

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV 2023/0466

**IN THE MATTER OF A PETITION BY THE CLAIMANT FOR WINDING-UP THE
COMPANY "GANE GRENADA LIMITED"**

and

**IN THE MATTER OF SECTIONS 377, 379, 380, 381 AND 382 OF THE COMPANIES
ACT, CAP. 58 A OF THE 2010 CONTINUOUS REVISED EDITION OF THE LAW OF
GRENADA**

BETWEEN:

GARVEY LOUISON

Petitioner

and

GANE GRENADA LTD

Respondent

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Benjamin Hood for the Claimant/Respondent

Ms. Zelica Haynes -Soo Hon with Ms. Keri-Ann Oliverie instructed by Ms. Dia
Forrester for the Defendant/Applicant

2024: May 29th;
June 24th;
October 28th.

JUDGMENT

[1] **ACTIE, J.:** The petitioner, Garvey Louison, seeks to wind up the respondent company incorporated with his brother, Nelson Louison, on just and reasonable grounds .

[2] The petitioner avers that he was appointed director and secretary of the respondent on its incorporation on 6th September 2007 on the understanding that

there would be equal management and beneficial ownership by the brothers. No shares were issued up to filing of the company's annual returns on 16th August 2023 for the year ending 31st December 2022.

- [3] The petitioner avers that on 16th August 2023 he was made aware of a resolution removing him as director and shareholder, a notice appointing Nelson Louison as secretary and the issuance of 2000 ordinary shares to Nelson Louison in the said company.
- [4] The petitioner states that it is impossible for any genuine shareholders meeting of the respondent to have been convened for the issuance of shares. The petitioner states moreover that no person has the legal authority to make a decision in his absence removing him as a director and secretary and appointing Nelson Louison as the secretary of the company.
- [5] The petitioner seeks the appointment of a liquidator to oversee the winding-up of the respondent and to be awarded his equitable and lawful liquidated portion of the respondent pursuant to the winding-up.

Respondent's case

- [6] The case of the respondent is propounded by Nelson Louison. Nelson Louison states that the respondent was created for him to conduct personal business transactions, the payment of bills and household expenses, and expenses associated with his children. He avers that the petitioner was included as an incorporator, director and secretary of the respondent since the petitioner was his trusted financial advisor and could prepare and file the necessary documents on behalf of the respondent.
- [7] Nelson Louison states that he purchased property at Belmont and Mt. Parnassus in the parish of St. George, Crochu in the parish of St. Andrew, and Westerhall Point in the parish of St. David, through the respondent. He avers that payments for the properties were made by him and Consolidated Contractors Company Caribbean Inc. (hereafter referred to as "CCCCI"), a company in which Nelson

Louison holds a beneficial interest. Nelson Louison avers that the petitioner did not contribute any money towards the purchase of the said properties. He avers that the properties under the respondent were never intended to be shared equally since the petitioner did not contribute financially to purchase the properties.

- [8] Nelson Louison states that the petitioner had the responsibility to prepare all annual returns for the respondent and used that opportunity to include his own name as a beneficial owner on the annual returns, though this was not the case.
- [9] Nelson Louison states that the respondent was neither a joint business venture or family business. He argues that the starting point should be a consideration of what is the respondent company. He states that the Petitioner facilitated and assisted him with handling his personal affairs, a fact not in dispute. Nelson further stated that he used the respondent company to purchase real property used as collateral with the Grenada Cooperative Bank Limited to secure a loan of CCCCCI with the Bank. He states that the transaction required the true beneficial owner of the respondent to be identified for the Bank as is a usual part of due diligence on any secured transaction, and the petitioner signed the Share Certificate confirming Nelson Louison's shareholding and membership of the respondent. He states that at the time of securing the loan with the Bank and identifying a beneficial owner and members for the Bank, there was no issue raised by the petitioner with respect to the allotment of the shares and or the management of the respondent company which he now seeks to wind up.
- [10] Nelson Louison states that the petitioner was charged with responsibility for securing the loan with the Grenada Cooperative Bank Limited, interfaced with the bank throughout the transaction, and was aware of the documentation required. He avers that it became necessary to issue shares in the respondent in order for CCCCCI to use one of the respondent's properties as security for a loan. He states that share certificates were drawn up in Nelson Louison's name, and that same is in the possession of Grenada Co-Operative Bank.

- [11] Nelson Louison states that these commercial consequences must also be considered in determining whether it is just and equitable for the winding up as this will impact both the respondent company and the business of CCCI.

Legal Analysis

Whether it is just and equitable for the respondent to be wound up

- [12] **Section 377(e)** of the **Companies Act CAP 58A** permits the winding up of a company where the court is of the opinion that it is just and equitable that the company should be wound up.

- [13] **Section 380 (2) (a) and (b)** of the **Companies Act**¹ states:

“(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound-up, the court, if it is of the opinion—

(a) that the petitioners are entitled to relief either by winding-up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound-up

shall make a winding-up order, unless it is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound-up instead of pursuing that other remedy.”

- [14] **Section 380 (2)** provides a conjunctive test which must be satisfied by the petitioner for his entitlement to relief under the Companies Act.

- [15] In **Wang Zhongyong et al v Union Zone Management Ltd et al**² it was held that the important consideration for a court in a winding up petition is the cumulative effect of matters specifically pleaded. The allegation that the business affairs of a company are in disarray does not itself lead to a winding up order on the just and equitable ground.

¹ CAP 58A

² BVIHCMAP2013/0024

[16] What is to be grounded as “just and equitable” has been defined by Lord Wilberforce in the case of **Ebrahimi v Westbourne Galleries Ltd and others**³ as follows:

“The words [“just and equitable”] are a recognition of the fact that a limited company is more than a mere judicial entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act 1948 and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The ‘just and equitable’ provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly, the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: **(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence—this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be ‘sleeping’ members), of the shareholders shall participate in the conduct of the business; (iii) restriction on the transfer of the members’ interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.**

It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves...” (my emphasis)

[17] The court recognises that the brothers had equal access to the management of the respondent company. Nelson Louison on behalf of the respondent states

³ [1973] AC 360

that he always shared a close relationship with the petitioner, so much so that he confided in him on a personal and professional level. He stated that their relationship extended beyond brotherhood, and that the petitioner was his trusted financial advisor prior to the formation of the company with responsibility for preparing all financial documents required for his businesses.

[18] The court on evidence finds that the circumstances fall squarely within the definition in the **Ebrahimi** case. The defendant company was formed on the basis of a personal relationship, involving mutual trust and confidence. Having established this, the next step is to establish whether there has been a breach of the relationship of trust and confidence existing between the brothers. .

Fraudulent Resolution

[19] The petitioner contends that there are sufficient grounds for the court to find that it is just and equitable to wind up the respondent consequent on the breach of the relationship of trust and confidence based on the purported resolution removing him as director and secretary and replacing Nelson Louison as secretary of the respondent. It is the petitioner's case that shares have never been issued in the respondent, and that the only officers of the respondent were Nelson Louison and himself.

[20] The respondent's position is that the petitioner signed the share certificate confirming Nelson Louison's shareholding and status as shareholder and member of the respondent.

[21] Counsel for the respondent argues further that the alleged fraudulent acts were not particularized in the petition. Counsel in support referenced the case of **Three Rivers District Council and others v Bank of England (No 3)**⁴ which confirms that particulars of fraud have to be established, and that a pleading in fraud cannot be a bare assertion.

⁴ [2001] 2 All ER 513

[22] Neither the petitioner's petition nor the initial affidavit in support particularizes the fraud alleged against Nelson Louison. Further, insofar as the petitioner states his signature was forged and Nelson Louison contends that the signature is that of the petitioner, no expert evidence is provided to establish the forgery as pleaded.

[23] Fraud and forgery are questions of fact to be proven. In **Three Rivers District Council and others v Bank of England (No 3)**⁵ it was stated:

"[184] It is well established that fraud or dishonesty [...] must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence [...]. This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so."

[24] The court finds that the petitioner's bare assertions of fraud and forgery cannot properly form the basis for the court concluding that it is just and equitable to wind up the respondent company.

Petitioner's Conduct

[25] It is the evidence of Nelson Louison on behalf of the respondent that he took issue with the manner in which the petitioner treated with the finances in CCCCI, so that he was no longer confident in having the petitioner manage the respondent's financial affairs. Nelson Louison states that the petitioner took issue with him not being a sole signatory on the accounts of CCCCI.

[26] The respondent relies on **Ebrahimi v Westbourne Galleries Ltd and others**⁶ at page 507 per Lord Cross of Chelsea who states the following:

"...A petitioner who relies on the "just and equitable" clause must come to court with clean hands, and if the breakdown in confidence between him and the other parties to the dispute appears to have been due to his

⁵ [2001] 2 All ER 513

⁶ [1973] AC 360

misconduct he cannot insist on the company being wound up if they wish it to continue.”

[27] Nelson Louison acknowledged that his relationship with the petitioner had broken down due to the number of questionable transactions coming to his attention and the failure of the petitioner to provide an explanation in relation to another company CCCCCI. Nelson Louison admits that in August 2023, he executed the relevant documents to remove the petitioner not only as a director of the respondent but also as a signatory on his other businesses which included the respondent and CCCCCI.

[28] The petitioner argues that the matters of CCCCCI are irrelevant to a determination of the extant case. The court agrees with the petitioner in this regard, as the respondent has not demonstrated misconduct on the part of the petitioner with respect to the respondent’s affairs. There is nothing before the court to establish that the respondent company was established for the purpose of management of CCCCCI which is a separate legal entity not reflected in the articles of incorporation of the respondent company.

[29] From all accounts it appears that although the defendant was incorporated as a limited company, the brothers conducted dealings with the respondent’s business as a quasi-partnership. It is the evidence that no shares were issued since incorporation in 2007 until the purported issuance of the 2000 shares to Nelson Louison in 2023 which is presently in contention. It is the evidence that both parties deposited and withdrew money from the respondent without any accounting to each other.

[30] The petitioner’s expulsion as director and secretary means that Nelson Louison now has sole control of the day-to-day management of the respondent company which is contrary to the intent and purpose of the joint beneficial ownership stated at incorporation and in the annual returns. The court finds that the conduct of the brothers and the formation of the respondent was based on mutual trust and confidence. There has been a breakdown of that said trust and

confidence which underpins the ethos for which the company was created and that impasse is impeding the intended management of the said company.

Whether some other remedy is available to the petitioner

[31] In considering whether to wind up the company on the basis that it is just and equitable, this court has to also examine whether there is any alternative remedy.

[32] **Section 380** of the **Companies Act CAP 58A** provides guidance for the making of a winding up order:

“380. Powers of court on hearing petition

(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound-up, the court, if it is of the opinion—

(a) that the petitioners are entitled to relief either by winding-up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound-up,

shall make a winding-up order, unless it is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound-up instead of pursuing that other remedy.”

[33] The petitioner states that there is no other remedy in the circumstances that is available. Counsel for the respondent states however that Part XIII of the Companies Act provides a series of Civil Remedies available to anyone who is described as a complainant in accordance with Section 238.

[34] The respondent argues that, for instance, a complainant may pursue orders from the court for any alleged oppression against him to be restrained and for

steps to be taken to rectify such matters as **Section 241** of the **Companies Act** provides. Some of the relief the court may order in a Section 241 application includes “an order to regulate a company’s affairs by amending its articles or By-laws, or creating or amending a unanimous shareholder agreement”, “an order directing an issue or exchange of shares or debentures”, and “an order compensating an aggrieved person”.

[35] In **Ebrahimi v Westbourne Galleries Ltd and others**⁷ it was stated:

“in the circumstances it was apparent that a potential basis for a winding-up order on the just and equitable ground existed since, after a long association in partnership, during which he had had an equal share in the management, the appellant had joined in the formation of the company; the inference was indisputable that he and N had done so on the basis that the character of the association would, as a matter of personal faith, remain the same; the appellant had established that N and G were not entitled, in justice and equity, to make use of their legal powers of expulsion; that was supported (a) by the fact that N had, by making clear that he did not regard the appellant as a partner, thereby, in effect, repudiated the relationship between them and (b) by the fact that, by ceasing to be a director, the appellant had lost his right to a share in the profits through directors' remuneration, retaining only a chance of receiving dividends; furthermore, he was unable to dispose of his interest in the company without the consent of N and G; all those matters led to the conclusion that the right course was to dissolve the association by winding-up”

[36] In **Wang Zhongyong et al v Union Zone Management Limited et al**⁸ Ferrara

JA at paragraph 48 said:

“In this regard, several categories giving rise to the application of the just and equitable principle have emerged from the cases. These include expulsion or exclusion from the management of the company in circumstances of a quasi-partnership, loss of substratum and deadlock. The various categories are by no means exhaustive of the circumstances in which the equitable principles are to be applied.”

[37] The common law has applied the analogy of the partnership law of just and equitable grounds to company law to say that a company is now in a state which

⁷ [1973] AC 360

⁸ BVIHCMAP2013/0024

could not have been contemplated by the parties when the company was formed, and which ought to be terminated as soon as possible⁹.

[38] An irretrievable breakdown in trust and confidence between the participating members may justify a just and equitable winding-up, essentially on the same grounds as would justify the dissolution of a true partnership¹⁰.

[39] The legal burden of proof shifts to the respondent to establish that the petitioner unreasonably failed to pursue some other available remedy instead of seeking winding-up¹¹. The court is of the view that the respondent has failed to provide a suitable alternative remedy in light of the differences between the brothers.

[40] The respondent speaks of the mortgage of the CCCC for which the respondent was used as collateral security. **Section 380 (1) of the Companies Act** states that the court on hearing a winding up petition shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged.

[41] The court is of the view that the petitioner has satisfied the court that a winding up order should be made having regard to the total breach of the mutual trust and confidence between the brothers. Equity will intervene where the state of affairs between the brothers, who agreed to work together on the basis of mutual trust and confidence, demonstrate that said trust and confidence has completely gone.

[42] The court in making a winding up order may direct the manner in which the winding up may be conducted or make such orders as it sees fit to ensure winding up is conducted in an orderly manner. Each case will be decided on its own merits, taking into account all the evidence submitted to the court in support of the application.

⁹ In re Yenidje Tobacco Company Ltd [1916] 2 Ch 426

¹⁰ Chu v Lau [2020] UKPC 24

¹¹ Asia Pacific Joint Mining Pty Ltd v Allways Resources Holdings Pty Ltd [2018] ACSR 227 at paras 32 and 43

Conclusion

[43] The court finds that the former close relationship of trust and confidence between the brothers has vanished in relation to the management of the respondent company. The issuance of shares to Nelson Louison and the expulsion of the petitioner as Director and Secretary of the respondent result in the exclusion of the petitioner from management participation in the conduct of the business of the respondent for which it was incorporated.

[44] This court is of the view that it is appropriate in the circumstances for the respondent to be wound up and is minded making the said order. However, the court notes that the petitioner although seeking the appointment of a liquidator has failed to provide a name and credentials of a liquidator.

ORDER

[45] In the circumstances it is ordered as follows :

- i. The petitioner shall within seven (7) days of today's date file the name and credentials of a proposed liquidator.
- ii. The respondent through Nelson Louison shall file a reply to the proposed liquidator within seven (7) days of the filing by the petitioner.
- iii. The matter is adjourned to 28th November 2024 for further consideration of the appointment of a liquidator.
- iv. Prescribed costs in the sum of \$10,000.00 to be paid to the petitioner by the respondent through Nelson Louison, within thirty (30) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar