

IN THE SUPREME COURT OF SEYCHELLES

GARY BANKS
(Herein Rep by Glenn McCarthy)

PLAINTIFF

VERSUS

1. MURRAY DOUGLAS GIROUX
2. RICHARD GEORGE DICKRAN
3. INTERNATIONAL FINANCIAL DEV. CORP **DEFENDANTS**

Civil Side No 353(A) of 2005

Mr. B. Georges for the Plaintiff
Mr. F. Chang Sam for the Defendants

JUDGMENT

Perera J

The plaintiff incorporated an International Business Company in Seychelles on 29th March 1996 under the name of “*Enormous Glory Co. Ltd*” (P2). It is averred that the plaintiff was the sole member of the said company and alone authorized to sign documents on its behalf. It is alleged that the defendants, by two documents dated 30th April 2001, purported to transfer ownership of the company to themselves from the plaintiff. The plaintiff seeks an order of this Court declaring that those two documents are forgeries and are therefore null and void. He also seeks a consequential order that the documents of the company be amended to record his sole ownership of the company and as sole director from the date of Incorporation to the date of such order.

The defendants were issued notice of the plaint. Upon considering the circumstances in which they were served, this Court, by order dated 2nd July 2007 ruled that there had been valid service. Hence, as they defaulted appearance, the case was heard exparte.

Mr. Glenn McCartney, representing the plaintiff testified that he was a business Associate and was the original investor in the business. He is presently resident in China, while the plaintiff is resident in the United States of America. He stated that the company “*Enormous Glory*” was created out of a business called “*Bourbon Street Restaurant and Bar*” in Shanghai, China. He was involved with the investment activities of raising funds and establishing that business in China. He produced a power of Attorney from Mr. Gary Banks to testify on his behalf in the present matter (P1).

Mr. McCarthy testified that the defendants were engaged by the plaintiff as Consultants as he had to go to the U.S.A. for medical treatment. The defendants were operating the restaurant business in China. Around the year 2002 it was learnt that they had refused to provide financial statements to investors, refused to meet with them, and also physically threatened them. The original documents of incorporation of the business in China were with the 1st and 2nd defendants. Subsequently it was found that they had changed the documents by appointing themselves as Directors. When the agent in Seychelles “*Ocra*” was contacted, they were informed that Mr. Banks had resigned from “*Enormous Glory*”, and had transferred his shares to the 3rd defendant “*International Financial Development Corporation*” in the West Indies.

Mr. McCarthy further testified that he was familiar with the signature of Mr. Banks and that the signature appearing in the letter of resignation dated 30th April 2001 (P5) is a forgery. He also stated that in the minutes on the resolutions of the company dated the same, the signature of Mr. Banks had been forged (P4). In that respect, he invited the Court to compare the signature of Mr. Banks on the power of Attorney (P1) and the signature appended by Mr. Banks on 15th July 2003 before a notary on exhibit P5, which he stated were genuine, with the impugned documents. He stated that Mr. Banks had no intention to resign from the company. When he made inquiries from Odra (*Hong Kong*) Ltd, he was told to raise those inquiries through Mr. Banks “*as there appear to be some irregularities*”. (P7)

As regards the alleged forgeries, there is a danger in comparing disputed signatures with genuine ones without the assistance of an expert in handwriting. However, the Court is satisfied on the basis of the oral evidence of Mr. McCarthy and the documentary evidence adduced by him that the defendants have gained control of the company by resorting to irregular procedures. This finding is sufficient for this Court to hold that the alleged resignation of Mr. Banks as Director, and the alleged appointments of the defendants as Directors and the transfer of shares are not genuine and therefore null and void.

The Court accordingly directs that the documents of “*Enormous Glory Co. Ltd*” be amended to record the ownership of the company solely by Mr. Gary Banks, and that he continues to be the sole Director of the company. Those amendments to be effective from the original date of incorporation of the company.

Judgment entered accordingly. There will be no order for costs.

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A. R. PERERA

JUDGE

Dated this 26th day of November 2007