

51

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 550
MC 101/2019

In the matter between:

STEFAN ADRIAN ILIESCU
(rep. by Frank Elizabeth with Ms A.Benoiton)

Petitioner

and

STEFAN RENATO PETRESCU
(rep. by Serge Rouillon)

Respondent

Neutral Citation: *Iliescu v Petrescu* (MC 101/2019) [2021] SCSC 550 (25 August 2021)
Before: Burhan J
Summary: Beneficial ownership in IBC Company, change of beneficial ownership, expert report on authenticity of signature
Heard: 25 Jan., 10 Dec., 11 Dec. 2020, 8 Mar., 9 Mar., 10 Mar., 11 Mar., 12 Mar., 26 Apr., 25 May – June 2021
Delivered: 25 August 2021

ORDER

The Petitioner has established his case on a balance of probabilities and this court accepts the case of the Petitioner and proceeds to enter judgment in favour of the Petitioner as set out in prayers 1 to 4 of the petition together with costs.

JUDGMENT

BURHAN J

[1] The Petitioner Mr. Stefan Adrian Iliescu filed a petition against the Respondent Mr. Stefan Renato Petrescu on the 4th day of November 2019 seeking the following reliefs:

- 1) *That the purported change of ownership of the company is unlawful and void ab initio;*
- 2) *That the Petitioner is the sole Beneficiary of the company and Company Services Ltd is the sole Director and any change in the company register to reflect the Respondent as and /or Beneficial Owner and the Certificate of Incumbency dated 19th September 2019, to be null and void and of no effect;*
- 3) *Direct the Registered Agent, All About Offshore(Seychelles) Ltd to amend the its register to reflect the Petitioner as the sole beneficial owner of the company and Company Services Ltd as sole director of the company;*
- 4) *Direct the Registered Agent, All About Offshore (Seychelles) Ltd to issue a new Certificate of Incumbency showing that the Petitioner is the sole beneficial owner of the company and Company Services Ltd the sole Director of the Company;*
- 5) *Award damages in favour of the Petitioner and against the Respondent in the sum of \$100,000.00 for prejudice, cost of travel, accommodation, food and beverage and unlawful interference with the Petitioner's property.*

Background

- [2] The main dispute is regarding the ownership of an International Business Company (“IBC”) Global Business Group Ltd (“GBG”) incorporated as IMO INVEST LIMITED on 22 April 2010 and subsequently having changed its name to GBG on 18 May 2010. The Registered Agent of the company is All About Offshore (Seychelles) Limited (“AAOL”) represented by Mr. Vandervalk.
- [3] GBG owned the majority of the shares in the Romanian company GBG BUSINESS CRIAD S.R.L., (“CRIAD”), incorporated in December 2010. GBG owned majority of the shares in CRIAD from January 2011 until November 2011 when the Respondent transferred all the shares to himself by way of proxy (relying on a Power of Attorney issued for him by GBG). This transfer was annulled by the Romanian Court Decision dated 13 February 2019. The Respondent appealed the decision in Romania.

- [4] After the decision of the Romanian Court on the 13 February 2019, the Respondent produced Change of Beneficial Owner's Declaration dated 12 September 2019 allegedly signed by the Petitioner to the Registered Agent AAOL, in order to change the ownership of GBG to the Respondent. The Petitioner states that he had never signed this document and alleges that it is a forgery.
- [5] The change in GBG ownership was effected on the 13 September 2019 and a Certificate of Incumbency was issued stating that the sole director and shareholder of GBG is the Respondent. The Respondent then produced this Certificate of Incumbency in the Romanian Court during the appeal proceedings but the learned Judge in Romania noticed the irregularity and acquiesced to the Petitioner's motion to adjourn the appeal to allow the parties to resolve the issue of ownership of GBG in a Seychelles Court first, before continuing the appeal proceedings in Romania.

Submissions

Petitioner's Case

- [6] The Petitioner contends in the Petition that he was at all material times the beneficial owner of GBG and the Respondent was at all material times an employee of the Petitioner, namely, driver, but was later promoted as administrator of Romanian CRIAD, the company that also belongs to the Petitioner.
- [7] The Petitioner in the petition states that the name CRIAD came from combination of Petitioner's wife name Cristina and his own second name – Adrian.
- [8] It is averred in the petition that the Petitioner was the beneficial owner since the incorporation of the GBG in 2010. Later, on 17 January 2019, Mr. Sammy Freminot was the registered holder of 100 shares of USD 1,000 each holding them as a nominee for the Petitioner. The Petitioner admits he also signed a Management Service Agreement between Company Services Ltd and himself for provision of nominee director and shareholder services and registered office/agent service.
- [9] The Petitioner avers that in 2015, he filed a lawsuit against the Respondent in Romania with regards to transfer of shares in Romanian Company GBG CRIAD. He alleges that in 2011 the Respondent unlawfully, using the Power of Attorney, transferred the shares in

GBG CRIAD to himself, effectively stealing the Petitioner's company. The Petitioner won the case on the 13th February 2019 when the court annulled the General Meeting of Shareholders including the decision regarding share transfer. On the 15th May, the Respondent appealed against the said judgment.

- [10] The Petitioner avers that communication with the Registered Agent AAOL in Seychelles was done through the Petitioner's Agent in Romania, namely Dema Partners, owned by Mr. Florin Manescu. It is averred that both Registered Agent and Mr Sammy Freminot were advised of the court proceedings and the judgment and on the 26th July 2019, GBG passed a company resolution appointing lawyers to represent the company in the proceedings at the appeal stage.
- [11] The Petitioner further states that on the 19th September 2019, the Registered Agent, despite having knowledge of the ongoing court proceedings, at the instance of the Respondent issued Certificate of Incumbency, which stated that the Respondent was the sole director and shareholder of GBG. It is averred that this was done based on a fraudulent and forged documents presented to the Registered Agent by the Respondent. Therefore it is alleged the Respondent effectively stole the Seychelles GBG company from the Petitioner.
- [12] On the 28th October 2019, the Respondent produced the Certificate of Incumbency to the court in Romania to show that he was the owner of GBG. The Petitioner states that this was the first time he found out about the change in ownership as the Registered Agent had not informed neither him nor Dema Partners regarding the change even though as late as October 2019, the Corporate Officer at the Registered Agent was still in correspondence with the Petitioner's agent and was invoicing the company.
- [13] The Petitioner has also made a formal criminal complaint to the police in Romania regarding the forged document and criminal prosecution has been initiated against the Respondent in Romania. Furthermore, in October 2019 State Prosecutor's Office has charged the Respondent with several criminal offences including Fictitious Assignment, Deception, Embezzlement and Fraudulent Administrative Management.
- [14] In summary, the Petitioner's case is that he is the 'brains of the operations' of the business conducted by the GBG CRIAD, which was 90% owned by the Seychelles IBC – GBG and both companies ultimately belong to him.

Respondent's Case

- [15] In his Affidavit in Response the Respondent states that he was approached by the Petitioner in 2010 and the Petitioner proposed a partnership in real estate and construction business and for the Respondent to invest to expand his own business. The Respondent states that the Petitioner's statement that the Respondent was his employee is a lie and on the contrary the Petitioner was employed by CRIAD for a period of time (Exhibit D8).
- [16] The Respondent avers that the name CRIAD is actually a combination of his son's name Adrian and his wife's name Cristina (Birth Certificate of son Marius-Adrian is attached as Exhibit D13; Marriage Certificate attached as Exhibit D12. The Respondent avers that the Petitioner is not married and has a child with "*certain Mrs. Cotarcea Pompilia Gabriela*", to whom he does not pay alimony.
- [17] The Respondent avers regarding the commencement of the business, that the Petitioner suggested that a Romanian company be set up with the majority shareholding company outside of Romania for financial and fiscal advantages and also for the protection of his personal properties. He avers that the Petitioner proposed to set up an offshore company in Seychelles where the name of the Respondent would not appear as they will use the services of director and nominal shareholder for the Respondent's protection; and the Respondent will be the representative of the company based on a power of attorney and will be able to make all the decisions on behalf of the company. The Respondent also states that at the time of setting up the companies, he had no knowledge about what offshore companies and what nomination service meant.
- [18] The Respondent states that later he found out that the intention of the Petitioner was dishonest, "*namely to let me make all the investment and bear all the risk [...] and if the business would be profitable – which happened indeed – he can steal the company very easily with the investments and real estate without me being able to do something about it because my name does not appear anywhere*" (neither in Seychelles GBG nor in Romanian GBG CRIAD).
- [19] The Respondent states that his relationship with the Petitioner became less friendly and at the end of 2010, he became sceptical and alert of the whole arrangement and structure and due to that and other reasons specified in the Affidavit, decided to get more involved in

Romanian GBG, therefore, decided to *“take over the administration of the company and 500 shares and to become associate in the company CRIAD SRL”*.

- [20] The Respondent states that the Petitioner *“followed the upward trend of CRIAD SRL and seeing that it goes very well decided to try taking it through various forgery, fraud”* and filed all the civil and criminal cases in Romania on behalf of Seychelles GBG in order to take over the management of CRIAD.
- [21] The Respondent avers that in 2019, he decided to come to Seychelles to find out the situation with the offshore company. He states that he met with the Registered Agent of the company and upon discussing the situation, he decided that the Petitioner has committed fraud and kept it hidden. The Respondent avers that he has confronted the Petitioner with his ‘discovery’ and they agreed by mutual consent to end the conflict and make the changes in the structure of the Seychelles GBG. The Respondent suggests that after the changes were made, even though the Petitioner gave his consent regarding *“the modification of the real beneficiary”*, the Petitioner now is trying to explain that, *“he is the victim and to come up with all kinds of lies and false acts in order to try to make everything look like it was all fraud he knew nothing about, and that in fact I am the one who wants to steal his company thus trying to cover his own illegalities and frauds”*.
- [22] The Respondent also avers that he is a businessman, clean, with a nice and legal business in Romania as opposed to the Petitioner, who, as alleged by the Respondent, was prosecuted in several criminal cases: car theft, drugs and other offences. The Respondent also alleges that the Petitioner lied in both Romania and Seychelles courts trying *“by fraud and forgeries to take control over both companies [...]”* (Romanian CRIAD and Seychelles GBG). The Respondent asks this court to examine the documents attached, among which as averred by the Respondent, there is a statement of the Petitioner given in front of the Romanian criminal investigation bodies where the Petitioner *“acknowledges that he is not the owner of the company in Seychelles – GBG LTD”*.
- [23] The Respondent further states that he is advised by his legal Counsel that *“there is no concept of trust or trustees in the domestic laws of Seychelles therefore Mr. Freminot held shares for his own benefit and not for any third party from the beginning”*.

- [24] Prior to addressing the issues of the case, it should be pointed out the Exhibit D7 and D8 which were produced as proof that the Petitioner was employed by CRIAD state a different company number (J40/3841/2012), therefore it appears that the Petitioner was employed not by CRIAD in dispute as its number is J23/3209/2010.
- [25] The Respondent and the Petitioner make several criminal allegations against each other, however, parties produced Certificates of Criminal Record indicating that both of them are not registered in the criminal record P40 and D17.

Preliminary issues

- [26] It should be noted that the Petitioner submits that the Respondent has not filed any statement of defence or affidavit in response to the Petitioner. This is incorrect as an Affidavit in Response has been filed and is dated 16th January 2020.
- [27] The Respondent challenges admissibility of several documents produced by the Petitioner. Several foreign documents were produced in court subject to being apostilled. After examining the Petitioner's Exhibits, the Romanian documents (apart from Certificates of Criminal Record) are translated and with apostille. Section 28 of the Evidence Act deals with the foreign documents and indicates that documents from foreign country with apostille are admissible in the Seychelles Court.

Beneficial Owner concept in terms of the International Business Company

- [28] The next contention of learned Counsel Mr. Rouillon is that under Seychelles law Sammy Freminot, who was the shareholder at the time of the transfer of shares, was the legal owner of the shares "*legally answerable to no one*". He further submits that the concept of ultimate beneficial owner did not exist as there was no such concept in the International Business Companies Act (IBC Act) 1994 Act and was only introduced in the IBC Act of 2016. Therefore, according to learned Counsel for the Respondent there could not have been a beneficial owner for GBG from incorporation to the year 2016.
- [29] Learned Counsel Mr. Rouillon further submits in his written submissions that there is no concept of domestic trusts in Seychelles or nominee relationship except for specific statutory exceptions. He cites the decision in *Hallock v D'Offay* (1983-1987) 3 SCAR (Vol I) 295, 301, 304; Dr. Mathilda Twomey's book *Legal Mettissage in a Micro Jurisdiction:*

The Mixing of Common Law and Civil Law in Seychelles. Wellington, New Zealand, City Print, 2017 and passage from communication from Attorney Conrad Lablanche to the Chairman of the Seychelles Bar Association. He concludes that in light of the above, whether or not Petitioner's signature on the Change of Beneficial Owner's Declaration is genuine, it does not come into play as Sammy Freminot has freely and voluntarily transferred the shares and ownership to the Respondent and that the 'gentlemen's agreement' does not come up for the consideration under Seychelles laws and therefore the Petition should be dismissed on that ground alone.

[30] Learned Counsel further proceeds to state:

"Petitioners' Counsel present us with the 1994 IBC and the International Trusts Act to support his claim. The 1994 IBC act had been repealed and superseded by the 2016 Act and provided no special procedure for deciding a suit such as this".

[31] Learned Counsel for the Respondent submitted that beneficial ownership concept was introduced and therefore exists under 2016 Act. Learned Counsel for the Respondent further submits that the International Trusts Act 1995 does not apply in the present case and reiterates that, "[...] *there is no concept of trust in Seychelles and the idea of a nominee holding something for someone else has been dealt with strictly by the courts that there is no concept of domestic trusts in Seychelles*".

[32] Learned Counsel for the Petitioner in his written submissions actually relies on provisions of 2016 Act. He further refers to provisions of the International Trust Act and Article 825 of the Civil Code of Seychelles with regards to fiduciary relationship between the beneficial owner and Sammy Freminot, breach of trust, acting honestly, diligently and in good faith. This Court will now proceed to set down the law relating to domestic trusts in the Seychelles.

[33] The case of *Hallock v D'Offay* (1983-1987) 3 SCAR 295, noted by the Respondent's Counsel, dealt with the property division between cohabiting couples and stated at page 296 of the Court of Appeal Reports:

"The Court of Appeal unanimously held that the law of trusts having no place in Seychelles, the doctrine of constructive trusts could not be applied to cohabiting couples as in the case of Eves v. Eves [1975] WLR 1338"

[34] The decision was held prior to the enactment of the International Trusts Act 1995. The International Trusts Act applies to International Trusts where person establishing the trust are not resident of Seychelles and as section 4(1)(c) provides, property held in trust does not include:

“(i) any property situated in Seychelles;

(ii) any shares, debentures, or any interests in any body corporate other than a corporate body incorporated under the law of a country other than Seychelles or an International Business Company or another international trust.”

[35] Section 5 further states that, “[s]ubject to this Act, an international trust is valid and enforceable in Seychelles”. Therefore, firstly, International Trust is valid in Seychelles. Secondly, the International Trust is not a domestic trust, it cannot include property located in Seychelles and shares in Seychelles companies, which are incorporated under the Companies Act, 1972 not the IBC Act; and trust property may include shares of an International Business Company (section 4(1)(c)(ii) above) incorporated under the IBC Act.

[36] The concept that does not exist in Seychelles and is referred to by the Respondent’s Counsel is domestic trust, holding property in Seychelles i.e. shares in corporations/companies incorporated in Seychelles, there is no contradiction with section 4(1)(c)(ii) regarding shares in the IBC, as an IBC is technically not a local Seychelles company, it is an International Business Company which under section 5(2) of the IBC Act 2016 could not have carried on business in Seychelles and owned immovable property in Seychelles and not a company incorporated under the Companies Act.

[37] Further the assets in dispute in the present case are shares in the Romanian company CRIAD, which are owned by the Seychelles GBG. The assets in dispute are therefore not located in Seychelles and the issue of domestic trusts does not arise.

[38] Learned counsel for the Respondents submissions that the ‘gentlemen’s agreement’ is not enforceable under Seychelles law is not correct. Firstly, even oral agreements can be enforceable under the Civil Code. Secondly, the agreement has nothing to do with domestic trusts as the assets in dispute are not located in Seychelles and dispute involves an IBC not a domestic company. Thirdly, as pointed out by learned Counsel for the Petitioner, Article 825 of the Civil Code clearly allows fiduciary relationship where fiduciary can “hold,

manage and administer the property. . . as if he were the sole owner of the property”.

Article 825 states:

Article 825: “The functions of the fiduciary shall be to hold, manage and administer the property, honestly, diligently and in a business-like manner as if he were the sole owner of the property. He shall be bound to follow such instructions, directions and guidelines as are given to him in the document of appointment by the unanimous agreement, duly authenticated, of all the co-owners or by the Court. He shall have full powers to sell the property as directed by all the co-owners, and if he receives no such directions, to sell in accordance with the provisions contained in articles 819, 1686 and 1687 of this Code and also in accordance with the Immovable Property (Judicial Sales) Act, Cap. 94 as amended from time to time.”

- [39] The wording of the Nominee Shareholder’s Declaration (Exhibit P6) is similar in nature. The Declaration provides that the nominee holds the shares as nominee for the owner and undertakes to transfer or deal with shares in such manner as the owner directs. The Nominee Shareholder Declaration in the present suit uses terms such as ‘trustee’ and ‘trust’. Trust or Trust Deed can be a specific instrument created under the relevant provisions of the law or it can also describe the fiduciary relationship between the parties. If one looks into the purpose of the Nominee Shareholder’s Declaration, whether or not we take the words ‘trust’ or ‘trustee’ into account, the purpose of this document is to establish that a particular person (nominee/trustee/fiduciary) holds the property on behalf of the owner and is authorised to perform certain dealings with the property as directed by the owner. Unless this document contradicts the law, which as noted above it does not, it creates and obligation upon the nominee, which he acknowledges by signing the document.
- [40] While the express term beneficial owner was introduced into IBC Act only in 2016, the concept of beneficial ownership has already existed for the Corporate Services Providers in Seychelles. For instance, section 1 of Schedule 2 Code of Practice of Licensees of International Corporate Service Providers Act, 2003 (the “ICSP” Act) Act 10 of 2003; S.I. 10 of 2004 S.I. 14 of 2005; Act 29 of 2009; Act 21 of 2011; S.I. 123 of 2014 places a duty on the licensee to identify beneficial owner of each company. Further, Section 6(1) and 6(4) of the ICSP Act also places a duty of the licensee to inform the authority regarding the change in beneficial ownership of the licensee company.
- [41] Furthermore, the Code for International Corporate Service Providers 2013 version and 2019 version both have references to the term ‘beneficial owner’: under section 10, section 12 and section 21.

[42] The abovementioned provisions illustrate that the concept of beneficial owner is not alien to the offshore industry in Seychelles.

[43] Section 355 of the IBC Act 2016 provides the definition of the beneficial owner; section 356 states that a company shall keep a register of beneficial owners; under section 358 the Court may order the rectification of the register of beneficial owners and “*determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of beneficial owners . . .*”; and section 360 relates to “*relevant change*” in beneficial ownership. The Petitioner relies on section 358 and also cites the abovementioned provisions in his written submissions. Relevant sections provide:

“PART XX OBLIGATIONS RELATING TO BENEFICIAL OWNERS

355. (1) In this Part –

“beneficial owner” means, subject to subsections (2), (3) and (4), any individual (excluding a nominee who acts on behalf of another) who in respect of a company –

(a) ultimately owns (directly or indirectly and whether alone or jointly with another person or entity) more than 25% of the shares in the company;

(b) exercises (directly or indirectly and whether alone or jointly with another person or entity) ultimate control over more than 25% of the total voting rights of members in the company;

(c) is entitled (directly or indirectly and whether alone or jointly with another person or entity) to appoint or remove a majority of the directors of the company; or (d) is otherwise entitled to exercise or actually exercises control over the company or its management;

[...]

“register of beneficial owners” in relation to a company, means the register of beneficial owners referred to in section 356(1); and

“registrable particulars” means, in relation to a company, the particulars referred to in section 356(1)(a) to (d) inclusive.

[...]

(5) For the purposes of subsections (3)(c) and (4)(c), “control” means a power, whether exercisable alone, jointly with another person or with the consent of another person, by law or under the trust instrument or foundation, charter or regulations, as the case may be, to –

(a) dispose of, advance, lend, invest, pay or apply property of the trust or foundation;

(b) vary the terms of the trust instrument or foundation's charter or regulations;

(c) add or remove a person as a beneficiary

(d) appoint or remove trustees, protectors or councillors, as the case may be; or

(e) direct, withhold consent to or veto the exercise of a power referred to in paragraph (a),

(b), (c) or (d).

356.(1) Subject to subsection (3), every company shall keep at its registered office in Seychelles a register to be known as a **register of beneficial owners**, and enter in it the following information –

- (a) the name, residential address, date of birth and nationality of each beneficial owner of the company;
- (b) particulars of each beneficial owner's beneficial interest and how it is held;
- (c) the date on which a person became a beneficial owner of the company; and
- (d) the date on which a person ceased to be a beneficial owner of the company

[...]

358 (1) If-

- (a) information that is required to be entered in the register of beneficial owners is omitted from the register or inaccurately entered in the register; or
- (b) there is unreasonable delay in entering the information in the register a beneficial owner or member of the company, or any other person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified.

(2) On an application under subsection (1), the Court may –

- (a) either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register of beneficial owners, and may direct the company to pay all costs of the application and any damages the applicant may have sustained;
- (b) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of beneficial owners, whether the question arises between –
 - (i) two or more beneficial owners or alleged beneficial owners; or
 - (ii) between one or more beneficial owners or alleged beneficial owners and the company; and
- (c) otherwise determine any question that may be necessary or expedient to be determined for the rectification of the register of beneficial owners.

360. (1) In this section, a "relevant change" to relation to a person occurs if –

- (a) **the person ceases to be a beneficial owner in relation to the company;** or
- (b) any other change occurs as a result of which the registrable particulars stated for the person in the company's register of beneficial owners are incorrect or incomplete.

(2) Within 30 days of a person becoming a beneficial owner in relation to a company he shall give written notice to the company of the registrable particulars relating to him.

