ST. LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO: 10 OF 1996

BETWEEN:

JOHN VELOX [Deceased] represented by
CORNELIA VELOX and
LISA VELOX - Administratrices of the Succession
Appellants

and

1. **HELENAIR CORPORATION**
2. **JOAQUIN WILLIE**
3. **ARTHUR NEPTUNE**
3. **MARIO REYES**

Respondent

Before:
The Hon. Mr. Justice Satrohan Singh **Justice of Appeal**
The Hon. Mr. Justice Albert Redhead **Justice of Appeal**
The Hon. Mr. Justice Odel Adams **Justice of Appeal[Ag.]**

Appearances: **Mr. Kenneth Monplaisir, Q.C. for the Appellants**
Mrs C. Hinkson-Ouhla with him
Mr. Alvin St. Clair for the Respondents
Ms Lorraine Jolie with him.

1997: October 29; November 11.

Company Law - Whether a purported forfeiture by the respondent company of a share issue to the deceased should be declared null & void - Estoppel - Application of the doctrine of consideration, as stated in the *Civ. Code* art. 917A - Shares granted to "enhance the standing of the company" - *Chitty on Contracts* 20th ed. para. 845, 846, 847 & 850 considered - Whether it was necessary that there be recorded payment for these shares. Appeal allowed. Forfeiture declared null & void.

J U D G M E N T

REDHEAD ALBERT, J.A.

Mrs Cornelia Velox, widow of John Velox, on 20th August 1993 brought an action in the High Court of St. Lucia seeking inter alia a declaration that 10,000 fully paid up shares issued by the defendant company to John Velox and subsequently forfeited by the defendant company were owned by John Velox and that the forfeiture was null and void.

The facts upon which Mrs Velox relied were that the fully paid up shares were issued to her husband in October 1987. The shares were issued to her husband by the company, as the company said to enhance the standing of the company. Apart from that there is no evidence that her husband did not pay for those shares. However, after her husband's death in April 1988 the company made a demand on her for payment of these shares and failure to pay for the said shares the company forfeited them.

The learned trial Judge in her judgment in rejecting Mrs Velox's claim said inter alia that there is no dispute that "Mrs Velox is not a bona fide purchaser of the shares for value without notice but that she came by the "alleged" shares through transmission [disposition by death] and as such cannot rely on estoppel in her own right".

As I understand it the plaintiff/appellant was not relying on estoppel by her own right but was saying that the defendants were estopped from saying that they did not give John Velox ten thousand [10,000] fully paid up shares.

Mrs Velox has appealed to this Court and the main thrust of the argument of her counsel before this Court was that the learned trial Judge erred in law by failing to apply the doctrine of consideration as stated Article 917 A of the Civil Code of Saint Lucia.

Before I revert to the Law I think it is prudent to set out the facts in this case. Helenair Corporation the defendant company was incorporated on the 8th day of July 1987. After incorporation the company issued 10,000 fully paid up shares to

John Velox who was then the Director of Civil Aviation in the Caribbean. The shares were allotted to him to enhance the standing of the company.

Joaquin Willie said in his evidence:

> "After the formation of the company Michael DuFour who was the Managing Director had an idea which he discussed with the Board of issuing shares to persons with whom he would like to be associated to the company and these persons were John Velox and Mr Harold Wilson. After discussion with the Board Mr DuFour produced share certificates for John Velox and Mr Harold Wilson…..".

Mr Monplaisir argued that the learned trial Judge erred in law by failing to apply the doctrine of consideration as stated in Article 917A of the Civil Code of Saint Lucia. This I may say was the plank of his attack on the judge's decision.

