

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2018/0261

BETWEEN:

HEIRS BURTON MATTHEW LOUISY

Claimant

And

1. SAPPHIRE EAST DEVELOPMENT COMPANY LTD.
2. CECILE ASHLINE PHILIP
3. JULIANA ERWIN LOUISY
4. GAIL VILNA PHILIP

Defendants

Appearances:

Mr. Evans Calderon of Counsel for the Claimant
Mr. Andie George of Counsel for the 1st 2nd and 3rd Defendants
Ms. Paulette Francis of Counsel for the 4th Defendant

2022: July 29;
: December 1.

RULING

- [1] **INNOCENT, J.:** By a Petition filed on 4th June 2018, Helen Louisy (the 'Applicant') representing the heirs of Burton Matthew Louisy acting pursuant to a power of attorney, petitioned the court for the winding up of the affairs of the limited liability company Sapphire East Development Company Ltd. (the 'Company') the first-named respondent herein, pursuant to the provisions of section 318 to 412 of the Companies Act.¹
- [2] The second and third named respondents are directors of the Company. The fourth respondent is the secretary to the Company.

¹ Cap. 13.01 of the Revised Edition of the Laws of Saint Lucia

- [3] The shareholders of the Company are the heirs of Raymond Louisy, the heirs of Burton Matthew Louisy, Monica Vilna Louisy, Cecile Ashline Philip (nee Louisy) and Juliana Erwin Louisy.

The Winding-up Application

- [4] The Petitioner alleged that the affairs of the Company were being conducted fraudulently to the extent that the directors of the Company had sold property owned by the Company without the knowledge and consent of the Petitioner and had failed to render an account of the several sales transactions involving property owned by the Company to the Petitioner as one of the shareholders in the Company.
- [5] In addition, the Petitioner complained that the directors of the Company had sold or caused to be sold property owned by the Company to another corporate entity Care Services Ltd. in which one of the directors was the mother of the secretary of the Company.
- [6] The Petitioner contended that the directors of the Company have either failed or refused to give any explanation or account of their dealings with the assets of the Company despite the Petitioner having made requests for the same. The Petitioner further contended that the 2nd to 4th named Respondents have perpetrated a fraud against the Petitioners as shareholders of the Company by failing to account for the proceeds of the sales of the Company's assets.
- [7] Ultimately, the Petitioner particularised the fraud alleged as being in respect of the resale of the Company's assets originally transferred purportedly by sale to Care Services Ltd. and thereafter to other persons including the 4th named Respondent.
- [8] On the basis of the foregoing, the Petitioner contended that the Petitioner is entitled to share in the proceeds of the sales to Care Services Ltd and other third parties including the 4th named Respondent. It is also on the same basis that the Petitioner seeks an injunction as against the Company restraining the Company from disposing of or dealing with any of the Company's remaining assets; and

against Care Services Ltd. restraining it from disposing of or dealing with the assets of the Company that had been transferred to it by the Company.

[9] The Petitioner also sought orders that the Company be wound up or dissolved and that the assets of the Company be distributed among its shareholders proportionately; that an inspector be appointed to investigate and report on the dealings and conduct of the affairs of the Company by its directors; damages and costs.

[10] The court does not intend to venture into the merits of the substantive proceedings. The court is presently concerned with the several applications presently before it precipitated by the applications filed by Helen Louisy. The court will deal with each application sequentially. The court will first deal with the petition to wind up the affairs of the Company and thereafter with the proceedings for oppression and unfair prejudice in the context of the preliminary points raised by the respondents herein.

Opposition to Winding-up

[11] The application for winding up was opposed on ostensibly four substantive grounds, namely: that the application was made pursuant to an act that has been repealed by the present Companies Act; that the application is not supported by any of the grounds contemplated by the provisions of section 378 of the Companies Act; that at the time that the application was made the applicants had no locus standi to bring the application for winding up; and that there are other remedies available to the Petitioner in light of the grounds put forward to ground the application for a winding-up order which would provide the same relief to the Petitioner.

[12] By an application filed 9th June 2022, the Company and its directors sought the following orders and relief, namely, an order that the winding up petition made pursuant to sections 378 to 412 of the Company's Act and filed on 4th June 2018 be struck out; and in the alternative, that the petition be struck out as against them

in their personal capacities rather than in their capacity as directors or shareholders of the Company.

[13] The applicants relied on the following grounds in support of their strike out application, namely, (1) that the winding up petition failed to satisfy any of the requirements for the grant of a winding up order by the court pursuant to section 385 of the Companies Act and that in all the circumstances of the case the petition discloses no reasonable grounds for making the application; (2) that the winding up petition is an abuse of process as there exist alternative forms of redress available to the petitioner which are more amenable to the circumstances of the present case; (3) that the allegation of fraud or fraudulent conduct relied on by the Petitioner is not a substantive ground up which the court can exercise its jurisdiction to make a winding up order in respect of the Company; (4) that in any event, the Petitioner has failed to clearly and distinctly particularise any of the broad allegations of fraud made against the 2nd and 3rd respondents whether in their personal capacities or in their capacities as directors of the Company; (5) the facts alleged by the Petitioner do not disclose any grounds for bringing a claim against the 2nd and 3rd respondents in their private capacities.

[14] Section 385 of the Companies Act makes provision for the winding up of a company by the court.² A company may be wound up by the Court if the company has by special resolution resolved that the company be wound up by the Court; the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; the company is unable to pay its debts; an inspector appointed under the relevant part of the Companies Act has reported that they are of the opinion that the company cannot pay its debts and should be wound up, or that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up, or the Court is of the opinion that it is just and equitable that the company should be wound up.³

² Section 378(1)

³ Section 385(1)

- [15] It appears that the present winding-up petition is not premised on any of the grounds set out in the provisions of section 385 of the Companies Act except that having regard to the substance of the grounds relied on in the Petition and the supporting affidavit that the Petitioner seeks an order for the winding-up of the Company on just and equitable grounds.⁴
- [16] In the court's view, the substance of the petition for winding-up appears to trigger the court's jurisdiction to make a winding-up order on just and equitable grounds. The court has examined extensively the grounds put forward in support of the application for winding-up of the Company alongside what has been canvassed by the Petitioner as an application for unfair prejudice made pursuant to section 241 of the Companies Act.
- [17] The court has formed the view that an application pursuant to section 241 of the Companies Act is more conducive to the relief sought by way of the Petition for winding-up. In the former case, the court has greater latitude in granting equitable relief to the Petitioner given the nature of the complaints made with respect to the management and conduct of the affairs of the Company which the Petitioner alleges has been unfairly prejudicial to her as the legal personal representative of the deceased shareholder. It is obvious that the grounds and the relief sought on the application made pursuant to section 241 of the Companies Act mirror substantial the grounds and relief sought on the petition for winding-up.
- [18] If 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 opinion that the petitioners are entitled to relief either by winding up the company or by some other means, and that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting

⁴ Section 378(1)(e)

unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

- [19] In the circumstances, the court has found it inappropriate for the two applications to be conducted simultaneously. However, the existence of circumstances which would warrant a petition on the unfairly prejudicial ground¹ does not by itself preclude a petitioner from seeking a winding up on the just and equitable grounds.² It is, however, undesirable to include, as a matter of course, a petition for winding up as an alternative to a petition under the unfairly prejudicial provision;³ and the jurisdiction to make a winding-up order on the just and equitable ground⁴ and the jurisdiction to grant relief based on grounds of unfairly prejudicial conduct are not coterminous⁵.
- [20] 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 that the petitioners are entitled to relief either by winding-up the company or by some other means; and 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.⁵
- [21] The court, having examined the grounds for the winding-up petition and the evidence relied on in support has formed the view that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the Company wound up instead of pursuing that other remedy.
- [22] In the court's considered view a winding-up petition should not be resorted to merely because there is disagreement within the company. In the present case the applicants do not allege any matter relevant to the fact that the relationship between the parties has deteriorated to the point where the parties are hopelessly

⁵ Section 388(2)

deadlocked on any issue concerning the management and conduct of the business and affairs of the Company.

