

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 513 of 2014

ROBERT'S GROVE LTD.

CLAIMANT/RESPONDENT

AND

JEAN-MARC TASSE

DEFENDANT/APPLICANT

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings

2014

15th October

21st October

Ms. Iliana Swift for the Claimant/Respondent.

Mr. Hubert Elrington, SC along with Mr. Marcel Cardona for the Defendant/Applicant.

RULING

1. This is an application brought by the Defendant for an interlocutory injunction to restrain the Claimant from carrying out resolutions passed at a purported meeting of the Board of Directors, specifically:

(a) Jean-Marc Tasse is prohibited from any operational role with the Company whatsoever with immediate effect, whether administrative, supervisory, managerial or otherwise, and shall no longer be entitled to enter upon the premises save and except

with the specific approval of the Board or for the purposes of board meetings or shareholder meetings of the Company;

(b) With immediate effect Jean-Marc Tasse is removed from signatory authority from all bank accounts of or held for and on behalf of the Company including but not necessarily limited to accounts with Atlantic Bank Ltd, Atlantic Bank International Ltd, Belize Bank Ltd and JP Morgan Chase Bank N.A. in the name of Robert's Grove Beach Resort LLC;

(c) With immediate effect Boris Mannsfeld shall be appointed as authorized signatory of the Company for all bank accounts of or held on behalf of the Company including but not necessarily limited to accounts held with Atlantic Bank Ltd., Atlantic Bank International, Belize Bank Ltd and JP Morgan Chase Bank N.A. in the name of Roberts Grove Beach Resort LLC;

(d) With immediate effect, Michael Kramer shall be appointed as authorized signatory to the Company's bank account at JP Morgan Chase N.A. in the name of Roberts Grove Beach Resort LLC.

2. The Claimant alleges in its claim that the Defendant, in breach of his fiduciary duties and/or breach of trust of the Claimant, during the period from October 2011 through June 2014 used, acquired or disposed of \$2,842,228 in value of the Claimants' funds and property without the Claimants knowledge or authority. According to the Affidavit of Service the Defendant was served with the Claim and Statement of Claim on the 19th September 2014. The Defendant however acknowledged his service as the 1st October, 2014. He filed his urgent exparte application on the 3rd October, 2014 prior to filing his defence on the 14th October, 2014.
3. That defence contained an ancillary claim which repeated the defence and sought a number of declarations being:

- (1) *A Declaration that Boris Mannsfeld is not a Director of Roberts Grove Limited.*
- (2) *A Declaration that he had none of the powers privilege and rights of a legally appointed Director of Roberts Grove Limited.*
- (3) *A Declaration that the purported calling of a Board of Director's Meeting by him acting in conjunction with Boris Mannsfeld, a legally appointed Director of Roberts Grove Limited was illegal, null, void and of no effect.*
- (4) *A Declaration that the purported Meeting of the Board of Directors held on Thursday, August 21, 2014, is null and void and therefore of no effect.*
- (5) *A Declaration that the resolutions purportedly passed at a purported Meeting of the Board of Directors of the Claimant held on Thursday, August 21, 2014, was therefore null and void and of no effect, given the illegality of the holding of the said purported meeting.*
- (6) *A Declaration that the Extraordinary General Meeting of the Claimant held on Tuesday, September 9, 2014, was valid.*
- (7) *A Declaration that the resolutions passed at the Extraordinary General Meeting of the Claimant held on Tuesday, September 9, 2014, were legally valid, subsisting and of full legal effect.*
- (8) *A Declaration that Boris Mannsfeld is, accordingly, not entitled to partake, and shall refrain from or shall not interfere, in the decisions of the Board of Directors or the running, management, or administration of the Claimant company.*
- (9) *A Declaration that the Defendant remains the only validly appointed Chairman of the Board of Directors of the Company, and also the only validly appointed Managing Director of the Board of Directors of the Company, until he is either removed or replaced by an Extraordinary Meeting of the Shareholders of the Claimant company in accordance with Article 79 of the Articles of Associations of the Claimant company.*

4. The Defendant/Applicant says that he is the Chairman of the Board of Directors of the Claimant and Chairman of the Board and majority shareholder in Sand Hill Resorts Holdings Limited one of the two shareholders of The Claimant. The other shareholder, holding one of the total 10,000 shares, being Sand Hill Limited also owned by the Defendant. He appears therefore to be the majority shareholder in the Claimant. He says he was not present at the Board of Directors meeting when the resolutions were illegally passed by Michael Kramer and Boris Mannsfeld.

The Application:

5. The court on the 6th October, 2014 considered the application and found that it would not be appropriate to hear same ex parte. An order was made then for the application and associated documents to be served on the Respondent for an inter partes hearing on the 8th October, 2014. At that hearing the Respondents explained that they had been served with another affidavit from the Applicants only the day before and they requested full notice under Part 11. The court in accordance with Part 17.14.3 allowed three days notice which spanned the weekend and a public Holiday. The matter therefore returned to court on the 14th October but again further affidavits were filed. The court adjourned the matter to the 15th October when it was eventually heard.

6. By this time the Applicant had filed three affidavits. The Respondent had also filed three. The barrage of documents attached to these affidavits began to resemble an ill managed trial. An application for an injunction is not a trial. The issues began to blur. So let us not lose sight of the application before the court. We shall start at the beginning and work our way forward.

THE INJUNCTION:

7. An interlocutory injunction regulates the position of the parties awaiting trial. So any party to the matter may apply. However it is not a cause of a action. *The Siskina [1979] AC 210 at 256:*

“A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the Defendant arising out of an invasion, actual or threatened by him, of a

legal or equitable right of the plaintiff for the enforcement of which the Defendant is amenable to the jurisdiction of the court.”

8. There is therefore one over-riding requirement to the granting of an injunction - the Applicant must have an existing cause of action. In this matter the application is made pursuant to the counterclaim.

Has the Applicant disclosed an existing cause of action:

9. When the Applicant filed his application he had not yet filed his defence. His right to the substantive relief he sought could only be granted then if he could show that it arose out of or was incidental to the Claimant's claim. When he subsequently filed his defence and counterclaim the Respondent seemed to concede that the requirement for a substantive claim was satisfied since they abandoned that objection.
10. Perusal of the Defendant's counterclaim reveals that its thrust is that Boris Mannsfeld is not a Director of the Claimant. He was, as counsel framed it, "an interloper or a trespasser." Therefore any action taken or thing done by or through Boris Mannsfeld in the capacity of a Director was illegal. He therefore asks for an injunction to stop the carrying out of certain resolutions which Boris Mannsfeld assisted to pass as a member of the Board of Directors.
11. In this court's estimation Directors who act in excess of the powers conferred on them are in breach of their duties to the company – *See Rolled Steel Products (Holding) Ltd. v British Steel Corp [1985] 3 All ER 52 87-88*. Likewise, interlopers to the management of the company have infringed

the rights of the company not the rights of Directors or shareholders personally. For such breaches to the Company the law provides a range of remedies, the enforcement of which rests with the company. It is a general principle of Company Law that an individual shareholder cannot sue for wrongs done to a company or complain of any internal irregularities. This principle is commonly known as the rule in *Foss v Harbottle*. In *Foss v Harbottle [1843] 2 Hare 461* the court rejected the two shareholders' claim against the promoters and directors of the company for allegedly misapplying company assets and improperly mortgaging company property. Those were wrongs done to the company for which it alone could sue. The proper Plaintiff was the company not the two shareholders. This rule rests on two general principles – 1. A company is a legal entity separate from its shareholders and 2. The court will not interfere with the internal management of companies acting within their powers.

12. One of the four exceptions to the rule in *Foss v Harbottle* is ultra vires or illegal acts since a majority of the members cannot confirm such acts. The Applicant has pleaded and alleged such acts and seems to be seeking to enforce rights which belong to the company. He may do so as a shareholder in only two ways – by asking the Board of Directors to bring suit in the company's name or by bringing suit in his own name on behalf of the company in a derivative action. He has clearly not done either since this is a personal action.
13. In his application he speaks to particular resolutions which may ostensibly infringe on some personal right or rights but he does not plead any such infringement. I find that he has therefore not disclosed a cause of action.

14. This is further demonstrated by the fact that if granted, the injunction would in effect finally dispose the matter in favour of the successful party. In *NWL Ltd. v Woods* [1979] 1 WLR 1294 Lord Diplock said at p 1306: “*American Cyanamid Co v Ethicon* [1975] AC 396 was not dealing with a case in which the grant or refusal of an injunction at that stage would in effect dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party’s interest to proceed to trial.” He goes on to say at page 1307 – “the degree of likelihood that the Claimant would have succeeded in establishing his right to an injunction if the action had gone to trial, is a factor to be brought into the balance by the Judge in weighing the sides that injustice may result from his deciding the application one way rather than the other.”

15. An injunction in such a case says *Blackstone Civil Practice 2013 at page 602*: “would only have been granted if the Claimant’s case was overwhelming on its merits.” In the instant matter the Respondent has produced minutes of a meeting (where the Applicant is recorded present) showing Boris Mannsfeld’s appointment as a Director. In those same minutes (just two lines below) is the appointment of the Respondent as the Managing Director of the Claimant. They have also provided a document dated 22nd August, 2014 from the Belize Companies and Corporate Affairs Registry showing Boris Mannsfeld named as a Director of the Claimant. The Applicant and Michael Kramer being the other named Directors.

16. The Applicant has brought a lot of information to the court but not one iota of evidence, other than what he states, to demonstrate that Boris Mannsfeld is not a Director of the Claimant. Nor has he brought any evidence to show whom he perceives to be the Directors and why. His case in this court’s estimation is not overwhelming.

EQUITY:

17. The application for the injunction it must be remembered, was made *ex parte*. The Applicant was therefore under a duty to make full and frank disclosure.

Donaldson LJ in *Bank of Mellat v Nikpour [1985] FSR 87* said: “*This principle that no injunction obtained ex parte shall stand if it has been obtained in circumstances in which there was a breach of the duty to make the fullest and frankest disclosure is of great antiquity. Indeed it is so well enshrined in the law that it is difficult to find authority for the proposition we all know it, it is trite law.*”

But beyond this duty there is the need to come to the seat of equity with clean hands. An injunction is an exceptional and discretionary, equitable remedy.

18. The Respondent has produced a document which states itself to be minutes of a Board of Directors meeting of the Claimant held on the 13th September, 2014. Present, is the Applicant as Chair, along with four other persons. Boris Mannsfeld and Michael Kramer are recorded as absent. During that meeting a resolution was passed constituting a new Board of Directors. The Applicant thereby being appointed as Chairman/President of the Board and Managing Director of the Company. The Applicant has never referred to this meeting in any of his affidavits. When counsel was asked by the court what the document was he said the Applicant was continuing to exercise what he considered to be his powers as the Managing Director of the board and that he was not accepting what had been done by those he continued to regard as interlopers. Nonetheless in his *ex parte* application he stated at ground 7: “*The Directors of the Claimant are the Applicant and Michael Kramer.*”

Then under oath in his first affidavit at paragraph 5 – “*The Claimant has two Directors who are myself and my brother-in-law Michael Kramer.*” He repeats this again at paragraph 15 of his second affidavit.

19. Furthermore, the ancillary claim speaks to an Extraordinary General Meeting of the Claimant held on Tuesday September 9th and begs that that meeting and resolutions passed be declared valid. It does not disclose the nature or content of the resolutions. So the court is not aware. If one could cautiously assume that the meeting of the 9th September is the same meeting of the 13th September and there was an error in the date, one must question the reason for the non-disclosure of this meeting in the Applicant’s many affidavits in support of his application. This court finds that the withholding of this information was a material non disclosure.
20. For these reasons I respectfully decline to exercise my discretion.
21. **It is hereby ordered:**
 1. The Defendant’s application for an interim injunction filed on the 3rd October, 2014 is dismissed.
 2. Costs to the Claimant to be assessed if not agreed.
 3. The matter is scheduled for Case Management Conference on the 18th November, 2014.

SONYA YOUNG
JUDGE OF THE SUPREME COURT