

IN THE COURT OF APPEAL

STATE OF DOMINICA:

CIVIL APPEAL NO. 1 OF 1976

BETWEEN:

CASTAWAYS DEVELOPMENTS LIMITED	Respondent/ Appellant
and	
SIEGFRIED KRIGLOWITSCH	Petitioner/ Respondent

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: B. Alleyne for Appellant.
F. De Gazon for Respondent.

1977, May 25 and 31

J U D G M E N T

PETERKIN, J.A.:

This is an appeal against a winding-up order made by Bruno, J. under Section 230 of the Companies Ordinance in respect of an unregistered Company on the following grounds:-

- (a) that the Company has ceased to carry on business in Dominica since the year 1971 and
- (b) that the Company is unable to pay its debts.

The grounds of appeal are:-

- (1) The learned trial judge erred and was wrong in law when he refused the application by the appellant for an adjournment of the hearing.
- (2) The learned trial judge erred and was wrong in law in holding that the High Court has jurisdiction to wind up the Appellant Company, a company registered under the laws of the Province of Ontario, Canada.

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- (3) The learned trial judge erred and was wrong in law in holding that the failure of the Respondent to serve the affidavit in support of the petition was not a fatal defect.
- (4) There was no evidence on which the learned trial judge could reasonably grant the relief granted.

Learned Counsel for the Appellant argued 4 grounds, but in my view the only ground that merits any serious consideration is ground (2).

In regard to ground 1 the record shows that on 26/3/76 an adjournment was granted to the Appellant Company, and when the matter came on for hearing on 1/4/76 another adjournment was granted to the Appellant Company and the hearing of the Petition was fixed for 7/4/76. On that day Counsel applied for a further adjournment on the ground that it might be necessary for the directors of the Company to be present in order to testify. This application was opposed by Counsel for the Petitioner, and after hearing argument, the judge exercised his discretion and refused the adjournment. In any event, the affidavit filed by the Appellant in opposition to the petition shows that there could have been only one possible contention for decision, and that was the question of jurisdiction -- a question of law.

In regard to ground III, counsel has not convinced me that there is any rule of court which authorises the service of an affidavit along with the petition. The affidavit referred to in this case was simply an affidavit verifying the facts stated in the Petition.

In regard to ground 4, it was argued that the Respondent had not established by evidence the facts required under

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Section 230 (c) of the Appellant's inability to pay its debts. Under this section a Company is deemed to be unable to pay its debts whenever a sum exceeding \$240 is due and the Company has been served a demand by the Creditor by leaving the same at the principal place of business, or by delivering the same to the Secretary, director, or a principal officer of the Company, and such sum has remained unpaid for 3 weeks after such demand. It is true that the petition simply stated that demand was made on the Company on 4th June, 1975, and that the Company had failed to satisfy the judgment, but this was not made an issue by the Appellant in the affidavit in opposition to the petition. However this may be, the affidavit in opposition made it clear that the Company had ceased to carry on business in Dominica, and this is one of the grounds on which the winding-up order was made. I turn now to ground 2 which deals with the question of jurisdiction. Learned Counsel for the Appellant submitted that neither the petition nor the affidavit in opposition established that the Appellant Company had a residence in Dominica, and until such residence could be shown to have existed the Court had no jurisdiction to make a winding-up order. He cited in support the case of *In re Lloyd Generale Italiano*, Law Journal, 1885, 748. In the case cited, the court held that there was no jurisdiction under the Companies Act, 1862, to wind up a foreign Company formed and registered in Italy which had no branch office in England, but carried on its business there by means of agents. Section 230 of the Companies Act, Cap.318, is similar to Section 199 of the English Companies Act, 1862, and the case cited would

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be relevant if it were shown that the business conducted by the Appellants in Dominica was conducted through agents. On the contrary, the affidavit of Harris who resides at Mero where the business is conducted shows that the Appellant Company was conducting the business of land development involving an acreage of land of approximately 365 acres. In the case of Re Tovarishestvo Manufactur Liudvig Rabenek, 1944, 2 A.E.R., 556, where the case of In re Lloyd was reviewed the Court held that in order to give the Court jurisdiction to wind-up an unregistered Company there need be no proof of an established place of business. I would adopt the language of Cohen, J., who stated as follows at P. 561.

"As to the correctness of the decision there can, I think, be no doubt, for the company had no assets here and there was nothing to administer. If and so far as it purports to suggest that an established place of business is a necessary ingredient in founding jurisdiction, I venture respectfully to differ; but I do not think this is the proper reading of the judgment. The statement of facts indicates that the company was transacting business, not by but through agents in this country. If so, there would clearly be no jurisdiction."

In the instant case, in my judgment I am of the opinion that the Appellant Company had not conducted business through agents but was itself conducting the business of land development in Dominica. I am of the view that the trial judge's order to wind up the Company's affairs in Dominica under the provisions of Section 230 was correct. Accordingly, I would dismiss the appeal.

/N.A. Peterkin.....

(N.A. Peterkin)
JUSTICE OF APPEAL

I agree

(E.L. St. Bernard)
JUSTICE OF APPEAL

I also agree

(Sir Maurice Davis)
CHIEF JUSTICE