- [23] In the present case, the dispute between the parties concern purely issues related to the management of the Company by its directors with respect to the deployment and management of the Company's assets which is suggestive of a claim related to a breach of the directors' fiduciary duty to the Company and their accountability to its shareholders. The applicants' complaint concerns the perceived lack of transparency and accountability by the directors in the management and disposal of the Company's assets. The applicants allege that the directors have dissipated the assets of the Company in a manner otherwise in keeping with the directors' duty to the Company or its shareholders and have withheld information from the applicants and have seemingly excluded them from decision making as it relates to the affairs and business of the Company.
- [24] In addition, the applicants by the tenor of their application seem to be alleging that it is impossible to place their trust and confidence in the directors, which loss of confidence has been caused by the conduct of the directors themselves. However, there appears to be no indication that the parties are incapable of cooperating in the management of the Company's affairs which has led to the Company's inability to function in the fulfilment of its objects or that the objects of the Company and or its dealings have been paralysed which would justify its winding-up of the Company on just and equitable grounds.
- [25] The court has also taken note of the fact that the applicants have not alleged that they have played any or any significant part in the management of the affairs of the Company or in the decision making process related to the affairs or business of the Company from which they have been shut out or if they had participated and not been shut out has resulted in a situation of deadlock.
- [26] In light of the foregoing, it is readily apparent that the applicants are not left without a remedy that is capable of achieving the redress that they seek, notably the

remedy provided by section 241 of the Companies Act to restrain oppression and unfair prejudice.

- [27] The court unfortunately has not been furnished with sufficient information at this stage of the proceedings to assess the question whether the present internal structure of corporate governance mandated by the Company's By-laws is capable of providing an available remedy to the applicants. In the court's considered view, the provisions of section 241 of the Companies Act provides the court with a broad discretion in relation to the kinds of orders it can make to restrain oppressive conduct alleged by a shareholder.
- [28] 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.⁶
- [29] The court has considered the provisions of section 241(7) of the Companies Act which provides that an applicant under section 241 may apply in the alternative for an order under section 385.
- [30] Having accepted that the remedy provided for by winding-up and that provided for by section 241 are separate and distinct remedies and not coterminous but exist as alternatives, the court has considered the propriety of joining the two applications in the same proceedings. Essentially, the applicant is asking the court to exercise its powers not in the alternative but conjointly in respect of the two applications before it.
- [31] In the premises, it would not be appropriate to permit the applicants to be put to their election with respect to which of the two applications they intend to proceed particularly in light of the findings which the court has made respecting the failure of the petition for winding-up to satisfy the requirements of section 385 of the

⁶ Section 388(1)

Companies Act. In the circumstances, and on the basis of the reasons expressed by the court previously, the application for winding-up of the Company is dismissed.

- [32] Therefore, the court will go on to consider whether the application with respect to section 241 of the Companies Act can be maintained later on in this decision.

Locus standi

- [33] With respect to the locus standi point, there is very little that the court intends to say in this regard as it pertains to the winding-up petition. The court's decision to dismiss the winding-up petition has overtaken the point raised by the respondents with respect to the applicants' petition to the winding-up of the Company. However, the question of locus standi also arises for consideration in the context of the claim for oppression and unfair prejudice. Nevertheless, for the sake of completeness, the court will consider the question of locus standi as it relates to the winding-up petition.
- [34] An application to the court for the winding-up of a company shall be by petition presented, either by the company; a creditor, including a contingent or prospective creditor, of the company; a contributory; or the trustee in bankruptcy to, or personal representative of, a creditor or contributory; or any 2 or more of those parties.⁷ This is subject to the exception that a contributory is not entitled to present a winding-up petition unless the shares in respect of which he or she is a contributory, or some of them, either were originally allotted to him or her or have been held by him or her, and registered in his or her name, for at least 6 months during the 18 months before the commencement of the winding-up, or have devolved on him or her through the death of a former holder;⁸
- [35] Section 381 of the Companies Act defines "contributory" as every person liable to contribute to the assets of a company in the event of it being wound up, and for

⁷ Section 387(1)

⁸ Section 387(2)

the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

[36] Section 379 of the Act provides that “Member” in relation to a company means an incorporator of the company and any other person who agrees to become a member of the company and whose name is entered in the company’s register of members; and for the purposes of subsections (1) and (2) “past member” includes the estate of a deceased member and, where any person dies after becoming liable as a member or past member, the liability is enforceable against his or her estate.⁹

[37] Therefore, the court has no hesitation in finding that in ordinary circumstances the applicants would have been competent to bring the application for the winding-up of the Company. However, it appears that the application was brought not on behalf of the estate of Burton Matthew Louisy but by the applicant Helen Louisy in her own right and in the right of the parties whom she represents in their right as beneficiaries.

