

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC...
CC08/2017

In the matter between

NATALIE LEFEVRE

(rep. by Frank Elizabeth)

Petitioner

and

1. BEAU VALLON PROPERTIES LIMITED

2. DRAMBOIS INVESTMENTS LIMITED

3. CONCORDIA INVESTMENTS LIMITED

4. VADIM ZASLONOV

5. YURI KHLEBNIKOV

(rep. by Alexandra Madeleine)

Respondents

Neutral Citation: *Lefevre v Beau Vallon Properties & Ors* [2020] SCSC CC08/2017

Before: Twomey CJ

Summary: loans by IBC to Seychelles Company – whether, loans fictitious, lawful and form part of the First Respondent’s liabilities - share valuation - behaviour of directors and auditors and sanctions

Heard: 31 October 2019, 19 November 2019 Submissions 20 November 2019 and 28 November 2019

Delivered: 3 February 2020

ORDER

1. The Petitioner’s shares in BVP are valued at SCR 4,028,859.20.
2. BVP is to pay the Petitioner the sum of SCR 100,000 in moral damages.
3. BVP is to pay the Petitioner SCR 200,000 for her expenses.
4. Mr. Zaslunov and Mr. Klebnikov are to be removed as directors of BVP and new directors after approval by the Court be appointed.
5. .Ms. Roberts and Pool and Patel are to be removed as auditors of BVP and new auditors after approval by the Court be appointed.

6. The whole with costs.

JUDGMENT

TWOMEY CJ

Background

- [1] On 5 October 2019, this court delivered a decision regarding a takeover bid by the Second Respondent (Drambois) and Third Respondent (Concordia) of the Petitioner's (Ms. Lefevre) shares in the First Respondent company (BVP), the alleged breach of fiduciary duties by the Fourth Respondent (Mr. Zaslonov) and Fifth Respondent (Mr. Klebnikov) as directors of the BVP and the alleged oppressive conduct by BVP and Mr. Zaslonov and Mr. Khlebnikov as directors against Ms. Lefevre, a minority shareholder.
- [2] The Court found *inter alia* that the purported transfer of shares from Concordia to Drambois was not bona fides. It also found that the actions of the directors of BVP were oppressive, unfairly prejudicial to Ms. Lefevre and constituted serious misconduct or breaches of duty. Despite these findings, the Court was not in a position to rule on the appropriate remedy in this case owing to an absence of evidence relevant to determining the value of the shares. Specifically, having found that some of the loans taken by BVP were illegal, the Court could not rely on the value of the shares identified in the independent report prepared for the Court ('the Moustache Report').
- [3] The Court accordingly made an order that Ms. Gemma Roberts, auditor at Pool & Patel, the company responsible for auditing BVP's accounts to provide to the Court documentation in support of BVP's liabilities contained in the audited reports of BVP since 2009.
- [4] On 31 October 2019, Ms. Roberts appeared before the Court – at which point a date was set for her to give further evidence. Based on the documentation provided by Ms.

Roberts, the Court made a further order that the Directors of BVP also produce further documentation in relation to these liabilities.

- [5] On the basis of the additional evidence provided to the Court in this regard since, together with the evidence presented in this case as a whole, this ruling sets out the Court's final remedies in light of the findings already made.

Evidence of Ms. Roberts

- [6] Ms. Roberts was issued a summons to witness to appear to give evidence on 31 October at 9am. The summons also requested that she 'provide the documentation in support of Beau Vallon Properties' liabilities contained in the Audited Reports from 2009.' Ms. Roberts provided further documentation to the Court. In the cover letter dated 29 October 2019, she noted that the documents are for the period 2011 to 2016, the firm having destroyed its files from prior to 2011 (after seven years). As regards the agreements for loans taken, she noted in the letter: 'The only evidence that we would have in our files directly relating to the loans is confirmation from the lenders of the balances outstanding at the end of the year. In addition to this, I have therefore included evidence that we have on how the funds were spent.' She further noted that evidence of receipt of the funds would be provided by BVP directly.

- [7] The documentation provided by Ms. Roberts are as follows (Exhibit P43).

