

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

GRENADA

CLAIM NO. GDAHCV2015/0339

BETWEEN:

EDWARD CHAMMAS

(also known as Edward Shammass)

Claimant

and

[1] HASSAN CHAMMAS

[2] NANCY CHAMMAS

[3] HASSAN BROTHERS LIMITED

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Hazel Hopkin for the Claimant

Ms. Rena Banfield with Mrs. Amy Bullock-Jawahir with for the Defendants

2021: September 21;
December 14.

JUDGMENT

- [1] **ACTIE, J.:** This claim raises the issues whether the claimant, Edward Chammas, is: (1) a director of the company; (2) entitled to any remuneration and dividends from the company; and (3) entitled to a monthly salary as an employee of the company.

Background

- [2] Edward Chammas, (Edward), the first defendant and Hassan Chammas (Hassan) are brothers. On 13th July 2004, the company, Hassan Brothers Limited, was

incorporated under the Companies Act 1994. The articles of incorporation reveal that 3,000 ordinary shares were issued for a stated capital of \$3,000,000.00. Upon incorporation Hassan, Edward and George Chammas (George) were listed as Incorporators. Hassan was allotted 2,000 shares and Edward and George were each allotted 500 shares. On 7th July 2004, the incorporators: Hassan, Edward and George were also appointed directors of the company.

- [3] On the 25th August 2004, the company bought property at the corner of Melville and St. John's Streets in the Town of St. George in the State of Grenada (the property). Thereafter, on 6th September 2004, a notice of change of directors was filed at the Company's registry under the company's seal removing Edward and George as directors and appointing Hassan and his wife Nancy Chammas as the only directors. Unfortunately, a few days after the property was bought, it was destroyed during the passage of Hurricane Ivan on 7th September 2004. However, repairs were made to the property which were completed sometime in 2007.

Claimant's case

- [4] In summary, the claimant, Edward Chammas, (Edward) claims against the defendants challenging his removal from office as a director of the third defendant (the company) and the appointment of the second defendant (Hassan's wife) as director in his stead. Equally, Edward also seeks special damages for unpaid wages; and orders directing the defendants to produce the financial statements of the company and to pay him dividends, among other relief.
- [5] Edward complains that the defendants, by their conduct of the company's affairs, have breached the provisions of the Companies Act and the by-laws of the company, in that they:
- (1) unlawfully purported to remove him as director of the company in breach of the company's by-laws and sections 72 and 73 of the Companies Act;
 - (2) refused to disclose the company's financial statements to him in his capacity as shareholder and director of the company;

- (3) failed, neglected and/or refused to hold shareholder's meetings and to file annual returns for the company;
- (4) failed to give him notice of any shareholder's meeting pursuant to 74 of Companies Act;
- (5) failed to pay him dividends as a shareholder and director's fees under clause 15 of the by-laws and section 52 of Companies Act;
- (6) failed to pay him a monthly salary of \$5,000.00 as an employee of the company under an oral contract between him and Hassan in 2008;
- (7) breached their duty of care in the conduct of their duties as directors in relation to him which entitles him relief pursuant to the by-laws and sections 241, 244, 377 and 518 of the Companies Act and orders for general and special damages.

[6] Notwithstanding the above, Edward further argues that being a shareholder of the company he is entitled to one-sixth share of the property which has a market value of \$4,500,000.00 in addition to outstanding dividends, director's fees and salary payments.

[7] Edward states that the company was envisioned as a family venture. However, Hassan and Nancy betrayed his trust when they assumed full control of the company and expelled him from its management. Further, he states that for years he made enquiries into company's functioning and sought to have his concerns addressed, but to no avail.

Defendants' case

[8] The defendants vigorously oppose the claim and contend that:

- (1) Although Edward is a shareholder of the company he is no longer a director of the company. His appointment as director was terminated

at the first shareholder's meeting of the company in accordance with section 69(3) of the Companies Act;

- (2) A notice of change of directors was signed on 25th August 2004 and filed in the Companies registry on 6th September 2004 removing Edward and George as directors and appointing Nancy Chammas as a new director. At that time, Edward did not raise any objection to his removal, which is evident by his acceptance of the share certificate issued to him pursuant to section 98(3) of the Companies Act. George and Edward were simply directors for the purposes of incorporation of the company;
- (3) The non-receipt of any notice of a shareholder's meeting will not invalidate the resolution passed at the meeting in accordance with clause 12.4 of the company's by-laws. The resolutions passed at the first shareholders' meeting following the company's incorporation removing George and Edward as directors and appointing Nancy Chammas as a director were valid.
- (4) In respect of the issue of non-financial disclosure, the defendants argue that Hassan whenever questioned by Edward about the finances status of the company provided him with information within his knowledge. Equally, if Edward claims to be a director of the company then it was within his own power to call an annual shareholders' meeting to request the formal financial statements of the company. Further, written statements were never requested until in or about January 2015 when the same was provided to Edward's attorney.
- (5) The payment of dividends are not mandatory and none of the directors have received director's fees. If Edward was a director as claimed, he has failed and/or neglected to perform any duties as director and therefore is not entitled to receive director's fees.

- (6) Edward and his wife, Jomana Chammas, were never employees of the company, but were employees of the business “Hassan’s Action Wear”, for which they were paid directly. In or about December 2007, Edward approached Hassan seeking financial assistance and out of love, Hassan agreed to assist him for one year until March 2009. The payments had nothing to do with the company.
- (7) They do not owe Edward a duty of care as a director. Any duties they owe are to the company in accordance with the Companies Act.
- (8) In any event, any action for breach of contract, statutory duty or negligence as alleged has long expired and therefore Edward’s claim is statute barred.
- (9) Further, in relation to breach of statutory duty, the defendants argue that Edward has failed to apply to the court for leave to bring an action as a complainant on behalf of the company pursuant to section 239(1) of the Companies Act.

Discussion

Termination as Director

- [9] It is Edward’s case that he is a director of the company. However, the defendants contend that Edward was removed from office and ceased to be a director by virtue of a resolution at the first shareholder’s meeting. In light of the above, the main dispute is whether Edward was lawfully removed from office as a director of the company.
- [10] Counsel for Edward, Ms. Hazel Hopkin in skeleton arguments filed on 15th September 2021, submits that section 4.4 of the company’s by-laws provides that unless a director’s tenure is sooner determined he shall hold office from the date that he is elected or appointed until the close of the annual meeting of the shareholders next following. Further, clause 4.4.2 of the by-laws prescribes the occasion when a director may cease to hold office. Additionally, clause 4.4.3 empowers the shareholders of the company to remove any director from office by

ordinary resolution. Clause 4.4.3 prescribes: “***the shareholders of the company may, by ordinary resolution passed at a special meeting of shareholders, remove any director from office...***”

[11] **Sections 72 and 73 of the Companies Act** also prescribe the manner in which a director ceases to hold office. The sections read:

72. Termination of office

(1) A director of a company ceases to hold office when—

- (a) he or she dies or resigns;
- (b) he or she is removed in accordance with section 73;
- (c) he or she becomes disqualified under section 66 or 67.

(2) The resignation of a director of a company becomes effective at the time his or her written resignation is sent to the company or at the time specified in the resignation, whichever is later.

73. Removal of directors

(1) Subject to section 71(g), the shareholders of a company may—

- (a) by ordinary resolution at a special meeting, remove any director from office;
- (b) where a director was elected for a term exceeding one year and is not up for re-election at an annual meeting, remove such director by ordinary resolution at that meeting.

(2) Where the holders of any class or series of shares of a company have an exclusive

right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) Subject to section 71(b) to (e), a vacancy created by the removal of a director may

be filled at the meeting of the shareholders at which the director is removed, or, if the

vacancy is not so filled, it may be filled pursuant to section 75.

[12] Ms. Hopkin submits that section 74 of the Companies Act is clear that every shareholder's meeting, even in those in which it is contemplated to remove a director from office, such director is entitled to be given notice of the meeting and to attend and to be heard at the said meeting. Section 74 states:

74. Right to notice

(1) A director of a company is entitled to receive notice of, and to attend and be heard

at, every meeting of shareholders.

(2) A director—

(a) who resigns;

(b) who receives a notice or otherwise learns of a meeting of shareholders called

for the purpose of removing him or her from office; or

(c) who receives a notice or otherwise learns of a meeting of directors or

shareholders at which another person is to be appointed or elected to fill the

office of director, whether because of his or her resignation or removal, or

because his or her term of office has expired or is about to expire, may submit to the company a written statement giving the reasons for his or her

resignation or the reasons why he or she opposes any proposed action or resolution.

[13] Ms. Hopkin states that, in this case, the defendants unilaterally removed Edward by way of notice of change of directors. Moreover, at no time was there a shareholder's meeting to determine whether Edward ought to have been removed from office. In any event, even if there was such a shareholder's meeting, Edward had no notice of it.

[14] Conversely, counsel for the defendants, Ms. Rena Banfield and Mrs. Amy Bullock-Jawahir submit that the Companies Act makes provision for informal meetings and that in accordance with the Act a special meeting took place. In the instant case, the

defendants adopted this course given the close family relationship of the three directors: - Edward, George and Hassan. They submit that Hassan, Edward and George were in attendance at informal gathering at the dwelling home when Hassan discussed their termination with them, and they all agreed to the termination. Counsel submit that pursuant to the Companies Act and the by-laws, this informal meeting was sufficient to make the decision of terminating Edward and George as directors of the company lawful and proper.

Analysis

[15] The defendants have alleged that Edward was lawfully removed as a director by way of a resolution at a shareholder's meeting. It is trite that he who alleges must prove. In the circumstances, the defendants have the greater evidential burden of proving that Edward was lawfully removed at the said meeting. The court is of the view that the defendants have failed to discharge that burden of proof. Equally, the court is not satisfied given the lack of evidence before it that such a shareholder's meeting even took place, for the following reasons:

- (1) There is no evidence of the date, place and when the said shareholder's meeting took place;
- (2) Further, there is no evidence that the shareholders were served with notice of such a meeting, whether by personal service, advertisement or otherwise, in accordance with section 74 of the Companies Act;
- (3) Apart from the defendants bare assertion that such a meeting took place, they have not tendered any other evidence to support that assertion;
- (4) Moreover, the defendants have failed to disclose the minutes of the meeting which ought to reveal:
 - (a) the shareholders or persons who were in attendance or participated through other telecommunication platforms;
 - (b) the person who tabled the resolution to remove Edward and George as directors and the results of those who voted in favour of it, whether in person, by way of proxy or otherwise; and
 - (c) whether the resolution was successfully passed at the meeting.

[16] In any event, the court notes that the notice of change of directors filed on 6th September 2004 which is relied on by the defendants reveals that on 11th June 2004 Edward and George ceased to hold office as directors of the company. However, the court also notes that the company was only incorporated on 13th July 2004. In the circumstances, there could not have been a shareholder's meeting on 11th June 2004 to remove Edward and George from their office as directors since at that material time the company did not exist. Therefore, the notice of change of directors dated filed on 6th September 2004 is null and void and of no effect. Accordingly, Edward and George did not cease to hold their office as directors. They continue to hold office as directors of the company until they cease to hold office in accordance with the provisions of the by-laws and the Companies Act.

Is Edward entitled to a salary from the company?

[17] Edward pleaded at paragraphs 16 and 17 of in his statement of claim that he was an employee of the company and was entitled to a salary. He has pleaded the following assertions and contentions to establish his claim for outstanding salary payments:

- (1) In 2008 he was employed as a Manager of the company pursuant to an oral contract concluded between Edward and Hassan in 2008;
- (2) One of his duties was the collection of rent;
- (3) He was entitled to a monthly salary of \$5,000.00;
- (4) He received salary payments from January 2008 to February 2009 as an employee of the company;
- (5) He was paid a monthly salary of \$5,000.00 less the National Insurance (NIS) deduction of \$740.00 totalling \$4,760.00;
- (6) He has not received a salary since February 2009 despite continuing employment with the company;

- (7) He received cheques from the company between 30th January 2008 and 6th February 2009 in the sum of \$4,760.00 from Hassan Brothers Limited and Hassan's Action Wear respectively.

[18] In contrast to those contentions, the defendants assert that those payments made to the Edward and his wife, Jomana, were not salary payments, but were made by of Hassan giving financial assistance to his brother to establish his own business. Further, they assert that Edward and Jomana were never employees of the company, but were employees of "Hassan's Action Wear".

Analysis

[19] Looking at the totality of the evidence, the court does not accept the defendants' evidence that those payments were gratuitous or given as financial assistance. The payments on the cheques were fixed in the monthly sum of \$4,760.00 and deductions for NIS in keeping with normal salary deductions. As such, the court prefers and accepts the evidence from Edward that there was an oral contract of employment between him and his brother, Hassan. However, the court notes that the evidence of the cheques are conflicting and not clear, in that the monies which were paid to Edward and Jomana came from both Hassan Brothers Limited and Hassan's Action Wear. Apart from the evidence of Edward and Jomana that they were employees of the company and the evidence of the cheques, there is no other evidence, such as a letter of appointment or pay slip from the company which supports Edward's contention that he was an employee of the company. Therefore, the court is satisfied that on a balance of probabilities Edward was employed pursuant to an oral contract between him and Hassan and not the company.

[20] Additionally, Edward's claim for outstanding salary payments from September to November 2008 and February 2009 to August 2015 from the company do not take matters any further. Apart from Edward's bare assertion that he continued to work from February 2009 without pay, there is no clear evidence of the continuation of his employment after February 2009. Edward failed to plead the duration of his employment with the company as a term of contract and did not lead evidence tending to prove the continuity of his contract of employment after February 2009. This, in the court's view, is fundamental to proving that his employment with the

company continued after February 2009 which would entitle him to the outstanding salary payments. Therefore, the court is of the view that the claim for outstanding salary payments must fail.

[21] Additionally, the court is also not satisfied that the Edward was an employee of the company based on the by-laws. There is no evidence that Edward was appointed as Manager of the company by the directors in accordance with clause 11.13 of the company's by-laws. Clause 11.13 provides:

“General Manager or Manager: The directors may from time to time appoint one or more General Manager or Manager and may delegate him or them full power to manage and direct the business and affairs of the company (except such matters and duties as by law must be transacted or performed by the directors or by the shareholders) and to employ and discharge agents and employees of the company or may delegate to him or them any lesser authority. A General Manager or Managers shall conform to all lawful orders given to him by the directors of the company and shall at all reasonable times give to the directors or any of them all information they may require regarding the affairs of the company; any agent or employee appointed the General Manager or Managers may be discharged by the directors.” (Underlining supplied)

[22] Moreover, Edward states that he was appointed pursuant to an oral contract between him and Hassan. However, any contract to appoint Edward as Manager of the company must have been agreed to by at least two directors in accordance with the by-laws of the company. There is no evidence that another director apart from Hassan agreed to Edward's appointment. Accordingly, Edward's appointment as Manager of the company was done contrary to the provisions of the by-laws and as such was null and void and of no effect.

[23] In any event, the court notes that the claim was filed 21st August 2015 which is more than six years after cause of action first accrued in February 2009. The defendants contend that any claim for breach of contract is statute barred. Section 40 of the **Limitation of Actions Act**¹ provides “.....***no action for debt (not on specialty),...shall be brought but within six years next after the cause of action***”. Accordingly, any claim by Edward for outstanding salary payments is statute barred.

¹ Cap 173 of the 2010 Continuous Revised Edition of the Laws of Grenada.

Dividends and Director's fees from the company

[24] It is Edward's case that he is entitled to dividends as a shareholder of the company. In response, the defendants argue that the payment of dividends is not mandatory. Ms. Hopkin submits that such a response is insufficient in this regard considering the context that Edward has been locked out of the financial decisions of the company and was unable to ascertain its position.

[25] On the other hand, counsel for the defendants submits that Edward is not entitled to any remuneration, including dividends since he was lawfully and effectively removed as director of the company shortly after his appointment. In the alternative, Counsel asks the court to consider the language used in section 52 of the **Companies Act**. Counsel is of the view that section 52 and the by-laws of the company placed a discretion on the company to pay director's fees and dividends. As such the payment of such remuneration is not mandatory. Additionally, counsel submits that the word "may" ought to be interpreted as discretionary and relies on section 3 of the **Interpretation and General Provisions Act**² which prescribes:

"In every written law, except where a contrary intention appears, the word "may" shall be construed as being directory or empowering and the word "shall" or "must" shall be construed as being mandatory or imperative."
(Underlining supplied)

[26] With respect to the remuneration of directors, clause 7 of the by-laws provides:

"The remuneration to be paid to the directors shall be such as the directors from time to time determine and such remuneration may be in addition to the salary paid to any officer or employee of the company who is also a director. The directors may also award special remuneration to any director undertaking any special service on the company's behalf other than the routine work required of a director and the confirmation of any such resolution or resolutions by the shareholders shall not be required. The directors shall also be entitled to be paid their travelling and other expenses properly incurred by them in connection with the affairs of the company."
(Underlining supplied)

[27] Further, in respect of dividends the by-laws and **section 52 of the Companies Act** prescribes:

² Cap 153 of the 2010 Continuous Revised Edition of the Laws of Grenada.

Clause 15 of the by-laws

“The directors may from time to time by resolution declare and the company may pay dividends on the issued and outstanding shares in the capital of the company subject to the provision (if any) of the articles and section 52 of the Act.” (Underlining supplied)

52 of the Companies Act - Payment of dividend

(1) Subject to subsection (2), a company may pay a dividend in money, in property, or by issuing fully paid shares of the company.

(2) A company shall not pay a dividend in money or in property out of unrealised profits.

(3) If shares of a company are issued in payment of a dividend, the value of the dividend stated as an amount in money shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend. (Underlining supplied)

Analysis

[28] A fair construction of clauses 7 and 15 of the by-laws and section 52 of the Companies Act suggests that the payment of remuneration to directors and shareholders are not mandatory. The word “**may**” is used in the provisions of the by-laws and Companies Act in relation to the payment of dividends and director’s fees. The court agrees with counsel for the defendants submissions that the word “may” is discretionary, and its natural meaning should be ascribed to it. As such directors are not specifically entitled to director’s fees or remuneration as of right. Likewise, neither are shareholders entitled to dividends as of right. Further, the court notes that the company does not have a clear policy on the payment of dividends for shareholders and remuneration of its directors. Additionally, there is no evidence that the directors of the company agreed to pay dividends and director’s fees on behalf of the company which were withheld from Edward. Equally, there is no pleading that the company was in a financial position to pay dividends and remuneration, but refused to do so. The claim also fails on this point.

Breach of Statutory Duty

[29] Edward complains that no annual meeting was ever called or held by the company which is contrary to Companies Act. It is the defendants’ case that any claim for

breach of statutory duty is statute barred. However, the court does not find merit in this argument as the provisions of the company's by-laws and section 107 of the Companies Act mandate that the company shall call a shareholder's meeting annually. Clause 12 of the by-laws provides "*the annual meeting of the shareholders shall be held on such day in each year.*" This section places a continuing duty on the directors to call an annual meeting each year. In the case at bar, there is no evidence that any annual shareholder's meeting was held in accordance with the Companies Act. Accordingly, the company is required to call an annual meeting in accordance with clause 12 of the company's by-laws and section 107 of the Companies Act.

Conclusion

[30] For all the above reasons, the claimant's claim filed as amended on 27th November 2015 is granted in part and it is ordered and declared as follows:

- (1) The notice of change of directors dated 25th August 2004 and filed on 6th September 2004 is null and void and of no effect;
- (2) The notice of change of directors dated 25th August 2004 and filed on 6th September 2004 shall be rectified under section 244 of the Companies to remove Nancy Chammas as director and reflect and insert Edward and George Chammas with Hassan Chammas as directors of the company from the date of incorporation to present;
- (3) The claimant continues to hold office as director of the company until he ceases to hold office in accordance with the provisions of the by-laws and the Companies Act;
- (4) The claimant's prayers for special damages for salary payments and orders for seeking remuneration or director's fees and dividends from the company are refused;
- (5) The company shall call an annual meeting in accordance with clause 12 of the company's by-laws and section 107 of the Companies Act within Sixty (60) days of this judgment.

- (6) At the annual meeting the first defendant, Hassan Chammas, shall serve on the shareholders the annual returns of the company, including all financial statements from the year 2015 to present in accordance with sections 149 and 153 of the Companies Act;
- (7) All other relief and orders claimed by the claimant not specifically granted herein are refused;
- (8) The defendants' counterclaim against the claimant for breach of statutory duty under section 239 of the Companies Act is dismissed.
- (9) The claimant having been partly successful on his claim and accordingly costs shall be assessed if not agreed within twenty-one (21) days from today's date.

Agnes Actie
High Court Judge

By the Court

Registrar