(3) If a relevant change occurs in relation to a person, he shall within 30 days of the relevant change give written notice to the company of –

- (a) the relevant change;
- (b) the date on which it occurred; and
- (c) any information needed to update the company's register of beneficial owners.

(4) Within 30 days of a person receiving a notice given by the company under section 359 he shall comply with such notice by providing in writing to the company the information requested in the notice

[...]” (emphasis added)

- [44] From the above provisions, it is clear that at least at the time of disputed transfer of ownership in GBG in 2019 the concept of the beneficial ownership existed.
- [45] The next issue to decide is who was and presently is the beneficial owner of GBG.
- [46] The corporate set of documents of CRIAD (Exhibit 49 and 50) indicates and gives details of the structure of CRIAD. In December 2010 when the company was incorporated, sole shareholder and administrator of the company was Mr Grosu. Set of documents also encloses the paying-in slip confirming payment for the issued shares from Mr Grosu. In January 2011 the shareholders of the CRIAD were GBG, holding 90% of shares and Mr. Grosu, holding 10% of shares. Mr. Petrescu was the administrator of the company. Corporate set of documents marked D2 indicate that share capital was increased as on 16th November 2011 the shareholders of the company were GBG (85.72%), Mr. Grosu (9.52%) and Mr. Petrescu (4.76%). Mr. Petrescu was still the administrator. Corporate set of documents dated 30th November 2011 (Exhibits D4 and D12) shows that structure of CRIAD changed to Mr. Petrescu being sole shareholder and administrator. Documents transferring the shares were signed by Mr. Petrescu as proxy for GBG and Mr. Grosu. Proof of payment for the shares is not enclosed. Court decision pronounced on 13 February 2019 (Exhibit P45) annulled the 30 November 2011 transfer of shares and restored the parties in the "*previous situation*".
- [47] In respect of GBG, the Order Form from Dema Partners addressed to the AAOL (Exhibit P51) shows that at the time of incorporation of the GBG in 2010, intended owner was the Petitioner Mr. Adrian Iliescu. The ownership was by way of beneficial ownership and not direct shareholding, executed by Nominee Shareholder's Declaration dated 22 April 2010 (Exhibit D21). The initial nominee shareholder and director of the company was Company Services Ltd (Exhibit P2, also see Register of Directors (part of Exhibit 18)). The shares were transferred to another nominee, Mr. Sammy Freminot on the 21 April 2017 (Exhibit P22, also see Register of Shareholders, part of Exhibit 18).
- [48] The beneficial ownership changed at some point from the Petitioner to Mr. Vasile Voicu (document regarding change is not provided) and then back to the Petitioner Adrian Iliescu on the 17 January 2019 (Exhibit P15) executed by Change of Beneficial Owner's Declaration document. Shares were held by Mr. Freminot as a nominee for Mr. Iliescu

(Exhibit P6). Management Services Agreement (Exhibit P7) was signed between Company Services Ltd as a nominee director and the Petitioner.

- [49] The disputed change in the structure of the company occurred on 13 September 2019 when the nominee shareholder Mr. Freminot transferred shares to the Respondent Mr. Stefan Petrescu and the Respondent was also appointed as director (Exhibit P18). With regards to share transfer, Mr Freminot was a nominee shareholder and held shares “*UPON TRUST, and as nominee for Stefan-Adrian Iliescu [...] (“the Owner”)*” (P6), and could transfer the shares “*in such manner as the Owner shall from time to time direct*”. Therefore, such direction was needed from the Petitioner before the shares could have been transferred by Mr. Freminot. Under section 360 of the IBC Act 2016 cited above, when the change in beneficial ownership occurs, a person in relation to whom the change occurs needs to give notice to the company Notice must be given by a person ceasing to be a beneficial owner and notice must be given of becoming a beneficial owner. The procedure and documents required for the change of beneficial owner was also described by Mr. Vandervalk during court proceedings (page 23 of the Court Proceedings on 12 March 2021 at 2 PM), in reply to the request from the Financial Services Authority (Exhibit P55) and also in the email to Ms. Lupu (Exhibit P54).
- [50] The original of document Change of Beneficial Owner’s Declaration signed by both the Petitioner and the Respondent was provided to AAOL (Part of Exhibit 18), original was produced in Court during Proceedings on 12 March 2021 at 10 am (page 27 of the Transcripts), marked as P18(d) and original was given back to Mr Vandervalk. The document expressly states that Mr. Iliescu as beneficial owner of GBG declares that Mr Petrescu now owns all the interests in the company and further declares that Mr. Iliescu no longer holds any interest in GBG. It is this document that the Petitioner avers is a forgery and that he has never signed it. He submits the Extrajudicial Criminal Expert Report (Exhibit P20 and P20(a)) in support of his averment.
- [51] From the provided documents of both companies it is clear that whoever owns GBG company, owns majority of CRIAD company (as transfer of shares to Mr Petrescu was annulled and GBG was restored as majority shareholder). According to the documents up to disputed transfer of shares, the owner of GBG was initially the Petitioner, he ceased to be the owner at some point and became once again in January 2019.

Expert Report

Challenge of the Report by the Respondent

- [52] Learned Counsel for the Respondent has challenged the Extrajudicial Criminal Expert Report (Exhibit P20 and P20(a)), prepared by Criminal Expert Preda Nicolae by stating this in his submissions regarding the Report:

“Any expert report the other side wished to produce should have been brought and produced by the expert who must be subject of rigorous cross examination since I was instructed the report filed by Petitioner is bogus and of little value if any and its production should have been complied strictly with the Evidence Act and our general rules of admissibility and hearsay evidence exclusions”

- [53] The Respondent, when asked about the report during the proceedings, stated at page 27 Court Proceedings on 12th March 2021 at 10:00AM:

Q: Can I just ask was that person expert appointed by a Court or a Judge?

A: No

Q: Do you know who hired him?

A: Mr. Iliescu, and he paid him as well.

Q: And did you ever get a chance to question that expert?

A: No.

- [54] Admissibility of the foreign documents in accordance with the Evidence Act has been addressed and the Expert Report is translated and with an apostille. The meaning of the Respondent’s statement regarding the payment by the Petitioner is not clear – either it is insinuated that the Report is not true/corrupted or the Petitioner has simply hired an independent expert and paid for his services to produce an independent report.

- [55] Under subheading *1. Affidavit evidence* the Respondent’s Counsel notes extract from the decision in *Roselie & Ors v Roselie* (SCA 41/2018 (Appeal from CS 112/2014) SCSC 645)) [2021] SCCA 9 (30 April 2021) which dealt with the issue of whether a judge may make determination on whether signature is genuine and emphasised that *“justice would be better served by the assistance of an expert”*. The Court in *Roselie & Ors v Roselie* at paragraph [31] cited decision in *Charles Lucas v Marie Georges* (Civil Appeal SCA13/2018) [2019] SCCA 13 (10 May 2019) where reference was made to *Cross & Tapper on Evidence*, 12th edition (2010). According to *Cross & Tapper*, evidence can be proved by three types of evidence, namely: the testimony of someone who saw the document executed (...an attesting witness...); by someone acquainted with the

handwriting'; evidence of a handwriting expert and the alleged writer may be asked to write in court for comparison. According to Cross, "*It is wrong for a judge to invite the jury to make a comparison without guidance of an expert...*", and cites the New Zealand case of *R V Stephens [1999] 3 NZLR 81*".

[56] The Respondent's Counsel then submits that, "*the criminal charges filed in a foreign country without convictions should be inadmissible just as should the expert and other report where the maker is not called in the same way as photographs and emails between parties require such a painstaking process to be followed*".