- a. For 2011, the documents include:
 - i. The Directors Report and Financial Statements for the year ending 31 December 2011 – pp 1-10.
 - ii. Letter dated 2 May 2014 regarding the indebtedness of BVP to Fortexan Enterprises Ltd. Note: It is unclear why this is in the 2011 documentation.
 - iii. A document (no letterhead, date or signature) which appears to set out the amounts paid by Caxton to BVP from the period 2011 through 2014 pursuant to the various loan agreements between the parties. This document is also included in the 2014 documentation.

- iv. A copy of the 'fixed assets schedule [of BVP] as at 31 December 2011'.
 - v. A statement of account for 'capital work in progress' at Coral Strand.
- b. For 2012, the documents include:
- i. The Directors Report and Financial Statements for the year ending 31 December 2012 – pp 1-10.
 - ii. Letter dated 2 May 2014 regarding the indebtedness of BVP to Fortexan Enterprises Ltd. It is unclear why this is in the 2012 bundle.
 - iii. Letter dated 31 December 2012 titled Reconciliation Report on the letterhead of Caxton Trading Ltd for the total amount owing according to the loan agreement of 20 May 2011 – being Euro 11,331,793.31.
 - iv. Letter dated 31 December 2012 titled Reconciliation Report on the letterhead of Caxton Trading Ltd for the total amount owing according to the loan agreement of 1 March 2012 – being USD 107,500.00.
 - v. Further documents on work in progress.
- c. For 2013, the documents include:
- i. The Directors Report and Financial Statements for the year ending 31 December 2013 – pp 1-10.
 - ii. Letters dated 31 December 2013 titled Reconciliation Report on the letterhead of Caxton Trading Ltd for the total amount owing:
 - 1. according to the loan agreement of 20 May 2011 – being Euro 13,170,521.54.
 - 2. according to the loan agreement of 10 January 2013 – being Euro 177,798.36.

3. according to the loan agreement of 22 April 2013 – being Euro 251,668.03.
 4. according to the loan agreement of 1 March 2012 – being USD 116,500.00.
 5. according to the loan agreement of 9 January 2013 – being USD 321,759.44.
- iii. Letter (undated) regarding the indebtedness of BVP to Fortexan Enterprises Ltd as at 31 December 2013 – being Euro 1,332,656.19.
 - iv. Documentation regarding the loan agreement between BVP and Eastern European Engineering Ltd dated 1 December 2012.
- d. For 2014, the documents include:
- i. The Directors Report and Financial Statements for the year ending 31 December 2014 – pp 1-11.
 - ii. Letter dated 12 January 2015 regarding the indebtedness of BVP to Fortexan Enterprises Ltd as at 31 December 2014 – being Euro 1,416,934.23.
 - iii. A document (no letterhead, date or signature) which appears to set out the amounts paid by Caxton to BVP from the period 2011 through 2014 pursuant to the various loan agreements between the parties.
 - iv. A spreadsheet setting out the fixed asset additions for the year ending 31 December 2014.
- e. For 2015, including:
- i. The Directors Report and Financial Statements for the year ending 31 December 2015 – pp 1-11.
 - ii. Letter dated 11 January 2016 regarding the indebtedness of BVP to Fortexan Enterprises Ltd as at 31 December 2015 – being Euro 1,510,625.68.

iii. Two Claim Assignment Agreements dated 30 March 2016 between Caxton to Zakya Holdings Ltd for the debt owed by BVP.

f. For 2016, the documents include:

- i. The Directors Report and Financial Statements for the year ending 31 December 2016 – pp 1-11.
- ii. Letter dated 13 February 2017 regarding the indebtedness of BVP to Fortexan Enterprises Ltd as at 31 December 2016 – being Euro 1,604,317.13.
- iii. Letter dated 31 December 2016 titled Reconciliation Report on the letterhead of Zakya Holdings Ltd for the total amount owing:
 1. according to the loan agreement of 20 May 2011 – being Euro 9,986,184.05.
 2. according to the loan agreement of 9 January 2016 – being USD 304,269.84.
 3. according to the loan agreement of 1 March 2012 – being USD 103,319.77.

[8] At the hearing of 19 November 2019, Ms. Roberts was examined by counsel for the Petitioner. She confirmed that she signed off the audited financial statements of BVP. She explained that she was satisfied that all the liabilities of the company including their loans were genuine. She could not confirm that she saw all of the loan agreements in respect of the loans taken by BVP. She said she had ‘not necessarily’ seen documents to support the client’s assertion that the loans were genuine. She did not however consider that the loans were a high-risk area for the purposes of the audit. As a result, she stated that ‘we would not have done very much audit work on them because the loans were there definitely.’ She ascertained this from the debits and credits of the client, which all agreed. Asked whether she saw the loan agreement between BVP and any other company in 2011, she initially said that: ‘I think in 2011 we did not see it’ (p. 7 of 44). She then changed her position, saying that she was not on site, but the person on site undertaking

the audit would have seen the agreement (p. 7 of 44). She later said that they ‘definitely’ saw the loan agreement (p. 17 of 44).

- [9] The overall thrust of her testimony was that she was confident she must have satisfied herself at the time that the loans were genuine – but she could not explain on what basis she satisfied herself or on what documentation. She was certain that the loans existed. As regards where the loans came from, she said that the loan was from ‘a company’. She did not consider it part of the audit to identify the nature of the company giving the loans. She knew that the other company was an IBC, but in her opinion ‘it wasn’t part of audit to know whether to make a determination about whether the IBC was allowed to lend money or not.’ Her interest, she said, was BVP and whether the other company was legally allowed to lend the money was ‘the problem of the other company’. She acknowledged that an IBC could not engage in banking activities, but she considered that it could hold debt instruments. She went on to state that she ‘didn’t know very much about this case neither of the parties’ – one of which is her client. Asked whether she considered it strange that BVP received a very large loan without having to provide any security, she said no as ‘the majority of the companies in Seychelles operate in this way’.
- [10] She was then asked about the repayment of the loans, in particular a significant repayment in 2015 of SCR 105,893,999 (p. 28 of Exhibit 44). She could not say whether that repayment was to Caxton. She said she would have seen documents supporting that repayment, but she could not recall what documents. She said she would have been satisfied that there was a repayment at the time of the audit.
- [11] Ms. Roberts was cross-examined by counsel for the Respondents. She confirmed that, as per usual procedure, a junior staff member would have reviewed the documents and prepared the report, which she would have reviewed, asked questions, and then signed off on. She confirmed that she had no suspicions relating to the loans. She referred to the annual report of 2011, which noted that the company only operated for six months of the year because it was undertaking renovations. She said that she was satisfied that the money was received, and that the money was spent for BVP. This was where, she said,

the auditors would have concentrated their attention. She noted that she was satisfied that the moneys were spent for BVP, with a large portion going to pay Vijay and Sahajanaland contractors.

Evidence of Mr. Zaslunov.

[12] On 15 November 2019, Mr Zaslunov provided documents to the Court in accordance with the Court's order (Exhibit P44). As regards the loan funds, the cover letter notes that: 'The receipt of the funds are reflected in these bank statements – in total 20 transactions, starting from May 2011 and ending in April 2013.' The letter further notes that the funds were received from the initial lender, Caxton Trading Ltd. In March 2016, Caxton assigned the rights of all claims under the loan agreements to Zakya Holdings Ltd, which is the current lender to BVP. Finally, the letter notes the purported purpose for the loans – i.e. the renovations of Coral Strand Hotel during 2011 and 2012, during which time the hotel was closed for nine months. Attached to the letter is a 'detailed breakdown' of the funds received from Caxton, amounting to Euro 11,600,636 and USD 396,130.

[12] The documents provided include:

- a. An agreement of 30 March 2016 between Caxton and Zakya. This agreement refers to loan agreements dated 20.05.2011, 10.01.2013, and 22.04.2013. The amount of debt of the debtor on the date of entering the agreement (30 March 2016) was Euro 15,531,932.49. This is the amount owed by BVP to Zakya under the Agreement. Attached to the Agreement of 30 March 2016 is also:
 - i. An Acceptance-Transfer Act. This lists eight 'Additional Agreements', which supplement the three loan agreements identified in the Agreement of 30 March 2016.
 - ii. An undated notification to Mr. Zaslunov of the Claim Assignment Agreement and the amount owed.
- b. An agreement of 30 March 2016 between Caxton and Zakya. This agreement refers to loan agreements dated 09.01.13 and 01.03.12. The amount of debt of the

debtor on the date of entering the agreement (30 March 2016) was USD 518,403.62. Attached to the second Agreement of 30 March 2016 is also:

- i. An Acceptance-Transfer Act. This lists two ‘Additional Agreements’, which supplement the two loan agreements identified in the second Agreement of 30 March 2016.
 - ii. An undated notification to Mr. Zaslantov of the Claim Assignment Agreement and the amount owed.
- c. Bank statements of BVP from Nouvobanq from the period 2011 to 2013 showing deposits from Caxton to BVP.

Findings on the remaining issues

[8] Counsel for the Petitioner filed written submissions dated 20 November 2019. Counsel for the Respondents filed written submissions dated 28 November 2019.

[9] The Respondents set out three questions in its written submissions regarding the remaining issues before the Court. The Court adopts these questions with slight modifications and provides its findings on each below.

Are the loans fictitious?

[10] In the ruling of 15 October 2019, the Court noted its concern that some the loans taken by BVP may be fictitious. The evidence presented to this Court subsequent to its ruling of 15 October 2019 supports the existence of several loans which were made to BVP from the period 2011 to 2016.

[11] The bank statements of BVP (P44) indicate that money was deposited into the account of BVP from Caxton. Several of the deposits note: ‘PMT under interest-bearing ...’ (cut off). The Respondents submit that, in full, this is to read: ‘payment under interest-bearing loan’. The value of the loans taken are recorded in the financial statements of BVP each year under the headings ‘shareholder loans’ and ‘other loans’. No further information regarding the nature of the loans is provided in the financial statements. It is

however shown that various deposits have been made by Caxton to BVP over the relevant period.

- [12] The Court has not been provided with the loan agreements – this is most unfortunate. For loans of this amount one would expect there to be a clear paper trail. This makes it difficult to marry the amounts set out in the loan agreements with the amounts deposited in BVP’s account, as we do not know how much the loan agreements were initially for – only the date of the loan agreements and the amount owing on 30 March 2016. The loan agreements are, however, referred to in the 30 March 2016 Assignment Agreements between Caxton and Zakya – and the dates of the deposits roughly correspond with the dates of the purported loan agreements. On this front, the Court did not find the evidence presented by Ms. Roberts as auditor of the company’s accounts particularly compelling. Her testimonial evidence as to whether she or her juniors ever saw any of the loan agreements was inconsistent. She further did not appear to consider that this would have been essential before signing off the audited reports – despite the fact that the loans were for such significant sums.
- [13] The auditors have further provided ‘reconciliation reports’ which record the amount the BVP still owes pursuant to the purported loan agreements. There is also evidence of why the loans were sought and what the money was spent on – notably, the renovation of the Coral Strand Hotel.
- [14] Finally, the financial reports of BVP indicate that some repayments have been made. The financial report of 2015, for example, shows that a particularly large amount was repaid. No confirmation of this could be presented and the auditor could not confirm that repayment was made to Zakya.
- [15] The missing piece is *who* gave the loans. The Court does not know anything about the companies that gave the loans to BVP, and the precise conditions of those loans. Ms. Roberts confirmed that Caxton is an IBC. Caxton later assigned the debts to Zakya Holdings Ltd – which we have been told is also an IBC. The Court has not been presented with any further information regarding either of these companies.

[16] Nevertheless, on the basis of the evidence before it, the Court must conclude that the loans are not fictitious.

Are the loans lawful?

[17] This question requires determining whether an IBC can lend money to a Seychelles company.

[18] In the Ruling of 15 October 2019, the Court found that at least some of the loans were unlawful.

[19] The International Business Companies Act 2016 (IBC Act) stipulates that an IBC ‘shall not ... carry on banking business (as defined in the Financial Institutions Act) in or outside of Seychelles’. The Financial Institutions Act defines ‘banking business’ as ‘the business of receiving deposits of money or other repayable funds from the public and extending credits for its own account’. It is distinct from ‘banking activities’ which includes ‘extending credits, including but not limited to consumer and mortgage credit; factoring, with or without recourse; forfeiting; financing of commercial transactions; and issuing credit cards’ (section 4(1)(b)).

[20] Under the IBC Act, a company shall not be treated as carrying on business in Seychelles (and thus not be an IBC for the purposes of the Act) by reason that it ‘concludes or signs contracts in Seychelles, and exercises in Seychelles all other powers, so far as may be necessary for the carrying on of its business outside Seychelles’; or by reason that it ‘holds shares, debt obligations or other securities in a company incorporated under this Act or in a body corporate registered under the Companies Act’ (Section 5(3)).

[21] I have always understood banking as something banks do – be they banking business or banking activities. In this context although the Court takes a dim view of these paradoxical (and verging on the preposterous) provisions of the IBC Act, on the evidence now presented, the Court finds that the loans were not unlawful.

Should the loans be taken into account as BVP’s liabilities in the valuation of the shares of BVP?

- [22] The ruling of 15 October 2019 identifies at para. 250 that the Moustache Report values the shares at SCR 18.89 each as at December 2017. On the basis of that value, Ms. Lefevre's shares were worth SCR 4,028,859.20. In light of the findings in relation to the preceding two issues, this value stands.
- [23] The findings made in this ruling regarding the loans could have been reached earlier had the parties been forthcoming with evidence. When the ruling of 15 October 2019 was made, barely any evidence was available regarding the loans taken by BVP – despite the influence these had on the company's share value. The loans were questioned because of the startling lack of information before the Court as to their nature, and even existence. The company Zakya was mentioned in passing in oral testimony by one of the witnesses, but the name did not appear in any documentation provided to the Court. The company name Caxton was not mentioned anywhere. This lack of evidence made the hearings most inefficient. For instance, much time was spent at the hearing questioning Mr. Zaslonov about shareholders' loans. This was in part because the auditors noted in their letter in respect of the financial statements for the year ending 2015 that: 'The equity of the company is in deficit and the company is able to trade due to support it receives from its shareholders in the form of long term loans and advances.' The shareholder loans were miniscule, however, compared with the 'other loans' (as they are identified in the financial statements) taken by BVP: the 2015 Annual Report notes shareholders loans amounted to SCR14,459,714 – while 'other loans' amounted to SCR160,766,137. The nature of these 'other loans' has only become apparent in the most recent phase of this case. Documentation provided by Mr. Zaslonov now reveals that an IBC, Caxton, lent BVP considerable sums of money over several years. This debt was later transferred to Zakya. Suffice to say that the whole case could have been dealt with much more efficiently had the respondent been forthcoming with evidence and assisted the Court in establishing the truth.
- [24] This raises two further issues. Firstly, in relation to the IBC Act, the manner in which the legislation is drafted appears to be intended to give 'international business companies' much discretion in respect of their business dealings. For instance, and

relevant to this case, the Act clearly stipulates that an IBC cannot carry on ‘business in Seychelles’ or ‘banking business’ in Seychelles (section 5(2)). However, the Act goes on to stipulate that a company will not be treated as ‘carrying on business in Seychelles by reason only that’ it, among other things, ‘holds shares, debt obligations or other securities in a Seychelles company’ or ‘concludes or signs contracts in Seychelles’. The Act therefore purports to set strict limitations on what an IBC can and cannot do, but proceeds to limit the very scope of those limitations. This encourages opaque business dealings and complicates the work of the Court. As I have stated above these provisions make a farce of the definition of banking.

[25] Secondly, the Court wishes to make a note on the role of auditors. The purpose of having accounts audited is to ensure that the company’s financial records are accurate and that it is operating in accordance with the law. Auditors thus play a fundamental role in ensuring confidence in the system on the part of shareholders and the public. If auditors come to be seen as simply ‘rubber-stamping’ the financial statements prepared by companies owing to a failure to properly investigate company records – or to keep records of that, this confidence is eroded. It also, again, makes the work of the Court more difficult. The Court therefore sends a strong word of caution to auditors to discharge their mandate diligently and with maximum rigour. In this context Ms. Roberts is strongly reprimanded and her firm Pool and Patel is to take note of the Court’s finding in this respect.

Damages

[26] It is necessary now to turn to the question of damages. This Court has found that the actions of BVP’s directors, namely Ms. Zaslonov and Mr. Khlebnikov, were oppressive, unfairly prejudicial to Ms. Lefevre and constitute serious misconduct or breaches of duty which were detrimental to BVP as a whole.

[27] In her amended petition, Ms. Lefevre sought judgment in her favour and prayed that the Court make the following orders:

1. An order appointing Halpern and Woolf as inspectors to investigate the affairs of BVP and the conduct of the directors of BVP and to report to the Court;

2. 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 BVP to disclose the same to the above inspectors and to allow the inspectors to make copies;
3. An order preventing the disposal of or dealing with any assets including but not limited to any bank accounts or rights in land belonging to BVP until after the investigation;
4. An order preventing the 1st, 2nd, 3rd, 4th, and 5th Respondents from undertaking further dealings with BVP, more particularly, the shares and assets of BVP and not to incur any new liability on behalf of BVP by taking or giving loans from the capital of BVP until further orders from the Court;
5. An order declaring any transfer of assets of BVP made without proper authority of the company void and that the assets be returned to the company forthwith; namely the purported shares allegedly sold by Concordia to Drambois;
6. An order that all persons holding any assets of BVP shall forthwith return the same to the Company;
7. An order that any person found to have acted contrary to law with regard to the conduct of the affairs of BVP be dealt with as the law prescribes;
8. An order that Halpern and Woolf value the shares of BVP and that of Ms. Lefevre;
9. An order for damages jointly and severally against the 2nd, 3rd, 4th and 5th Respondents in the sum of SCR 1,000,000 for inconvenience, distress, anxiety, mental anguish and trauma;
10. An order that the Respondents are jointly and severally be liable for costs of this petition; and
11. Any other order as the Court may deem fit in the circumstances of the case.

- [28] With respect to moral damages, the Petitioner sought damages in the sum of SCR1,000,000 for inconvenience, distress, anxiety, mental anguish and trauma. The Court understands this to be a request for moral, or non-pecuniary, damages. Section 201(3) (e) of the Companies Ordinance does not specifically refer to moral damages – unlike Article 1149 of the Civil Code. However, this Court does not consider that section 201(3) (e) excludes such damages. This is informed by the generality of the powers granted to the Court under section 201 and the widely held position that damages encompass both pecuniary and non-pecuniary damages.
- [29] The amount claimed by Ms. Lefevre for moral damages is high, and no further particulars were provided to indicate how she arrived at this amount. The Court is not aware of any jurisprudence that provides guidance as to the application of damages under section 201 of the Companies Ordinance. It is trite law that the quantum of compensation granted in legal cases will depend on the facts of each case and no rigid formula should be involved. The Court takes as its starting point the awards granted for personal injury pursuant to Article 1149 of the Civil Code.
- [30] These cases are not apposite to the present facts, but the damage and trauma sustained in these cases gives an indication of where the Court pitches moral damages. In *Geers v Dodin* (Civil Appeal SCA 7/2017) [2019] SCCA 9 (10 May 2019), the Court of Appeal reduced an award of damages granted by the Supreme Court in a personal injury case, granting the respondent on appeal SCR150,000 for moral damages arising out of a road traffic accident. At the extreme (though slightly outdated), in *Jacques v Property Management Corporation* (385 of 2006) [2011] SCSC 13 (22 February 2011) [2011] SCSC 13, the Plaintiff sustained horrific injuries resulting in tetraplegia and was granted SCR100,000 for moral damages. This gives an indication that the jurisprudence tends to pitch moral damages at the lower end, and certainly much lower than the figure sought by the Petitioner in this case.
- [31] Turning to the evidence presented in support of the damages sought, Ms. Lefevre gave evidence that the whole ordeal has caused her extreme stress and mental anguish. Ms. Lefevre also gave testimonial evidence that she intended to freeze her eggs, but that she

had not been able to do so given the stress caused by this case. This was not specifically pleaded, however, and the Court does not consider this to be sufficiently linked to this case.

[32] This Court accordingly orders moral damages of SCR100, 000.

[33] In respect of her expenses – travel and rental car -Ms. Lefevre has not specifically sought in her petition that the Court grant damages for the costs she has incurred by virtue of bringing this case. Section 71 of Code of Civil Procedure provides:

‘The plaint must contain the following particulars: ... (e) a demand of the relief which the plaintiff claims.’

[34] Consistent with this, the Court is mindful of the recent Court of Appeal decision in *Cerf and Surf Properties v Davidson & Ors* SCA 12/2017 (17 December 2019), where the Court stated: ‘The award made for the closing of the deceased’s estate in Dubai is *ultra petita* as there was no claim in this regard in the Plaint, nor was it set out under ‘Particulars of loss and damage’ in ... the Plaint.’ The Court of Appeal thus set aside the grant of damages for the cost of winding of the estate.

[34] The present case is distinct in two respects. First, the plaint in *Cerf and Surf* (supra) did not include a request for such orders as the Court sees fit – such as was made in this case. Secondly, it is clear from section 201 of the Companies Ordinance that the Court has wide powers to make ‘with a view to bringing to an end or remedying the matters complained of, make such order as it think fit for regulating the conduct of the company’s affairs in future’ (section 201(2)). Subsection (3) goes on to note, ‘Without prejudice to the generality of its powers under the last foregoing subsection, the court may order that ... (e) any person shall pay damages or compensation ... to the applicant for any loss suffered in consequence of that person’s misconduct or breach of duty.’ The Court thus has wide powers to grant such remedies as it sees fit in the present context.

[35] Ms. Lefevre has clearly suffered losses from having brought this claim and needs to be compensated. She gave testimonial evidence that she had incurred expenses arising from

bringing the petition, including for flights to Seychelles and car rental (see pg. 36 of 37, 13 June 2018). It is common ground that she does not usually reside in Seychelles.

[36] The Court thus considers it appropriate to grant compensation to Ms. Lefevre. We have been provided no evidence of her expenses – where she was flying from, cost of airfare, cost of rental car, for how long. In the absence of this, the best the court can do is to give an amount it considers fair in the circumstances. I therefore grant the sum of SR200, 000.

[37] Having found in favour of the petitioner, costs are awarded in her favour.

[38] Finally, with regard to the behaviour of Mr. Zaslouov and Mr. Klebnikov and the Petitioner’s prayer for an order that any person found to have acted contrary to law with regard to the conduct of the affairs of BVP be dealt with as the law prescribes and the finding of the Court that their behaviour was oppressive, unfairly prejudicial to Ms. Lefevre and constituted serious misconduct or breaches of duty which were detrimental to BVP as a whole and contrary to the provisions of the Companies Ordinance, it is noted that section 201 (3) (b) provides that:

“(3) Without prejudice to the generality of its powers under the last foregoing subsection, the court may order that: -

...

(b) a director, managing director or other officer or an auditor of the company shall be removed from any office, appointment or employment held by him under the company or its holding company or subsidiary, and that some other person nominated or approved by the court shall be appointed to any such office, appointment or employment in his place;”

[39] In this respect I order that both Mr. Zaslouov and Mr. Klebnikov be removed from office as directors of the BVP and that other directors as approved by the court be appointed to BVP within six months hereof.

[40] In this same respect, the Court also orders that Pool and Patel and in particular Ms. Roberts be removed as auditor of BVP and another auditor with the approval of the court be appointed within six months hereof.

[41] To summarise, the Court makes the following orders:

1. The Petitioner's shares in BVP are valued at SCR 4,028,859.20.
2. BVP is to pay the Petitioner the sum of SCR 100,000 in moral damages.
3. BVP is to pay the Petitioner SCR 200,000 for her expenses.
4. Mr. Zaslouov and Mr. Klebnikov are to be removed as directors of BVP and new directors after approval by the Court be appointed.
5. Ms. Roberts and Pool, and Patel are to be removed as auditors of BVP and new auditors after approval by the Court be appointed.
6. The whole with costs.

Signed, dated and delivered at Ile du Port on 3 February 2020

Twomey CJ