[38] The court is guided by the provisions of section 196(2) of the Companies Act which provides that a transfer of the shares or debentures of a shareholder or debenture holder of a company made by his or her personal representative; is, although the person executing the transfer is not himself or herself registered with the company as the holder of the shares or debentures, as the case may be, as valid as if he or she had been so registered at the time of the execution of the instrument of transfer.¹⁰ Section 196(3) provides that this applies in respect of a company despite anything contained in the articles or bye-laws of the company, and despite anything contained in any trust deed or debentures, or any contract or instrument relating to the shares or debentures of the company.

⁹ Section 379(3)

¹⁰ Section 196

- [39] On the basis of the foregoing provisions of section 196 of the Companies Act it appears that Mary Simone Louisy is competent to bring the application for a remedy against oppression and unfair prejudice. It has not been presented to the court whether the share transfer pursuant to which Mary Simone Louisy holds herself out as being a shareholder of the Company has been registered by the Company. However, in any event, if this has not been done, then this is a matter that the court can give consideration to in granting relief in the proceedings for oppression and unfair prejudice.
- [40] The court is fortified in this view by the provisions of section 196(3) which states that despite anything in the articles or bye-laws of a company or in any debenture, trust deed or other contract or instrument, a company shall register the personal representative of a shareholder or debenture holder as a member in respect of the shares of the deceased person in its register of members or debenture holders, as the case may be, within 7 days after he or she produces to the company satisfactory evidence of his or her title and requests it to register him or her as a member or debenture holder.¹¹
- [41] In addition the dictionary to the Companies Act defines “shareholder” in relation to a company as including a member of a company described in Division A of Part 3, except where inconsistent with a provision of that Division; the personal representative of a deceased shareholder; and a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members.
- [42] The more troubling issue concerns the applications made by Helen Louisy. There appears to be no substantial dispute regarding the entitlement of the Heirs of Burton Matthew Louisy to the shares held by him in the Company. The dispute surrounds the issue of the identity of those beneficiaries and whether the applicant Helen Louisy has brought the claim in a representative capacity. It appears that Helen Louisy is the administrator of the estate of Matthew Burton Louisy having

¹¹ Section 199(3)

obtained a grant of administration in his estate.¹² Therefore, it follows that Helen Louisy is entitled to bring the present proceedings in her capacity as legal personal representative of Matthew Burton Louisy even though there has been no transfer of shares registered by the Company which vests his shares in her in that capacity or in the beneficiaries of his estate.

Unfair prejudice and oppression

- [43] On 24th January 2022, the Petitioner who had initially sought a winding up order, by a notice of application sought the following declaratory relief and orders, namely, (1) that the business of the Company has been carried on with the intent to defraud the applicants; (2) that the business of the Company has been carried on in a manner or that the powers of the directors of the Company are being exercised in a manner that is oppressive or unfairly prejudicial to or disregards the interest of the Petitioner as shareholder; (3) that the persons concerned in the formation of the Company have acted fraudulently or dishonestly; (4) it is in the public interest that the Company be dissolved; and (5) that an investigation be conducted into the affairs of the Company pursuant to section 518 of the Companies Act.
- [44] This application seemed to be based ostensibly on the same grounds as the “winding up petition” save and except that the applicant now relied on the grounds that there has been no shareholders meeting or resolution of the Company authorising the sale, conveyance or transfer of the Company’s assets in the manner complained of by the applicant.
- [45] Section 241 of the Companies Act provides relief to an aggrieved shareholder of a company and permits an application to the court for an order under that section. In order to grant relief under section 241 the court must be satisfied that in respect of a company that (a) any act or omission of the company effects a result; (b) the business or affairs of the company are or have been carried on or conducted in a manner; or (c) the powers of the directors of the company are or have been

¹² SLUHPB2016/0177

exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.¹³

- [46] On an application to restrain oppressive or unfairly prejudicial conduct the court has power to make several interim and or final orders as it thinks fit. The orders that the court is empowered to make are discretionary. They include inter alia, (a) an order restraining the conduct complained of; (b) an order appointing a receiver or receiver-manager; (c) an order to regulate a company's affairs by amending its articles or bye-laws, or creating or amending a unanimous shareholder agreement; (d) an order directing an issue or exchange of shares or debentures; (e) an order appointing directors in place of, or in addition to, all or any of the directors then in office; (f) an order directing a company, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof; (g) an order directing a company, subject to subsection (6), or any other person, to pay to a shareholder or debenture holder any part of the moneys paid by him or her for his or her shares or debentures; (h) an order varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract; (i) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 149 or an accounting in such other form as the court may determine; (j) an order compensating an aggrieved person; (k) an order directing rectification of the registers or other records of a company under section 244; (l) an order winding-up and dissolving the company; (m) an order directing an investigation under Division B of Part 5 to be made; or (n) an order requiring the trial of any issue.¹⁴

Joinder

¹³ Section 241(2)

¹⁴ Section 241(3)

- [47] By yet another application filed on 3rd March 2022, Mary Simone Louisy, purporting to be a shareholder of the Company by virtue of having inherited the shares of her deceased husband Raymond Joseph Louisy, sought to be joined as a party to the application for unfair prejudice.
- [48] The question that arises with respect to the respondent's contentions in opposition to the joinder of Mary Simone Louisy as a party to the proceedings is whether Mary Simone Louisy is competent to maintain such an action on the basis of her entitlement to the estate of Raymond Joseph Louisy.
- [49] Mary Simone Louisy is the Executrix of the Last Will and Testament of the late Raymond Joseph Louisy and the sole universal legatee named therein which was admitted to probate on 1st February 2000.¹⁵
- [50] Exhibited to Mary Simone Louisy's application is what purports to be a share transfer certificate effecting the transfer to her of the shares held in the Company in the name of the Heirs of Raymond Joseph Louisy. The share transfer certificate was lodged and registered at the Registry of Companies on 25th March 2022, that is, subsequent to the filing of the present proceedings and the application for joinder.
- [51] The substance of the respondent's opposition to the application was that Mary Simone Louisy was not a shareholder in the Company when she purported to join in the proceedings and was therefore not competent to sustain the application for unfair prejudice. In addition, it also appeared that the respondents were contending that since Helen Louisy had no standing to bring either application, Mary Simone Louisy could not be joined in proceedings that were not properly commenced.
- [52] In response, Mary Simone Louisy took the position that having been granted probate of the Last Will and Testament of Raymond Joseph Louisy she possessed legal standing to bring the present application and to be joined as a party thereto.

¹⁵ Exhibit MSL1

Additionally, she took the view that even though the shares had not been transferred to her so that she had title to the same, it mattered not as she was entitled to bring either of the two applications as she was the personal legal representative of the estate of the deceased shareholder Raymond Joseph Louisy. The court accepts that the foregoing proposition is a correct one.

[53] CPR 19.2(3) permits the court to add a new party to proceedings without an application if it is desirable to add the new party so that the court can resolve the matters in dispute in the proceedings or there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue. In addition, CPR 19.3(1) enables the court to add a party on or without an application. An application under CPR 19.3(1) may be made by a person who wishes to become a party.¹⁶

[54] In the court's view Mary Simone Louisy has a sufficient interest in the subject matter of the application for oppression and unfair prejudice in her capacity as shareholder. In the premises, the application made by Mary Simone Louisy to be added as a party to the application made pursuant to section 241 of the Companies Act is granted.

Misjoinder

[55] In a subsequent application filed on 2nd June 2022, the 4th named respondent applied to the court seeking an order removing her as a party to the proceedings pursuant to CPR 19.3(1), CPR 19.3(2) and CPR 19.3(5) on the grounds that (1) she was not a necessary and proper party to the proceedings since she only held the office of secretary in the Company and only having been appointed as such on 16th January 2003; (2) that given her office of secretary in the Company she was not directly responsible for directing or managing the business and affairs of the Company; (3) that she was not a signatory to the instrument by which the Company's assets were transferred to Care Services Ltd.; (4) that she did not act

¹⁶ CPR 19.3(2)

and could not be held out to be an agent of the Company in relation to the transfer of the Company's assets to Care Services Ltd. or otherwise in any other capacity; and (5) that she held no beneficial or other interest in the Company's assets.

[56] CPR 19.2(4) confers on the court the discretion to order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.

[57] In the ordinary course of things it is the duty of the directors of a company to manage the affairs of a company. However, it is also the prerogative of the directors to delegate to other officers or persons the conduct of such duties as the directors are at liberty to determine subject to any statutory bar.¹⁷ The question of fact that arises in the present case is whether such duties had in fact been delegated to the secretary.

[58] In the present case, it has not been shown conclusively that the secretary of the Company played any active or decisive role in the management of the affairs of the Company. The primary allegation made by the applicants herein is that the secretary both had knowledge of the impugned transactions and played some part whether directly or indirectly by virtue of her interest in one or more of the transferee companies involved in the sale transactions and her proximity to at least one of the directors of the Company. It is entirely a question of fact whether or not that is indeed the case. Such a question of fact cannot be determined on paper but can only be resolved on hearing the evidence related thereto.

[59] It cannot be denied that the secretary named in the present case was indeed an officer of the Company. It is readily accepted that by legal definition an officer of a body corporate includes the secretary and any other person who performs for the body corporate functions similar to those normally performed by the holder of any office who is appointed by the board of directors to perform such functions.¹⁸ In the premises, these are all questions of fact to be determined on the assessment of

¹⁷ Section 58 Companies Act

¹⁸ Section 2(2) Companies Act

the evidence presented at the hearing; and therefore cannot be resolved by the court in a summary manner.

[60] It appears that the secretary was joined as a party to the proceedings based on the allegations that point to the fact that she is somehow concerned in the affairs of the Company to the extent that there was a relationship between herself, the shareholders and directors and or other officers of the Company which forms the subject matter of the claim for oppression and unfair prejudice.¹⁹ Therefore, it is arguable, that in all the circumstances of the case, it is desirable to retain the secretary as a party so that the court can resolve all the matters in dispute in the proceedings; and that there appears to be issues involving the secretary which are connected to the matters in dispute in the proceedings, and it is desirable to retain the secretary as a party so that the court can resolve those issues.

[61] In the circumstances, it would be difficult at this stage of the proceedings for the court to make a determination regarding the propriety of joining the secretary of the Company as a party to the proceedings and accordingly make an order removing her as a party. Presumably, if it is found upon consideration of the evidence as a whole that the secretary was improperly joined, then such impropriety can be alleviated by an award of costs. Therefore, the court will decline to make an order removing her as a party to the proceedings.

[62] The directors named in the present proceedings contended that they were improperly joined having been joined in their personal capacities and that the proceedings ought to have been brought against the Company and not its directors. The court does not subscribe to this argument. In respect of the application for the winding-up of the Company that contention would however hold true. In light of the court's findings in relation to the winding-up application there is no need to explore this point further except in relation to the application made pursuant to section 241 of the Companies Act.

¹⁹ Section 551(1) Companies Act

[63] The application as it relates to oppression and unfair prejudice interrogates the conduct of the directors in the management and conduct of the business and affairs of the Company. Therefore, it would be incorrect to say that they are joined in that application in their personal capacities rather than in their capacity qua directors of the Company. In the premises, the court is prepared to hold that the directors have been properly joined in the proceedings brought pursuant to section 241 of the Companies Act.

[64] In addition, the application for oppression and unfair prejudice also relate to matters specifically within the remit of the directors of the Company and in large measure concern their fiduciary duty to the Company, their management of the business and affairs of the Company and in particular their relationship with the shareholders.

Disposition

[65] For the reasons given in this decision the court thinks it is important to make certain orders to put matters right so that the application for oppression and unfair prejudice can proceed to a hearing on its merits.

[66] In the intitle to the application the court thinks it appropriate that “Mary Helen Louisy Administrator of the Estate of Burton Matthew Louisy (deceased)” be substituted as a party in place of the “Heirs Burton Matthew Louisy”.

[67] Also, it will be necessary for the court to give all consequential and incidental directions necessary for the future conduct of the matter at a case management hearing where the court will consider all further applications and any interim relief that the applicants are desirous of obtaining pursuant to section 241 of the Companies Act prior to the substantive hearing.

Order

[68] In the premises, the court’s order is as follows:

1. The application for a winding-up order by the court against the Company is dismissed.
2. The matter shall proceed as an application made pursuant to section 241 of the Companies Act.
3. Helen Louisy, Qua Administrator of the estate of Burton Matthew Louisy shall be substituted as a party to the proceedings in place of "Heirs Burton Matthew Louisy".
4. Mary Simone Louisy is added as an applicant to the application for oppression and unfair prejudice made pursuant to section 241 of the Companies Act.
5. The fourth-named Respondent's application to be removed as a party to the proceedings is dismissed.
6. The matter shall be listed for case management on a date to be fixed by the court office.
7. The court makes no order as to costs.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar