

SUPREME COURT OF SEYCHELLES

Not Reportable
[2019] SCSC 953
MA 342/2019
(Arising in MC 101/2019)

In the matter between:

EX PARTE: ADRIAN STEFAN ILIESCU
(Rep. by Mr Frank Elizabeth)

Applicant

and

ALL ABOUT OFFSHORE (SEYCHELLES) LTD

Respondent

Neutral Citation: *Iliescu vs All About Offshore* (MA 342/2019) [2019] SCSC 953
(7th November 2019)

Before: Twomey CJ

Heard:

Delivered: 7 November 2019

ORDER

TWOMEY, CJ

1. The Applicant is the beneficial owner of Global Business Group Ltd, a company incorporated under the International Business Companies Act 2016 (hereinafter the Company) with All About Offshore (Seychelles) Ltd and the Respondent is its registered agent.
2. At the time of incorporation, the Petitioner avers that he was the sole beneficiary of the company and that one Sammy Freminot was holding all the shares in the company on trust as his nominee. A management agreement was signed on behalf of Global Business Group Limited by Mr. Freminot with Company Services Limited to manage the company.
3. The Petitioner further avers that on 18 January 2019, the company's registered agent issued a certificate of incumbency detailing the contents of the company register, naming Company Services Ltd as the sole director of the company

and Sammy Freminot as the registered holder of 100 shares of US\$1000 each, holding them on trust as nominee.

4. A Certificate of Good Standing was subsequently issued by the Registrar of International Business Companies.
5. The Petitioner further avers that his agent in Romania is Dema Partners owned by Florin Manescu and all correspondence between himself and his registered agent in Seychelles was routed through Mr. Manescu. The registered agent's corporate officer is one Irene Nioze.
6. In 2015, the Petitioner filed a law suit against Stefan Renato Petrescu to recover his shares in a company, namely GBG Business Criad Sarl which had been stolen by Mr. Petrescu by unlawfully using a 2011 power of attorney. The Petitioner avers that ultimately he won the case on 15 February 2019 against Mr. Petrescu, which case has now been appealed by Mr. Petrescu.
7. These proceedings were communicated to the registered agent (All About Offshore) and the trustee of the company, Sammy Freminot.
8. In addition to these civil proceedings, in August 2019 the State Prosecutor's Office charged Mr. Petrescu with several criminal offences ranging from fictitious assignment to deception, embezzlement and fraudulent administrative management.
9. Despite communications to the registered agent on 19 September 2019 the Petitioner avers that it issued a certificate of incumbency unlawfully naming Stefan Ranato Petrescu as the sole director of the company without informing or notifying the Petitioner or his agent. The certificate was issued on fraudulent and forged documents and was produced on 28 October 2019 by Mr. Petrescu in the Romanian Court on 28 October 2019 to show that he was the owner of the company.

10. The Petitioner avers that this was the first time he came to know of the change of ownership of the company and immediately instructed his attorney to seek an adjournment to travel to Seychelles to enquire of the registered agent why there had been a change of ownership of his company without his instructions authority, consent, permission or authorization.
11. A formal criminal complaint was also made to the police in Romania and Mr. Petrescu was subsequently charged with forgery of official documents.
12. The Petitioner applies ex parte for an order for disclosure, inspection and/or delivery of copies of documents relating to the Company, which information is held by the Respondent.
13. The Applicant makes this application for disclosure to enable him to produce information, documentation including forged documents to the Courts in Romania in relation to a subsisting fraud case and in order to secure his rights against Stefan Renato Petrescu.
14. The orders ultimately sought by the Applicant in the present matter are for orders for the Respondent to release information and documents relating to the Company, in particular to disclose to the Applicant and provide copies of the documents which were submitted to it by Stefan Renato Petrescu and on which it relied to change ownership of the company and to issue a fresh certificate of incumbency showing Stefan Renato Petrescu as the sole director of the company.
15. *Norma Pharmacal* orders are well established in the laws of Seychelles and I do not propose to rehash the same but I do refer to the first application of its kind in Seychelles, namely *Danone Asia Pte Limited and ors v Offshore Incorporations (Seychelles) Ltd* CS 310/2008 (unreported). Such orders are grounded in equity and emanate from the case of *Norwich Pharmacal v Commissioners of Customs and Excise (1974) AC 133*.

16. The conditions which must be satisfied before a *Norwich Pharmacal* order may be granted were summarised by Lightman J in *Mitsui & Co Ltd v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch), [2005] 3 All ER511 at

"(i) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer; (ii) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and (iii) the person against whom the order is sought must: (a) be mixed up in so as to have facilitated the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued."

17. Returning to the circumstances in the present case, I must also be satisfied that the Applicant is not involved in a mere fishing expedition (see *AXA Equity and Law Life Assurance Society Plc and others v National Westminster Bank (PLC)* [1998] SLC1177).

18. The Applicant in the present matter has made full and frank disclosure of all the facts relating to this case and has supported his application with all necessary documentation. I am satisfied that the application is not a fishing expedition but justified and necessary for the obtention of information for its use in court proceedings in Romania.

19. Section 378 of International Business Companies Act 2016 permits disclosure to a third party of such information and documents by an order of the Court.

20. I therefore make the following orders:

IT IS ORDERED that:

1. The Respondent shall within forty-eight hours of the date of service of this order disclose all documents or information in the Respondent's knowledge or possession and provide copies of the documents which were submitted to it by Stefan Renato Petrescu and on which it relied to change ownership of the company and to issue a fresh certificate of incumbency showing Stefan Renato Petrescu as the sole director of the company.

2. The Respondent shall verify the disclosure provided pursuant to paragraph 1 of this order within forty-eight hours of service of this order by serving on the Applicant's attorneys an affidavit sworn by an authorised officer of Respondent, exhibiting copies of the documents disclosed.
3. The Respondent must not inform anyone else of these proceedings or that he is to disclose the documents or information sought until 30 days after the service of the affidavit referred to in paragraph 2 of this order (or by later date agreed in writing with the Applicant).
4. The Court file in respect of these proceedings shall be sealed and public inspection thereof shall not be permitted until further Order of the Court.
5. The Registrar is directed to remove reference to the names of the parties to these proceedings from any cause lists which are publically circulated until further order of this Court.
6. The Respondent's reasonable costs, including his costs and expenses of complying with this order, be paid by the Applicant.
7. The Respondents may apply to the court at any time to vary or discharge this order, but if they (or any of them) want to do so, they must first inform the Applicant's attorneys in writing at least 48 hours beforehand.

Signed, dated and delivered at Ile du Port 7 November 2019.

Twomey, CJ