I now turn to look at Article 917A of the Civil Code of Saint Lucia, which states as follows:

> "Subject to the provisions of this article from and after the coming into operation of this article, the law of England for the time being relating to contracts, quasi-contracts and torts shall mutantis mutandis extend to this colony and the provisions of Article 918 to 989 and 991 to 1132 of this code shall as far as practicable be construed accordingly; and the said article shall cease to be construed in accordance with the law of Lower Canada or the "Coutume de Paris". Provided however, as follows:-
>
> [a] the English Doctrine of Consideration should not apply to contracts governed by the law of the Colony and the term "consideration" shall have the meaning herein assigned to it.
>
> [b] the term "consideration" where used with respect to contracts shall continue as heretofore to mean the cause or reason of entering into the contract or of incurring an obligation and consideration may be either onerous or gratuitous.
>
> [c] ……..."

Learned Counsel for the appellant stressed the fact that the consideration for entering into a contract is the cause or reason for so doing. In view of that learned Queen's Counsel argued that from the evidence it is quite clear that the reason for John Velox being given the 10,000 shares was to enhance the standing of the company and that satisfied the requirement of the Civil Code 917 A[b] which states inter alia:

> "… the cause or reason of entering into a contract… and consideration may be either onerous or gratuitous."

Learned Queen's Counsel also referred to the definition of cause as given in Article 1896 of the Louisiana Code which is said to be the purest form of the Code and on which this code is based defines cause this way:

> "By the cause of contract in this section is meant the consideration or motive for making it…."

Learned Queen's Counsel argued that the motive for making this contract was to enhance the standing of the company by putting John Velox as a shareholder of the company. I agree entirely with this argument. This in my view could dispose of this appeal. However, one other matter was argued before us, that is, the certificate, which says on the face of it that John Velox was issued with 10,000 fully paid-up shares. There is also an Annual Return of the defendant company filed in the Registry on 20th September 1989 which shows that John Velox has 10,000 shares. In my view no parol evidence could be led to defeat the claim that John Velox had 10,000 fully paid up shares. [See **Bank of Australia v Palmer** 1897 A.C. 540 at 545].

However, learned counsel for the respondent Mr St. Clair referred to Chitty on Contracts 20 Edition paragraphs: 845, 846, 847 & 850. At paragraph 845 it is there stated that "where parties appear to have embodied their agreement in a written document the question arises wherein extrinsic evidence that is to say, evidence of the matters outside of the documents is admissible so as to affect its content…"

846: It is often said to be a rule of law that "if there be a contract which has been reduced in writing verbal evidence is not allowed to be given so as to add or subtract from or in any manner to vary or qualify the written contract."

847: However, the parol evidence rule is and has long been subject to a number of exceptions. In particular since the nineteenth century the courts have been prepared to admit extrinsic evidence of terms additional to those contained in the written document if it is shown that the document was not intended to express the entire agreement between the parties…."

850: where it is shown that the parties did not intend to record all the terms of their agreement in a particular document, then on the same analysis extrinsic evidence might be possible to prove other terms even if they were varied or contradicted those in the document…."

I make the observation that nowhere in the evidence can it be shown that the parties, that is John Velox and the company, intended to record a different agreement as reflected in share certificate. Neither can it be shown by the evidence, that the share certificate was not intended to express the entire agreement between John Velox and the company.

The evidence reveals that Joaquin Willie said in cross examination that the intention was that they [Velox and Lynch] would pay for the shares. That intention in my view was in the bosom of Willie and or the Company. There is not one scintilla of evidence that this was communicated to John Velox to show that the certificate was not intended to express the entire agreement of Helenair Corporation and John Velox. Neither can it be said that John Velox and Helenair Corporation by that document did not intend to record all the terms of their agreement.

For the foregoing reasons I will allow the appeal, set aside the judgment and grant the declaration that the forfeiture was null and void, that the 10,000 fully paid up shares issued to John Velox by the defendant company are the property of John Velox's estate. There will be costs to the appellant in this Court and the Court below.

A.J. REDHEAD
Justice of Appeal

SATROHAN SINGH
I concur
Justice of Appeal

ODEL ADAMS
I concur
Justice of Appeal [Ag.]