

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

GRENADA

CLAIM NO GDAHCV2003/0373

BETWEEN:

ERIC LA QUA

Claimant

and

JAMES LA QUA AND SONS ANGLO AMERICAN FUNERAL AGENCY LIMITED

Defendant

Appearances:

Mrs. Celia Edwards and Ms. Sabrita Khan for the Claimant
Mr. Lloyd Noel on the record for the Defendant

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2009: July 15, 16, 17
2010: February 17
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JUDGMENT

- [1] **MICHEL, J:** This judgment is really a continuation of the judgment (then interlocutory) rendered in this matter on 16th July 2009. The matter commenced on 15th July and continued on 16th July after the interlocutory judgment was

rendered, with an application by Mr. Lloyd Noel, Legal Practitioner on record for the Defendant, for an adjournment to the following day so that the liquidator of the Defendant company can be consulted and can participate in the proceedings.

- [2] The adjournment sought was granted, but on the following day (17th July 2009) Mr. Noel informed the Court that the liquidator had declined to participate in the proceedings because he was not personally summoned or previously notified to be in Court. Mr. Noel then submitted that the case could not proceed against the Defendant because, according to the Companies Act, No. 35 of 1994, the powers of a company in the course of liquidation were exercised by the liquidator and not by the directors.
- [3] The Court ruled against the submission of Mr. Noel on the basis that the Defendant in this case was the company and not the directors of the company and that if the company is in liquidation then the liquidator should represent it, but there was no responsibility on the part of the Court or the Claimant to specifically summon or notify the liquidator in respect of an ongoing matter against the company. It was accordingly ordered that the trial of the matter do proceed.
- [4] At that stage Mr. Noel and the company official in attendance excused themselves from the Court and took no further part in the proceedings. The Claimant then took the stand to give evidence on his own behalf as per his witness statement, which he stated was true and correct. He was then tendered for cross examination, but there was none. Some questions were however asked by the Court.
- [5] The evidence of the Claimant as per his witness statement was that he is a shareholder in the Defendant, which is a company incorporated on 12th September 1978. He was one of the subscribers to the Memorandum of the Defendant, the other subscribers being his father, James La Qua, and his brothers, Thomas James La Qua, Justin La Qua and Eric Cuthbert La Qua. All subscribers were

issued with one share each. His father owned and operated an unincorporated business as a mortician, embalmer and funeral director since 1939. He (the Claimant) worked in the business with his father as his main assistant from about 1942 when he was 15 years old until he emigrated from Grenada in 1955, after which his earlier-named brothers began working in the business as employees and, as his father grew older, the three brothers started assuming a management role in the business. He was kept in the know by his father, with whom he communicated frequently by letters and telephone calls. At some stage his brothers became interested in expanding the business and needed to obtain financing from the bank, for which purpose they were going to establish a limited liability company incorporating his father's business. His father told him that he insisted that he (the Claimant) was to have shares in the company because of his years of active contribution to the business. Whilst on a visit to Grenada in December 1978 he subscribed to the Memorandum of the company.

[6] The Claimant then referred to several documents, including letters, agreements, minutes of meetings, conveyances, wills, etc. and stated that at the date of his father's death on 14th October 1987, his father should have been the owner of many more shares than the 500 reflected in the Defendant's share register and he (the Claimant) should be entitled to more than the 700 shares reflected in the Defendant's share register. He contended that the Defendant was obligated under its constitution and the Companies Act to have independently audited financial statements annually and have failed to do so and the directors, Justin and Thomas La Qua, have mismanaged the affairs of the company. He contended too that the said directors operated the Defendant as their private kingdom and after siphoning off the life blood from the Defendant, they illegally took it down the road of voluntary liquidation.

[7] In response to questions by the Court, the Claimant said that his father should have been allocated more shares in the company on the basis of the property that he had transferred to the company. He said too that he does not acknowledge

that his father was being paid \$3,000 per month by the Defendant for some years before and up to his death or that his father had entered into an agreement to that effect.

[8] Following the evidence of the Claimant, the case for the Claimant was closed. The Defendant's representatives, having excused themselves from further participation in the case, the proceedings in Court were brought to an end at the close of the Claimant's case. Learned Counsel for the Claimant then filed written closing submissions on that same day on behalf of the Claimant containing both legislative and judicial authorities.

[9] There being no evidence led by the Defendant either in support of its case or in contradiction of the case of the Claimant, this Court is left with no alternative but to render judgment in favour of the Claimant as per his claim, but revised to cater to the fact that seven years and several developments have elapsed since the filing of the claim.

[10] It is therefore ordered that –

1. The Defendant shall, within three months of the date of this order, produce to the Claimant the up to date financial statements of the Defendant, which statements shall be submitted to an independent business or financial expert to be approved by the Court, upon application by either party, and the expert shall examine the statements and investigate the affairs of the Defendant since its incorporation and shall report thereon within six months of the submission to him of the aforesaid financial statements or within such extended period as may be approved by the Court upon application. The investigation and report shall cover the shareholding of the company as it is and as it ought to be, the financial position of the company as it stands currently and the handling of its finances since its incorporation.

2. The cost of the examination and investigation by the expert shall be approved by the Court and shall be paid to the expert by the Defendant in such manner as may be approved by the Court out of the funds of the Defendant, whether in bank accounts of the Defendant or in the hands of its directors or of any liquidator appointed by the directors.
3. At the conclusion of the examination and investigation by the expert, the Defendant shall, within one month, rectify the register or other records of the company or rectify any other matters requiring rectification as a result, pursuant to section 241 of the Companies Act, No. 35 of 1994.

[11] The Defendant shall pay the Claimant's costs in this matter to be agreed or otherwise assessed.



Mario Michel
High Court Judge