannot be committed to prison, for the 1st Respondent enjoys separate legal personality from them. The 1st Respondent being the judgment debtor

and as such the directors cannot be rendered personally liable for the debt of the 1st Respondent nor for failure of the 1st Respondent to pay its debt;

- (iii) That the Petitioner has not established any grounds to lift the corporate veil so as to render the 2nd and 3rd Respondents personally liable for the debt of the 1st Respondent, and
- (iv) That the Petition was wrongly brought against them.

[5] .The 1st and 2nd Respondents further claim that the Affidavit in support of the Petition is defective in that it has failed to distinguish what part of the affidavit is based on knowledge and what part is based on information and belief

[6] I have stated in the judgment of 28th September 2017 that *it is a fundamental principle of company law and commerce that a limited liability company is an entity separate and distinct from its shareholders and directors. It has its own legal personality. Therefore a company will normally be treated as solely responsible for debts it incurs and the obligations which it enters into, notwithstanding that it requires individuals, who normally would be its directors, to act as agents and enter into arrangements creating rights and liabilities for the company. Company law operates on the basis that when directors act on behalf of the company, they do so as agents; see Swiss Renaissance v General Insurance [1999] SLR 17. This means that directors who act as agent of a company will not incur personal rights or obligations to the counterparty under a contract unless explicitly provided for. Directors may be rendered bound to a contract in their personal capacity if the Directors fail to make known to those with whom they are dealing that they are acting as director of the company rather than in their individual capacity. If a director personally guarantees obligation of a company such director will incur personal liability.*”

[7] Directors may however be made responsible debts of the company, if they have acted fraudulently. Another instance would be in the event of a winding up of a company if any act of misfeasance can be established.

[8] The judgment debt is against the 1st Respondent, Elite Club Limited. The 2nd and 3rd Respondents as directors did not personally guarantee obligations of the company in the

event of liability being established against it. There has been no fraud alleged against the directors. Therefore, the 1st and 2nd Defendants remain independent and not liable for the debt of the 1st Respondent.

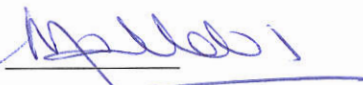
[9] I also consider the objection raised in regards to the affidavit in support of the Petition. At paragraph 10 of the affidavit Grant Weaver states that "*the averments made in the attached Petition and this affidavit are true and correct to the best of my information, knowledge and belief.*" Counsel for the 1st and 2nd Respondents referred to **Union Estate Management (Proprietary) Limited v Herbert Mittermayer [1979] SLR 140**, in which it was stated thus;

"I agree with the contention of Mr. Inamdar that an affidavit which is based on information and belief must disclose the source of information and the grounds of belief. It is therefore necessary for the validity of an affidavit that the affidavit should distinguish what part of the statement is based on knowledge and what part is based on information and belief and that the source of that information or grounds of belief should be disclose."

Unfortunately, the affidavit falls foul of such requirements and therefore could not be relied on.

[10] Based on the above I dismissed the Petition and make no order as to cost.

Signed and delivered at Ile du Port, on this 30rd day of May 2019



Vidot J