[57] Section 17 of the Evidence Act deals with expert opinion:

Expert opinion

17. (1) *In any trial a statement, whether of fact or opinion or both, contained in an expert report made by a person, whether called as a witness or not, shall, subject to this section, be admissible as evidence of the matter stated in the report of which direct oral evidence by the person at the trial would be admissible.*

(2) *The Chief Justice may make rules as to*

(a) the condition subject to which an expert report may be admitted as evidence at a trial;

(b) the condition subject to which oral expert evidence may be given at a trial,

and rules made under this section may make different provision for different classes of cases, for expert report dealing with matters of different classes and for other different circumstances.

(3) *Nothing in this section affects the admissibility of an expert report under any other written law or otherwise than for the purpose of proving the matter stated in the expert report.*

(4) *In this section "expert report" means a written report by a person dealing wholly or mainly with matters on which the person is or would, if living, be qualified to give expert evidence.*

[58] Evidence Act therefore allows admissibility of expert report whether the expert is called as a witness or not. The decision in *Roselie & Ors v Roselie* cited by learned Counsel also emphasises the need to have expert evidence if one is to come to a finding of forgery. Therefore based on section 17 (1) of the Evidence Act the said report is admissible even if the expert is not called.

[59] The Expert Report was also relied upon by the Criminal Investigation body of judicial police, Chief Commissioner of Police Avarvarei Aurel from Giurgiu County Police

Inspectorate – Economic Criminality Investigation Services in the Ordinance to extend the criminal prosecution in rem (Exhibit P21(a)). The Ordinance translation done by Vasile Emilia Maria, sworn translator and interpreter state:

On 19.12.2019, the Prosecutor's Office subordinated to Giurgiu Court submitted to the file the report of the extrajudicial forensic expertise submitted by the prejudiced party Iliescu Stefan-Adrian on 16.12.2019 regarding his signature affixed on the document "Change of Beneficial Owner's Declaration"/12.09.2019, which contains the following conclusion: it does not reproduce a signature executed by ILIESCU STEFAN-ADRIAN, . . .

Examining the documents submitted to this complaint and subsequently the certified copies of these documents, including the Extrajudicial Forensic Expertise Report, it has been shown that the essential elements of the offenses of forgery of official documents, forgery of writs given under private signature and use of forgery have been met, as provided by art. 320 para. 1, art. 322 para. 1 and art. 323 of the Criminal code . . ."

- [60] It is apparent from this that the Police in Romania relied on the Expert Report to establish that essential elements of the offenses of forgery has been shown, therefore submission by learned Counsel for the Respondent is baseless and not supported by any acceptable evidence.
- [61] On consideration of the Extrajudicial Criminal Expert Report (Exhibit P20 and P20(a)), it was prepared by Criminal Expert Preda Nicolae pursuant to Article 172 and 179 of the Romanian Criminal Procedure Code and according to the civil convention for the provision of services concluded between Mr Iliescu and Preda Nicolae. License of Mr Preda Nicolae confirming that he has acquired accreditation of Official Criminal Expert was also produced (part of (Exhibit P20 and P20(a))).
- [62] The purpose of the Report is to identify whether signature on the Change of Beneficial Owner Declaration dated 12 September 2019 was executed by Mr Iliescu. The analysed materials were a copy of the said Declaration and a Report dated 02.12.2019 with signature evidence taken from Mr Iliescu, namely 6 (six) signature samples executed in sitting position and 7 (seven) executed in standing leaning position.
- [63] The findings of the report state that the signature on the Declaration reproduces low execution speed, high pressure, and that "*there is uncertainty in the execution of the lines, highlighting three interruptions/discontinuations of the graphical thread*"; that signature presents uncertain movements; that drawing of the graphics are devoid of the logical line, "*confused composition, shaking while executing and repeated opinions in the execution of*

the graphics, all of which are specific to the signatures executed by servile imitation"; that the pressure of the signature is *"higher in the incipient parts, and moderate through"*; that the execution speed of the signature is moderate and *"it is noted by hesitation/left-handedness [...] multiple stops, retouching, increased pressure"*.

- [64] In comparison, the model signatures from the Report are found to be executed at moderate to high speed, low pressure with naturalism in the execution of the lines, *"made naturally, show safe movements, the graphics follow a logical/natural line, without showing shaking or hesitation in execution [...]"* with uniform pressure.
- [65] The Report concludes that the signature on the *Declaration* *"does not reproduce a signature executed by Iliescu Stefan-Adrian [...]"*.
- [66] Having considered the facts set out above this court will come to a finding that the Expert Report can be accepted by court.

Registered Agent's duties in relation to change of beneficial ownership

- [67] The Petitioner next submits in his written submissions that the Registered Agent acted contrary to Section 360(1) (2) and (3) of the IBC Act 2016 as they have not received the notice of 'relevant change' in the beneficial ownership from the Petitioner or its representative and therefore under section 360(7) has committed an offence and are liable upon conviction to a fine. Further, it is submitted that the Respondent and Roxana Lupu (Representative of the Respondent) have also committed an offence under section 360(5) by providing false or misleading information. The Petitioner submits that the court should recommend prosecution to the Attorney-General of the Respondent, Ms Lupu and Registered Agent (para 85-87 of the Written Submissions). However this recommendation was not included in the prayer to the Petition.
- [68] The Petitioner further submits that the Registered Agent and Mr. Sammy Freminot has acted in breach of trust and/or fiduciary duties under the International Trust Act and/or Article 825 of the Civil Code.
- [69] It is to be noted that Mr. Freminot and the Registered Agent have not been made parties to this action. Mr. Vandervalk was a witness for the Respondent on behalf of the Registered Agent. Mr. Sammy Freminot was not a party and not called as a witness in the proceedings.

- [70] In his evidence Mr. Vandervalk explains the procedure that AAOL uses to verify the authenticity of the signature in AAOL's reply to the formal complaint made against AAOL to the Financial Services Authority (Exhibit P55). He states AAOL verifies the authenticity of the signature against the signatures from the documents that the AAOL has in the files.
- [71] Another issue is whether the Registered Agent has an obligation to inform the intermediary who represents the outgoing beneficial owner regarding the change. The Registered Agent was aware of the Management Service Agreement and the Nominee Shareholder Declaration between the Nominee and the owner of the company. Under this Agreement and Declaration, as noted, the Nominee cannot transfer the shares held for the owner unless the owner so directs and obviously informed.
- [72] Mr. Florin Manescu, the Petitioner's agent in Romania in his affidavit Exhibit P41, corroborates averments that it was initially intended that the Petitioner would be beneficial owner of the Seychelles company. In his Affidavit. Mr Manescu states that the Petitioner made the decision "*to set up an offshore in Seychelles*", that collaboration between Mr. Iliescu and AAOL was mediated only by Mr Manescu; that all invoices for services provided by AAOL with regards to the company were issued to Mr. Manescu's company DEMA Partners or to him personally. He further states that all the payment for the services were made by the Petitioner.
- [73] Mr Manescu further states that the change of beneficial owner from the Petitioner to the Respondent was done without any instructions from him and also disregarding his "*clear and express instructions not to communicate to thirds parties information*" about the company and its shareholding. He also states that the Registered Agent hid from him the fact that this transfer has been made. Mr. Manescu also states that he personally informed Peter Vandervalk about the law suit in Romania against the Respondent, which "*intended to obtain the cancellation of the fraudulent transfer of the shares held until 2011*" by Seychelles GBG in Romanian GBG CRIAD.
- [74] Mr. Manescu sent further emails (Exhibit P10, P28) informing Mr. Vandervalk that his client and his lawyer stated that they would prefer not giving any information to "Lupu & Partners lawyers" indicating clearly Ms Lupu was not one of their lawyers and their lack of trust in them. However, the Registered Agent continued to correspond by email with

them. It arouses suspicion as why the Registered Agent was simultaneously corresponding with representatives of both parties, while having the knowledge regarding the ownership dispute in Romania and its nature and the lack of trust in “Lupu & Partners Lawyers”. Further, after receiving emails (P36 and P37) from Mr. Manescu regarding the opening of bank accounts for the Petitioner and even sending the relevant forms (review form and business plan for banking) on the 2nd October 2019, the Registered Agent had not kept Mr. Manescu informed of the transfer of beneficial ownership which occurred on the 13th of September 2019 prior to this correspondence. It appears that there was a lack of due diligence and professionalism on the part of AAOL having knowledge of all these facts, in failing to verify the authenticity of the signature and in not intimating there was such a change effected in reply to the intermediary Mr. Manescu in their subsequent emails in respect of opening bank accounts.

- [75] Had they just verified the change directly from their current client at that time, Mr. Iliescu, and his representative Mr. Manescu, the entire present court case could have been avoided. Further when the Petitioner found out about the change in the beneficial ownership and tried to contact the Registered Agent, they refused to communicate as supposedly client has changed and they cannot disclose any information.
- [76] The Petitioner further submits that the Registered Agent, represented by Mr Vandervalk were previously involved in the case regarding fraud of signature – *Agnes Elizabeth So Siong v All About Offshore (Seychelles) Limited* CS No.30/2015 delivered on the 8th November 2017 and the Court was not ‘impressed’ by the credibility of Mr Vandervalk as a witness, stating that he was “elusive” (paras 63-66 of the written submissions).
- [77] As noted earlier, the formal complaint has been filed with the Financial Services Authority regarding the transfer of ownership and the response by the AAOL was produced by the Petitioner (Exhibit P55). The outcome of the complaint is not known.
- [78] It should also be noted that on 17 July 2020, the Prosecutor’s Office in Romania has extended criminal prosecution against Ms. Lupu for committing the offences of “usurpation of authority or official functions” and “practicing a profession or activity without the right to do so” for the organization and practice of the profession of lawyer (Exhibit P44).

[79] It is clear to this court on considering the facts that the Registered Agent had clear knowledge that there was a serious dispute going on between the Petitioner Mr. Adrian Ilescu and the Respondent Mr. Stefan Renato Petrescu in Romania for the ownership of the CRIAD company and therefore as responsible Registered Agents of GBG they should have been more cautious in dealing with any changes being brought to their notice. When one refers to the email of Mr. Manescu to Mr Vandervalk on the 8 May 2019 stating that Mr. Ilescu won the case and in a further email on the 26 July 2019 sent by Mr. Manescu to Mr Vandervalk (Exhibit P31, P53) informing him that the Beneficial Owner has won the case for GBG and the other party has made an appeal, therefore, they will need lawyer contracts to be signed by Mr. Freminot, clearly indicate that the decision of the Romanian Court had been communicated to the Registered Agents and they were aware of the decision of the Romanian Court.

Circumstantial Evidence

Petitioner's Statement to Police in Romania

- [80] The Petitioner maintains throughout the suit that he was the owner and in control of both companies from the start. However in his statement made to the criminal investigation body the Petitioner attempts to show that GBG Seychelles was some third party foreign investor, which is contrary to the averments maintained by him. Furthermore, the Petitioner maintained throughout the suit that Mr. Sammy Freminot was nominee shareholder holding shares for the Petitioner, yet in the statement to the investigation body it appears that he distances himself from the company, foreign investor and even Mr. Freminot. Nevertheless, neither in his statement to the investigation body nor in court, does he state that the Respondent was ever the beneficial owner of the companies and maintains his position that the Respondent unlawfully transferred the shares to himself.
- [81] His statement, "*because my father was a mayor and I don't want to be in trouble*" sheds some light on contradicting statements as it implies that he did not want to show his true connection to the company as his father was a mayor when making his statement to the investigating body.

Respondent's Police Statement

- [82] In his suspect statement given to the police inspectorate (Exhibit P42) the Respondent stated that in 2010, the Petitioner proposed to him to buy 5% of the shares in CRIAD and to take the position of Director. At that time the Respondent states that he was working as a construction engineer at SC Kaliterm SRL. He further stated that he did not make any payment for 5% of the shares but signed "*a convention with Mr Grosu Adrian to pay later, from the financial results of the company*". Mr Petrescu states that he does not remember how the payment was made. He stated further that he was given a power of attorney for Seychelles GBG company but that, "*I do not know who decided to empower me*".
- [83] Mr. Petrescu further stated that he "sold" himself shares in GBG CRIAD company which were held by GBG Seychelles company but that, "*I never paid the equivalent value of these shares because GROSU ADRIAN never asked me to do so*" and that, "*I declare that I do not remember to pay in any moment the share capital owned by SC GBG BUSINSESS CRIAD SRL, at that moment*".
- [84] When one considers the police statement of the Respondent given to the police inspectorate (Exhibit P42,) he clearly states that at that time he was not interested about the source of investment money that according to him came from credit that Grosu Adrian made available. Mr Petrescu states that he was not interested in the source of the money and explains his income as:
- "a Director salary of about 3000 lei and my personal fortune is a flat with 3 rooms in Bucharest and a car of 2000-3000 euros, personally, I was interested only to work and to receive the salary which was very good, other incomes of the family being of approximately 5 thousands lei.*
- I declare that all my incomes during 2000-2019 periods came from my salary of engineer, employed with a good salary, as I declared before."*
- [85] Further, throughout the statement Mr. Petrescu also declares that he did not know where most of the investment money came from (reference to 8 million Euros investment, credit of 1.1 million Euros).
- [86] From the above statements made to the Romanian police inspectorate and in court it does not appear that the Respondent made any investments into CRIAD.

Investments into business

Paying-in slip

[87] When one considers the corporate set of documents of CRIAD tendered by the Petitioner (Exhibit P49), it indicates that Mr. Grosu Adrian was the sole administrator and shareholder when CRIAD was formed in December 2010. The initial capital was 10,000 (Ten Thousand) RON paid in by Mr. Grosu. The payment is confirmed by the paying-in slip issued by Raiffeisen Bank dated 06.12.10. As it is seen from the corporate set in January 2011 (Exhibit P50) share capital of CRIAD increased by additional investment of 90,000 (Ninety Thousand) RON made by GBG Seychelles and GBG then held 90% shares and Mr. Grosu 10%. It is to be noted the Petitioner was the Beneficial Owner of GBG during this time. Payment by GBG Seychelles is confirmed by the paying-in slip issued by Raiffeisen Bank dated 06.12.10. It appears from the paying in slips that 90,000 (Ninety Thousand) RON was paid at the time CRIAD was formed and bears the same date as Mr. Grosu payment of 10,000 (Ten Thousand) RON - 06.12.10. Though GBG was not reflected in the corporate document as a shareholder at the time of CRIAD's formation in December 2010, GBG was reflected as shareholder in a later corporate set of January 2011 (Exhibit P50).

[88] The corporate sets of documents of CRIAD submitted by the Respondent do not enclose paying-in slips confirming investment into CRIAD or any confirmation of payments paid by the Respondent into CRIAD. This is consistent with the statements of the Respondent that either he does not remember how payment was made or that he never paid for shares because he was not asked to. Therefore, there is no evidence presented that the Respondent paid any money into CRIAD.

Bank Account Statement

[89] The Petitioner also produced Account Statement of GBG from Rietumu Bank for the period from January 1st, 2010 to December 31st, 2014 (Exhibit P38) as proof that he was the one who invested in the company. His evidence is that, he has invested 1.4 million Euros (One Million Four Hundred Thousand Euros). The Account Statement does show several large

sums were transferred from the Petitioner's account as 'transfer of personal funds' to the account of GBG and then same date these sums are transferred to CRIAD. At the same time the Account Statement also shows several large transfers from CRIAD and then same sum transferred back to the Petitioner. The majority of credit and debit transactions involve CRIAD and the Petitioner's personal account.

[90] Learned Counsel for the Respondent's and Respondent himself alleged several times that the Bank Account Statement illustrates that the Petitioner was involved in money-laundering as the sums transferred were going "in and out". No other proof is produced regarding this allegation. The present suit is not directly concerned with determining alleged money-laundering issue.

[91] The Account Statement (Exhibit P38) indicates that on 9/6/2013, the balance in the account was 0.00 Euro and the Credit and Debit Turnovers are 1,416,750.00 Euros. Mr. Iliescu was cross examined regarding his averments that he has invested 1.4 million Euros into the company and it was put to him that the account shows that 1.4 million was credited but also same amount was debited. The Petitioner explained the transactions (page 3 of the Transcripts on 11 December 2020 at 09:00AM) noting some borrowing arrangements between his companies and himself.

[92] From the abovementioned extracts from the proceedings it is not entirely clear what kind of loan arrangements/dealings existed between the Petitioner and 'his companies'. Nevertheless, it is clear that the Petitioner is intending to show to the Court that he had the money to finance the business and invested money into the company, although, the source of the money is unknown.

Payment to Sammy Freminot for GBG Shares

[93] Throughout the suit, the Respondent states that he had paid Mr, Sammy Freminot, the nominee shareholder for the amount for the shares that he had transferred to him (page 39 of the Transcripts on 10 March 2021 at 2.30 PM; page 4 and page 7 of the Transcripts 11th March 2021 at 10A). He further stated that he paid via bank transfer and when asked whether he has the proof of the bank transfer, he replied that "*the proof of the bank transfer is the declaration of Mr. Freminot*". When pressed for the answer regarding actual proof

from the bank, the Respondent repeated several times that it is a private information that he does not want to reveal and that it is confidential.

- [94] Therefore, even though the Petitioner is somewhat elusive in his statement to the investigation body regarding his true connection with GBG and CRIAD companies, he maintains the position that the Respondent was not the true owner of the companies, but was the administrator. The majority investment into CRIAD was made by GBG with paying-in slip enclosed as a proof thereof. At the time of the investment, according to the GBG corporate documents, the Petitioner was the beneficial owner. Although, the Bank Account Statement does not exactly prove that the Petitioner invested exactly 1.4 million euro as the sums transferred rotate between transfers to CRIAD and then back to the Petitioner, Mr Iliescu has at least shown that large sums of money were available in his personal account whether as is personal means or by way of some credit arrangements with his companies. This evidence point towards conclusion that the Petitioner had sufficient means to establish the business and invest into it, whilst the Respondent had not shown any confirmation of his investments into CRIAD.

Respondent's Income

- [95] Further when one considers the Respondent's income: salary and Tax Return with regards to the Respondent income, learned Counsel for the Petitioner throughout the case and in cross examination aimed to establish that the Respondent was "*a man of very limited means and he could not had the money to build seven commercial complexes [...] or to buy a hundred thousand dollars shares in GBG Business Group in Seychelles that he said he paid Sammy Freminot*" (page 6, pages 4-8, page 13 of the Transcript on 09 March 2021 at 9AM).
- [96] The Petitioner produced contract of employment and employee certificate (Exhibit 47) between IMO INVEST TOTAL SRL and the Respondent. The start date of contract was 15.09.2010 and gross monthly salary of 1,200 lei. The Certificate of Employment states that "*starting with 01.03.2011 the individual labor contract [...] has ceased [...]*".
- [97] The Petitioner also produced excerpt of the Respondent's tax records of incomes for the period 2010-2018 submitted by National Agency of Tax Administration upon request of the Police Inspectorate (Exhibit P39(a)). In the Tax Return, the payments from IMO

- INVEST are recorded in 2010, 2011, 2014 and 2015. In 2010 and 2011 the net income from IMO for the fiscal year (not month) is under 3,000 lei with significant increase in 2014 (11,755 lei) and in 2015 (17,994 lei).
- [98] During cross examination regarding his income, the Respondent explained that he earned more than 1,200 lei as declared in his contract with IMO and more than declared in the tax return, but that the return was always filed by his employer and he did not personally check his tax status (pages 12-14 of the Transcripts on 9 March 2021).
- [99] The Respondent was asked for which reason then in the statement to police he said that his income was 3,000 lei (pages 18-19 of the Transcripts on 9 March 2021) and which version of his income is the truth – statement to Police or Tax Return or whether both are untrue. The Respondent stated that he is not saying that the Tax Return is correct because he was not the one who submitted it, and in the police statement he was asked specifically for which year and that he was generalizing and also that, *“I admit that I wrote that and now I think it is wrong”*.
- [100] The Tax Return shows significant increase in the Respondents income starting from year 2015, increasing further up to 2019. The Respondent was asked to explain the *“massive jump in salary”* during cross examination (page 19 of the Transcripts on 9 March 2021; page 22-23 of the Transcripts on 9 March 2021). The respondent stated that it is his company and he can do whatever salary he wants for himself. He further stated that the company’s business started to pick up, company earned a lot and his role was growing, therefore, he had to get paid more. The Respondent could not explain with certainty the source of income and reasons for increase during 2018-2019 (salary and/or bonuses and/or dividends).
- [101] On the other hand, the Petitioner’s explanation for increase in the Respondent’s salary was given during his examination in chief (page 27-28 of Transcript on 10 December 2020 at 09:30AM). The Petitioner stated that significant increase in salary was due to the commencement of various suits against the Respondent in Romania and when the Petitioner was close to finishing the lawsuit, the Respondent *“was desperate and retrieved 1.6 Million Ron from the company”*.

- [102] It is clear from the above analysis that the initial majority investment into CRIAD's capital in 2010 as illustrated by the paying-in slips was done by GBG Seychelles. In 2010 as averred by the Petitioner and supported by the GBG documents, the beneficial owner was intended to be and was according to the Nominee Declaration Mr Iliescu, the Petitioner. Therefore, the conclusion is that it is Mr. Iliescu who invested initial capital into CRIAD through GBG company.
- [103] From all the above-mentioned Respondent's statements and answers, the Respondent not only cannot prove that he ever invested any money either in CRIAD or in GBG, it also appears that he does not have an understanding of the source of investments into CRIAD as he was not interested in the source at that time.
- [104] The Respondent avers that he made the police statement under pressure (eg page 28-30 of 12th March 2021 at 10AM). However, he does not support this averment with much proof or that he complained to higher authorities regarding pressure being put on him during the taking of the statement.
- [105] From the statements and answers in these proceedings it appears that the Respondent either never invested anything in the company's business or does not want to show any proof that he did. One might ask, on which basis then the Respondent benefits from the profits of successful business, into which, according to his own statements, he either did not invest at all or does not remember how or does not want to show how. Therefore, the Respondent's averments that he was approached to invest and partner in CRIAD Company seems misleading.
- [106] Furthermore, the Respondent's position and learned Counsel's submission that GBG was either owned by Mr. Freminot or by no one indicate lack of understanding of companies structures, source of investments and point towards conclusion that the Respondent, while being the administrator, was not the owner of either companies and was never intended to be one.
- [107] Respondent's explanation for transferring ownership in GBG to himself in 2019 because he thought it was his company does not make much of financial sense as in 2011 the Respondent by his own decision transferred all the shares in CRIAD to himself. Therefore, he became the sole owner of CRIAD company. What is the purpose of owning GBG? The

Respondent further explained that the Petitioner agreed to transfer the ownership in GBG because the Respondent has informed him that he had ‘uncovered’ the deceit that the Seychelles IBC is not owned by the Respondent and by mutual agreement the Petitioner and the Respondent decided to end the dispute and transfer the ownership.

[108] One does wonder though why would the Petitioner agree to transfer the ownership of GBG, which owned CRIAD prior to transfer of its shares to the Respondent, after he has won the ownership dispute case in Romania, where the court held that the Respondent transferred the ownership in CRIAD to himself unlawfully. The Petitioner has just gotten back ownership of the business and after all the time, money and energy spent on proving his case in Romania, he decides to voluntarily just give the company to the Respondent. These explanations do not add up. During the proceedings it became apparent that the Respondent by becoming the beneficial owner of GBG becomes both the plaintiff (GBG) and the defendant in the Romanian court proceedings. In such case, as the court decided to restore the majority ownership of CRIAD back to GBG, the Respondent by becoming the beneficial owner of GBG gains the ownership of the business again.

[109] Taking into account both documentary and circumstantial evidence, this court is satisfied that from the incorporation of the GBG in 2010, the Petitioner was intended to be and was the beneficial owner of GBG. Therefore, at the time of the investment by GBG into the capital of CRIAD and becoming the majority shareholder, the Petitioner was the beneficial owner of CRIAD also. According to the corporate documents of GBG, the Petitioner ceased to be the beneficial owner at some point but became the Beneficial Owner again on 17 January 2019.

[110] It is the view of this Court that Mr. Sammy Freminot who was the shareholder at time of disputed transfer of shares in GBG to the Respondent, did not have the capacity to transfer the shares of the company without instructions of the owner, the Petitioner, in accordance with the Nominee Shareholder Declaration. I also observe from the evidence of the Respondent that when he states he purchased the shares of GBG from Mr. Freminot he had paid him a sum of 100,000 US Dollars. The Respondent has failed to provide any documentary proof in respect of such a large payment.

[111] Further the Expert Report concludes that the signature on the Change of Beneficial Owner's Declaration dated 12 September 2019 is not genuine.

[112] Article 1116 of the Civil Code and numerous case law states that fraud shall not be presumed and must be proved:

"Article 1116

Fraud shall be a cause of nullity of the agreement when the contrivances practiced by one of the parties are such that it is evident that, without these contrivances, the other party would not have entered into the contract. It must be intentional but need not emanate from the contracting party.

It shall not be presumed and it must be proved."

[113] It is establish that the burden of proof is on the party who challenges a document to prove its falsity; that fraud must be proved by adducing positive evidence and that higher degree of probability is required but not so much as in criminal cases (*Charles Lucas v Marie Georges* (Civil Appeal SCA13/2018) [2019] SCCA 13 (10 May 2019); *Albert v Rose* (2006) SLR 140; *Houcreau v Houareau* (2011) SLR 47; *Basson v Bason* (2005) SLR 129; *Katz v Ward & Anor* (CS 11/2015, CS 12/2015) [2017] SCSC 780 (04 September 2017)).

[114] Hence, in civil cases where there are some criminal elements involved a higher standard of proof is necessitated. In **Hornal v Neuberger Products Ltd [1957] 1QB247**, a civil matter where fraud was alleged, Lord Denning expressed the standard of proof that should apply in the following way:

The more serious the allegation the higher the degree of probability that is required: but it need not in a civil case, reach the very high standard required by the criminal law (page 258).

[115] This court is satisfied the Expert Report complies with all legal requirements and can be accepted by court and that the Petitioner has established the burden of proof placed on him to prove that the Change of Beneficial Owner's Declaration is a forgery. Therefore the Change of Beneficial Owner's Declaration in the view of this court is not genuine and all further steps taken in respect of the transfer of the beneficial ownership is null and void. Therefore the ownership of the IBC company GBG lies with the Petitioner Adrian Iliescu. I therefore order the Registered Agent to restore the position of the parties prior to transfer of shares to the Respondent and order the Registered Agent to rectify the beneficial owner under section 358 of the IBC Act 2016.

Constitutional Rights and lack of Fair Trial; Recusal applications; Preliminary Objections

[116] Learned Counsel for the Respondent referred to the constitutional rights and lack of fair trial in respect of the case in his written submissions. In this regard the record speaks for itself. Ample opportunity was given to learned Counsel for the Respondent to prepare for the case as on several occasions learned Counsel was given time to prepare even his re-examination questions due to the lengthy cross examination conducted by learned Counsel for the Petitioner. Despite many applications for urgency hearing being made by the Petitioner, time was given for the Respondent to reply and prepare his case. Applications for recusal were made on several occasions by learned Counsel for the Respondent and time was given for the hearing of same but eventually learned Counsel for reasons best known to him, decided to withdraw and not pursue the applications though ample opportunity was provided. All preliminary objections were eventually dealt with at the request of learned Counsel for the Respondent. The Respondent was given ample opportunity to appeal from the Rulings in the said preliminary objections but once again for reasons best known to learned Counsel for the Respondent he refrained from appealing from these decisions. This court is satisfied on the preliminary Rulings given by this court and sees no reason to revisit these decisions. Heated differences between the two learned Counsel emerged during the trial, resulting in intemperate language being used by learned Counsel for the Petitioner which resulted in a caution being given to him by court. Learned Counsel for the Respondent was never denied any right to natural justice either as all rulings and orders were made after hearing both Counsel on the material issues and giving them both ample time to prepare their written submissions. This court in coming to its findings in this case has not relied on any false, misleading, vexatious statements from the bar as borne out by the facts and reasoning contained herein.

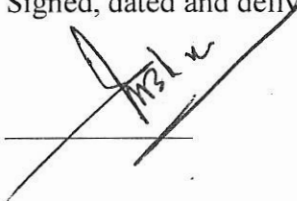
[117] The other matters namely evidence, oral and affidavit evidence, procedural irregularities, failure to call witnesses and concept of trusts have been dealt with in this judgment and even in the several rulings given during the course of the trial. Any aggrieved party has still recourse to the Seychelles Court of Appeal.

Damages

[118] The Petitioner has sought award of damages in the sum of \$100,000.00 for prejudice, cost of travel, accommodation, food and beverage and unlawful interference with the Petitioner's property. With regards to the expenses, the costs should be covered by the Cost Order. No specific submissions were made regarding award of damages. During this Trial evidence of possible unlawful bonuses and dividends payments made by the Respondent from CRIAD company were presented, however, no specific evidence showing any payments and/or transactions with regards to GBG Seychelles that may have diminished the company's value were shown. Therefore, the issue of damages in relation to unlawful interference with the Petitioner's property is better left to be determined by the courts in Romania.

[119] Therefore for all the aforementioned reasons this court is satisfied the Petitioner has established his case on a balance of probabilities and this court accepts the case of the Petitioner and proceeds to enter judgment in favour of the Petitioner as set out in prayer 1 to 4 of the petition together with costs.

Signed, dated and delivered at Ile du Port on 25 August 2021

A handwritten signature in black ink is written over a horizontal line. The signature appears to be 'M. S. L. v.' or similar, with a large initial 'M' and 'S'. The line is slightly wavy and extends to the left and right of the signature.