

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2013/0062

**IN THE MATTER OF A CERTIFICATE OF GOOD STANDING FOR THE COMPANY STANDFORD
DEVELOPMENT**

COMPANY LIMITED

AND

IN THE MATTER OF THE REGISTRAR OF COMPANIES

AND

IN THE MATTER OF THE COMPANIES ACT 1995

BETWEEN:

STANFORD DEVELOPMENT COMPANY LIMITED

Applicant

AND

THE REGISTRAR OF COMPANIES

Respondent

Appearances:

Mr. David Joseph Q.C. and with him Ms. Kema Benjamin for the Applicant
Mr. Justin Simon Q.C. and Mrs. DeFreitas-Reis for the Respondent

2013: February 28
June 4

DECISION

[1] HENRY, J.: A Notice of Change of Directors together with a Resolution dated 16th November 2009 were filed with the Registrar of Companies (the respondent) on 23rd November 2009. The documents indicated that Barbara Streete and another had been appointed directors of the applicant. Certain objections were raised by the respondent and the filings were not accepted. The Applicant, over a period of time, sought to address the objections raised and to have the respondent accept the filings, but the applicant has not been successful. By Application filed 28th January 2013, the applicant applies to the court pursuant to Part 56 of the Civil Procedure Rules for an order that:

1. Leave be granted to the applicant to file a claim seeking a Writ of Certiorari against the Registrar of Companies for her decision to refuse the filings of the Company together with her requested alteration reflected in her letter of 22nd November 2012;
2. Leave be granted to the Applicant to file a claim seeking a writ of Mandamus against the Registrar of Companies for her failure to consider and act upon the Resolution of the Applicant amending its articles dated 26th October 2012 as she is under a duty to do within a reasonable time, such reasonable time having long expired.
3. An interim order that the respondent do forthwith issue written confirmation as to the state of affairs of the Applicant as it relates to its Officers and do make available the Register of the Company for public inspection.
4. The applicant further requests that the court direct that the grant of leave acts as a stay of all proceedings against the applicant until the determination of the substantive issue, pursuant to CPR 56.4 (8).
5. That all necessary and consequential directions be given.

[2] The application is supported by an affidavit of Barbara Streete. In her affidavit Ms. Streete deposes that Robert Allen Stanford is the sole shareholder of the applicant. With regard to her alleged position with the applicant, she points to the Resolution made on 16th November 2009, in which one Andrea Stoelker and herself were appointed Directors of the Applicant. Further she notes that this Resolution together with a Notice pursuant to section 77 of the Companies Act were duly filed with the Registry on 23rd November 2009.

[3] According to the affidavit, by letter dated 24th November 2009, the respondent raised issue with the filings with respect to compliance with the requirements of the non-citizen Land Holding Regulation Cap 239 (the Act). Specifically the letter requested the nationality of Andrea Stoelker and a copy of her licence required by the Act. Ms. Streete's affidavit noted that there was no issue raised with respect to her directorship. However, subsequently by letter of 7th January 2010, the respondent raised several issues having to do with the same filings. She asserts that again no issue was

raised with her directorship. According to Ms. Streete, the applicant complied with the directions and clarifications of the respondent, namely:

- (a) On 2nd March 2010 a resolution removing Arnold Knoche as a director was filed together with the requisite Notice of change of Director;
- (b) Also on the same day the resolution of the 16th November 2009 was re-filed. The resolution was witnessed by a Notary Public. With respect to the issue of a license for a non citizen, Ms Stoelker resigned as a director and evidence of this was furnished to the respondent on 20th July 2011.
- (c) The applicant also furnished the respondent with a Notice of change of Registered Office.

[4] The deponent states that the applicant continued to seek to obtain a Certificate of Good Standing and that she continued to act in the role of a Director of the Company given that all of the concerns expressed by the respondent did not in any way undermine her holding of the office of Director.

[5] However, on or about 22nd June 2010, the respondent together with the Attorney General made an application to the High Court for directions on the same matters she had already addressed. A decision or ruling was given by the court on 3rd September 2010. Upon receipt of the ruling, the applicant via its Attorney wrote to the respondent seeking her position on the filings.

[6] On 22nd November 2012, the Respondent issued a letter to the applicant stating that she now rejects all its filings. The Respondent specifically stated as follows:

“(c) xviii. Additionally, those Notices of Change of Director and “Resolution” documents which indicate the appointment of Barbara Street as a director are inconsistent with the Articles of SDCL [the Applicant] in that there is no indication that she holds shares or stock as required by section 80 of the Articles of Association.”

[7] The applicant responded by letter dated 8th December 2012 which drew respondent’s attention to the Resolution of the Applicant dated 26th October 2012 and duly executed by the sole shareholder, Robert Allen Stanford. Yet the Respondent has failed and refused to issue a certificate of good standing with confirmation that Barbara Streete is duly appointed and acting as a Director.

[8] In a Supplemental Affidavit filed on 14th February 2013, Barbara Streete brought to the court’s attention further attempts by the applicant to have the respondent issue confirmation as to the Directorship of the Company, but that to date, the Respondent has not responded.

[9] Ms. Streete asserts that the action of the Respondent has caused the Applicant severe hardship and the applicant is no longer in a position to operate as a viable business. Further, that the Applicant holds certain Orders and Judgments against the Crown which it needs to enforce and is unable so to do as the appointed Officer of the Applicant is not properly recognized.

- [10] The Respondent opposes the application for leave. In her affidavit dated 25th February 2013, she directed the court to her three letters – one dated 22nd November 2012 and two dated 11th February 2013 – where she addressed the issues of the various requests made for filing of corporate documents by the applicant following the directions given in the judgment of Michel J delivered on 3rd September 2012.
- [11] The Respondent states that in her responses to the filings on behalf of the applicant she has complied with section 246 (1) of the Companies Act, 1995 and points out that section 247 of that Act provides a remedy to all persons aggrieved by a decision of the Respondent in that regard.
- [12] The respondent further states that she has rejected the Applicant's Resolution dated 26th October 2012 because its verification, among other things, by the attached Certificate of Execution is deficient in a number of particulars as itemized in her letter dated 11th February 2013. Further, the respondent challenges the applicant's legal authority to institute this action.

The Law

- [13] As was noted by Lord Diplock in **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd**¹ the procedure under the Rules for obtaining judicial review involves two stages: (1) the application for leave to apply for judicial review, and (2) if leave is granted, the hearing of the application itself. He then addressed the need for leave. He stated:

"The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions or declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived."

- [14] In **C.C.S.U. v Minister for Civil Service**² Lord Diplock classified under three heads the grounds upon which administrative action is subject to control by judicial review. They are:
1. Illegality – the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether or not he has is a justiciable question to be decided.
 2. Irrationality: This Lord Diplock noted, applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it.

¹ [1982] A.C. 617

² [1985] A.C.374 at 410

3. Procedural Impropriety: In addition to failure to observe basic rules of natural justice or failure to act with procedural fairness, this covers failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice

- [15] The Applicant is proceeding under all three heads. Counsel for the Applicant submitted that the Respondent's actions are unlawful in that, firstly, the notice of change of directors in reference to Ms. Streete did not suffer from any of the grounds identified in section 509 of the Companies Act and therefore ought not to have been rejected. Secondly, Counsel admits that at the time of the filings, Article 80 of the Company's Articles of Association provided that a director must be a shareholder. However, his position is that the non-compliance with Article 80 is not a matter which entitled the Respondent to decline the filing. Articles of Association, Counsel stated, are a contract between the members and the Company. The Respondent, he insisted, is not the guardian of those Articles.
- [16] The Applicant also alleged that the Respondent's actions are irrational/unreasonable. The Applicant pointed to the fact that there was a 3 year period when there was no response to the filing from the Respondent. Also, the Registry accepted the payment for the filing and re-filing. The only points taken, at the time, were in regard to the other named directors. Furthermore, in the action before Michel, J., the respondent said during her testimony that the points raised in the letter of 11th February were not an issue.
- [17] With regard to the issue of Ms. Streete's authority to act for the Company, Counsel submitted that the filing or non-filing of a change of directors does not prevent the director from bringing an action to accept the filing. Counsel's position is that it cannot be said that Ms Streete cannot act for the Company because if that were the case, the Company would be unable to get the issue resolved.

Given the nature of the allegations, the court will deal with the issue of Ms Streete's authority first.

Barbara Streete's Authority to maintain this action

- [18] Where management powers are vested generally in the board of directors, it is the directors of an incorporated company who have authority to act for the company in regard to litigation.³ I accept that proceedings begun without proper authority may subsequently be ratified. In the case of **Danish Mercantile v Beaumont**⁴ it was made clear that if proceedings are brought without proper authority, the proceedings are not a nullity and may be subsequently ratified. In other words, proceedings brought by a fully competent principal are not a nullity. However, in **Airways Ltd v**

³ Harben v Phillip (1883) 23 ChD 14 at 29 per Chitty J..

⁴ [1951] 1 Ch 680

Bowen and another⁵ it was held that an objection that an action in the name of a company is not properly constituted because it is not authorized by the company cannot be raised by way of a defence, but must be raised at the outset by an application to have the name of the company struck out as plaintiff.

- [19] Respondent questions whether Ms. Streete can proceed as agent for the claimant to make an application on behalf of the applicant where she seeks a determination as to whether or not the Registrar was entitled to reject the very documents that she alleges would ground her appointment as a director.
- [20] Therefore, the issue of whether Ms. Streete is legally authorized to maintain this action is properly raised here at the outset of the matter in this application for leave.
- [21] Item 3 of the Notice of Change of Directors filed on 23rd November 2009 states: "Notice is given that on the 16th day of November 2009 the following persons were appointed directors:" The notice then lists the names of Barbara Streete and Andrea Stoelker. Item 4 indicated that one Arnold Knoche had ceased to hold office as Director. Item 5 on the said Notice lists the directors of the company as of that date. Listed are three (3) names: R. Allen Stanford, Barbara Streete and Andrea Stoelker.
- [22] By letter of January 7, 2010, (erroneously dated January 7, 2009) the respondent acknowledged receipt of the Notice and the Resolution attached to it. The letter pointed out certain issues with both the Notice and the Resolution including the fact that section 4 of the Notice appeared to have been altered. The respondent requested that the company submit a Notice of change of Directors without alterations.
- [23] A further Notice of Change of Directors was filed with the Respondent on March 2 2010. That Notice in item 5 listed the directors of the company as R. Allen Stanford. No other names were listed.
- [24] One of the objections subsequently raised by the respondent with regard to the November 2009 Notice concerned Ms. Streete's qualification to be a director. The Respondent asserted that Ms. Streete did not meet the share requirement to be a director as set out in Article 80 of the Articles of Association. That Article provided that the qualification of a director shall be the holding of shares or stock of the nominal value of at least one hundred dollars (\$100.00). Ms. Streete held no shares or stock in the company.
- [25] In an attempt to cure this objection, notice that the Articles of Association of the company were amended by a special resolution dated 26 October 2012 was filed with the respondent. The

⁵ [1985] BCLC 355, CA

amendment reads: "A director need not hold shares issued by the company to be qualified as a director."

- [26] While certain other objections were taken by the respondent in regard to the due execution of the Certificate of Execution, the court notes that the amendment of the Articles became effective on the 26th October 2012 and therefore could not retroactively change the 2009 requirements which were applicable at the time of Ms. Streete's appointment.
- [27] No subsequent Notice or resolution re-appointing Ms. Streete as a director has been filed and none has been brought to the court's attention. Notwithstanding this, the contention between the parties continues over the respondent's acceptance of the 2009 Notice and Resolution, and Barbara Streete continues to rely on the 2009 documents to ground her claim to be a current director of the company and the basis of her authority to maintain this action.
- [28] While neither the 2009 Resolution nor the Notice of Change of Directors indicated the length of Ms. Streete's term as a Director, the court is of the view that R. Allen Stanford having been named the sole director by the Notice of Change of Director filed on March 2010, Barbara Streete ceased to be a director.
- [29] Furthermore, even if it could be said that Ms. Streete's appointment was valid despite her failure to meet the share qualification, and even if somehow the appointment was unaffected by the March 2010 filing, the maximum length of the 2009 appointment as director is 3 years⁶. This action for Administrative Order was filed on 28 January 2013. At that time, Ms. Streete's term had already expired, she was no longer a Director. The sole Director was R. Allen Stanford.

The court finds that Ms. Streete's term as a director having expired, without supporting evidence of a director, she was not competent and lacked the authority to maintain this action on behalf of the company. In other words the action is not properly constituted because it is not legally authorized by the company.

- [30] This is not the first judicial pronouncement on Ms. Streete's status with the applicant company. Lanns, J (Ag) in her judgment in Claim No HCVANU2011/0478 dated 21st January 2013 found:

"(3) Ms Barbara Street is not a director of SDC and should cease holding herself out as such. At best her directorship expired in 2010."

Yet this Application was filed on 28th January 2013.

⁶ See also section 69(3) of The Companies Act, 1995

- [31] Furthermore, the court rejects the submission by the applicant that it is necessary for Ms. Streete to act for the company in order for the issues to be brought before the court and resolved. Section 247 of The Companies Act gives a person aggrieved by the decision of the Registrar a right to bring an action. The aggrieved person may apply to the court for an order requiring the Registrar to change his/her decision. Ms. Streete chose not to pursue a section 247 action as an aggrieved person, instead this action was filed in the name of the company by a person who is not a director and who is not legally an agent of the company.
- [32] Having found that Ms. Streete is not a director of the applicant company and legally has no authority to act as agent of the company in this action, the matter cannot proceed any further.
- [33] Accordingly, the application by the applicant pursuant to Part 56 of CPR for leave to file a claim for a Writ of Certiorari and a Writ of Mandamus against the Registrar of Companies is denied. The application for interim relief is also denied.
- [34] Cost to the Respondent in the sum of \$1800.00


CLARE HENRY
High Court Judge
Antigua & Barbuda