THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0164

BETWEEN

NICOLE FERNANDEZ
of Cane Garden, St. Vincent and the Grenadines

FIRST CLAIMANT

AND

MAYA JOHN
of Cane Garden, St. Vincent and the Grenadines

SECOND CLAIMANT

AND

MAKAYLA JOHN
of Cane Garden, St. Vincent and the Grenadines
(By her next friend MERLE FERNANDEZ)

DEFENDANT

IN THE MATTER OF THE SECURITIES ACT CHAPTER 261 OF THE REVISED LAWS OF SAINT VINCENT AND THE GRENADINES 2009

AND

IN THE MATTE ROF THE COMPANIES ACT CAP 143 OF THE REVISED LAWS OF SAINT VINCENT AND THE GRENADINES 2009

AND

IN THE MATTER OF THE SALE OR TRANSFER OF SHARES JOINTLY HELD WITH A MINOR

Appearances:

Mr. Jadric Cummings for the claimants.
Defendant unrepresented.

2020: May 12
May 20

JUDGMENT

BACKGROUND

[1] **Henry, J**.: Ms. Nicole Fernandez is the mother of Maya and Makayla John. In 2011, Ms. Fernandez purchased some common shares of the Bank of Saint Vincent and the Grenadines Ltd. ('the bank') in the joint names of her daughters and herself. They wish to sell the shares. Maya John has consented to the sale. Makayla is not yet an adult but she is in agreement. She will turn 18 years in December 2020[1]. Her mother and sister have applied to the court for an order permitting the sale of those shares jointly held by Makayla John and a declaration that Nicole Fernandez may complete the transfer on Makayla's behalf. Makayla's grandmother Merle Fernandez appears as her next friend in this matter. She does not object to the sale.

[2] Ms. Nicole Fernandez contended that a court order is required to sanction the sale. Ms. Merle Fernandez made no submissions. The court is satisfied that the law provides for the sale of a minor's shares in accordance with an order of court. A declaration to this effect is accordingly made.

ISSUE

[3] The issue is whether the court should grant permission for the sale of Makayla's shares.

Should the court grant permission for the sale of Makayla's shares?

[4] Nicole Fernandez testified that she bought several hundred of the bank's shares on 19th December 2011. She produced a copy of the confirmation of the transaction. She attested[2] that the bank was subsequently registered with the Eastern Caribbean Central Securities Registry Limited ('ECCSR') as a consequence of which its shares are now uncertificated. Ms. Fernandez produced a copy of the ECCSR's account statement and a letter from the ECCSR which collectively identified her as the account owner in respect the referenced shares, held in a joint account with her daughters. The court accepts that those documents supply adequate proof of the referenced purchase and joint shareholding.

[1] Based on the contents of her birth certificate exhibited to Nicole Fernandez' second affidavit.

[2] By affidavits filed respectively on 29th October 2018 and 5th May 2020.

[5] Ms. Fernandez testified that she added her daughters' names to the account for convenience, so that they would benefit in the event of her passing. She averred that she was unaware at that time that she would not have been able to deal with the shares until her daughters became of age, without a court order. She testified that they now wish to sell the shares to cover necessary educational and social development expenses which have been incurred for their joint benefit. Ms. Fernandez revealed that their shareholdings were increased in 2017 by an interim stock dividend made by the bank. Neither Maya nor Makayla testified.

[6] Ms. Fernandez commenced her claim by Fixed Date Claim Form and subsequently filed an Amended Fixed Date Claim Form[3]. The latter was served on the Merle Fernandez one day after filing. The changes to her statement of case were made before the case management conference and are accordingly permissible without court order[4].

[7] Ms. Nicole Fernandez submitted that the court is empowered pursuant to provisions of the Securities Act[5], to make an order authorizing the sale of Makayla's shares. Sub-regulation (5) of regulation 11 provides:

> '(5) Where any one or more joint shareholders or joint holders of any other security is a minor, no dealings may be effected with the security **save pursuant to and in accordance with an order of the court**.' (bold added)

[8] I am satisfied that this provision enables the court to make an order authorizing joint holders to deal with (including to sell) shares held in common with a minor. In the circumstances of the case at bar, no reason has been advanced why the court should not grant the order permitting Nicole Fernandez to transfer the shares on Makayla's behalf, and to do all things incidental thereo.

[9] Nicole Fernandez is in law regarded as trustee for Makayla in relation to management of the referenced shares, while Makayla is a minor. There is no objection to the proposed sale by the

[3] Respectively on 29th October 2018 and 8th April 2019.

[4] Pursuant to rule 20.1(1) of the Civil Procedure Rules 2000 ('CPR').

[5] Cap. 261 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

minor or her next friend. The court notes that she will soon assume the status of an adult. There are no circumstances which appear to militate against the making of such an order. It is therefore appropriate to grant the order.

Costs

[10] The proceedings were not adversarial. Ms. Merle Fernandez was unrepresented and took no active part in the leading of evidence or through submissions. In the premises, I make no order as to costs.

Miscellaneous

[11] Out of necessity, Ms. Fernandez included additional details about the referenced shareholdings and the identity of the proposed purchaser. Those matters have been considered by the court. It has been determined that it is not necessary to include those particulars in this judgment. They have been excluded to protect the parties' privacy.

ORDER

[12] It is declared and ordered:

1. Ms. Nicole Fernandez is authorized, on Makayla John's behalf to sell the referenced shares, to execute all instruments and do all things necessary to complete such sale.

2. No order as to costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar