THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2004/0086A

BETWEEN

In the matter of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Chapter 18 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990 section 76 and Paragraphs 3 and 4 of the Barristers and Solicitors Rules Booklet 4

And

In the matter of Unprofessional Conduct by Othniel R, Sylvester a Barrister and Solicitor

And

In the matter of the Application for a Rule to issue to Othniel R. Sylvester Barrister and Solicitor to show cause why he should not be suspended or struck off the roll of Barristers and Solicitors

And

In the matter of the application of Faelleseje a private commercial foundation of Denmark

Between

Faelleseje A Private Danish Foundation

Claimant

and

Lesline Bess Court Appointed Representative of the Estate of Othniel R. Sylvester Deceased

RESPONDENT

Appearances:

Mr. Richard Williams for the claimant.
Mr. Parnel R. Campbell Q.C. and with him Ms. Mandella Campbell for the respondent.
Mr. Emery Robertson Snr. for Mr. Trevor Sylvester.
Mr. Grahame Bollers for Marcole Investments Limited.

2017: Jan.18
Mar. 3

DECISION

BACKGROUND

[1] **Henry, J.:** This is an application by Marcole Investments Limited ('Marcole Investments') and Mr. Trevor Sylvester for leave to appeal a decision granting the claimant Faelleseje, permission to sell Marcole Investments' property - Marcole Plaza, and for a stay of execution of that order. The parties are connected to this case by a series of inter-related activities involving Othniel R. Sylvester deceased. A lawyer by profession, Mr. Sylvester was struck off the rolls of barristers and solicitors in Saint Vincent and the Grenadines in May 2007[1] as a result of disciplinary proceedings brought against him by Faelleseje, his former client. Faelleseje accused Mr. Sylvester of stealing a substantial amount of their monies. The disciplinary tribunal found Mr. Sylvester liable and ordered him to repay Faelleseje $5,212,500.00 with interest. He did not. Faelleseje has remained largely unpaid since then.

[2] Mr. Sylvester's estate has been represented in this matter by Ms. Lesline Bess, the executrix of his will. Mr. Sylvester held the majority shares in Marcole Investments, a company which owns a commercial building known as Marcole Plaza, in Kingstown, Saint Vincent and the Grenadines. Marcole Investments was brought into the instant case as an interested party.

[1] On 29th May.

[3] Mr. Sylvester's daughter, Nicole Sylvester was a director in Marcole Investments. She became an integral player in MIL's affairs and represented Marcole Investments in the court proceedings until her death in 2015. By consent order dated 22nd November 2012[2], Faelleseje, Marcole Investments and Lesline Bess as executor for Othniel Sylvester's estate agreed to the sale of Marcole Plaza and for the proceeds be paid to Faelleseje. The sale did not take place. In December 2015[3], Faelleseje applied to court for an order to sell Marcole Plaza below the market value for a minimum of $2,600,000.00. Marcole Investments opposed the application and filed a counter application[4] to set aside the consent order on the ground that it was a nullity.

[4] Othniel Sylvester's son Trevor Sylvester, represented Marcole Investments in his capacity as director for that part of the proceedings. He holds 1.8% of the shares in Marcole Investments. However, he was not a party to either application. Othniel Sylvester's estate holds a commanding share of 71.5% in Marcole Investments. This court granted Faelleseje's application for the sale of Marcole Plaza, by decision dated 5th December, 2016. It is against that order that Mr. Trevor Sylvester and Marcole Investments have sought leave to appeal. Sometime after the instant application was filed, an affidavit was filed[5] by one Mr. Peter Alexander in which he averred that Marcole Investments' Board of Directors (including Mr. Trevor Sylvester) had been replaced by a new board and a decision taken to withdraw Marcole Investments' application for leave to appeal and stay of execution.

[5] Faelleseje submitted that Trevor Sylvester has no *locus standi* to seek leave to appeal or to appeal because he was not a party to the applications from which the decision arose. For the reasons provided in this decision the applications for leave to appeal and stay of execution are refused.

ISSUES

[6] The issues are whether Marcole Investments and Mr. Trevor Sylvester should be granted:

(1) leave to appeal? and/or

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[2] Entered on 30th November, 2012.

[3] By Notice of Application filed on 17th December, 2015.

[4] By Notice of Application filed on 24th June, 2016.

[5] On 11th January, 2017.

(2) a stay of execution of the order for sale?

Preliminary Issues

[7] This application raises two preliminary issues related to *locus standi* and the purported withdrawal by Marcole Investments' applications. I will deal first with the latter.

Withdrawal of application by Marcole Investments

[8] Up to 11th January 2017, Mr. Emery Robertson Snr. conducted Marcole Investments' case in respect of the application for leave to appeal and stay of execution. Mr. Peter Alexander deposed that he, Ms. Danielle France and Mrs. Ianthea Leigertwood-Octave were appointed as Marcole Investments' new directors at a special general meeting[6] of Marcole Investments and that a Notice of Directors to this effect was filed at the Commerce and Intellectual Property Office on 6th January 2017. He produced a certified copy confirming this. He attested further that the new board had replaced Mr. Emery Robertson Snr. as Marcole Investments' solicitor and appointed Mr. Grahame Bollers of Regal Chambers in his stead. A Notice of Acting was filed by Mr. Bollers on 11th January 2017 signifying that he was indeed appointed to act as legal practitioner for Marcole Investments in place of Mr. Robertson.

[9] Mr. Sylvester has not:

1. disputed those assertions;
2. provided any evidence that the Notice of Change of Directors does not reflect the true position in relation to the management of Marcole Investments; or
3. challenged the new board's appointment or its authority to act for Marcole Investments.

He made no submissions regarding the change of directors as evidenced by the certified copy of the notice. His silence suggests acquiescence which is inferred accordingly. Learned counsel Mr. Emery Robertson Snr. expressed the view that he did not consider that he had been lawfully removed as Marcole Investments' legal practitioner. His assertion does not advance Mr. Sylvester's cause.

[6] On 4th January, 2017.

[10] The law[7] stipulates that the directors of a company have exclusive responsibility to exercise its powers and direct its management, unless a unanimous shareholder's agreement provides otherwise. The law[8] also provides for removal of directors at a special meeting. I accept Mr. Alexander's testimony regarding the appointment of the new board as evidenced by the notice of change of directors. In those circumstances, I find that the former board's authority to make decisions for Marcole Investments ceased on 11th January, 2017, on the appointment of the new board. It follows that the new board's decision to withdraw the dual applications and representation of this to the court, effectively terminates that aspect of the proceedings, once the appropriate order is made. In the premises, Marcole Investments' application for leave to appeal and stay of execution of the impugned decision are dismissed.

Locus standi

[11] Faelleseje and Ms. Lesline Bess argued that Mr. Sylvester was not a party to the application from which he seeks leave to appeal. It submitted that consequently Mr. Sylvester lacks legal capacity in these proceedings, that his proposed appeal has no merit and no possibility of success. They reasoned that Mr. Sylvester should not be granted leave to appeal. Ms. Lesline Bess submitted further that having been removed as a director of Marcole Investments Mr. Sylvester no longer has the requisite *locus standi* to pursue the instant application. Mr. Sylvester did not address these contentions. Marcole Investments filed no submissions.

[12] It is trite law that generally only parties to civil proceedings can lodge an appeal or move the court for leave to appeal or a stay of execution of a decision[9], unless express legislative provision is made to the contrary. Mr. Sylvester was not a party to the original application in his personal capacity. He was involved solely in a representative capacity, as director of Marcole Investments. He did not thereby gain an interest in the claim as an individual in his own right and he made no application to be joined in such capacity. Faelleseje's and Lesline Bess' submissions that he lacks the requisite capacity are

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7 Companies Act, Cap. 143 of the Revised Laws of Saint Vincent and the Grenadines, 2009 ('the Act'), section 58.

8 Ibid. at section 73 of the Act.

9 See CPR 62.2 which enables a party to seek leave and rule 2.4 which describes 'party' as a party to the claim or his legal practitioner.

accordingly upheld. In the round, I hold that Mr. Trevor Sylvester has no *locus standi* to prosecute an application for leave to appeal or stay of execution in this matter.

ANALYSIS

Issue 1 – Should Mr. Trevor Sylvester be granted leave to appeal?

[13] In view of the foregoing finding regarding Mr. Sylvester's *locus standi*, the only logical outcome is refusal of his application for leave to appeal. Mr. Sylvester's application for leave to appeal is therefore dismissed.

Issue 2 – Should Mr. Trevor Sylvester be granted a stay of execution of the order for sale?

[14] Since Mr. Sylvester lacks legal capacity to make application in the present proceedings, his application for a stay of execution cannot be entertained. It is accordingly dismissed. Faelleseje, Lesline Bess as executor of Othniel Sylvester's estate and Marcole Investments are entitled to recover costs from Mr. Trevor Sylvester. They are required to file and serve on or before 31st March, 2017, applications for costs to be assessed pursuant to CPR 65.11.

ORDERS

[15] It is accordingly ordered:

1. Marcole Investments' application for:

   (a) leave to appeal; and

   (b) stay of execution of the decision for sale of Marcole Plaza,

   dated 5th December 2016 is dismissed.

2. Mr. Trevor Sylvester's application for:

   (c) leave to appeal; and

   (d) stay of execution of the decision for sale of Marcole Plaza,

   dated 5th December 2016 is dismissed.

3. Mr. Trevor Sylvester shall pay Faelleseje, Lesline Bess as executrix of Othniel Sylvester's estate and Marcole Investments Limited, costs to be assessed on application to be filed and served on or before 31st March, 2017.

[16] I am grateful to counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE