SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1 OF 1996

BETWEEN:

INTERTRADE CORPORATION

Appellant

and

DAVID CRAM

Judgment Debtor

and

WINDJAMMER LANDING COMPANY LIMITED

Respondent

Before: The Honourable Mr. Satrohan Singh Justice of Appeal
The Honourable Mr. Albert Redhead Justice of Appeal
The Honourable Mr. Odel Adams Justice of Appeal (Ag.)

Appearances: Mr. Kenneth Foster, Q.C., Mr. Peter Foster and
Mrs. Claire Malaykhan with him for the Appellant
Mrs Brenda Floissac-Fleming, Mr. Anthony Bristol with her for the Respondent

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1997: Oct. 27, 28; Nov. 24:

Bankruptcy Law - Writ of execution issued against Judgment Debtor - Seizure of shares in respondent company - Estoppel - Whether the respondent, who was not a party to the initial proceedings, can now oppose, or has locus standi to oppose, the writ of execution - Meaning of a 'person aggrieved' and a person with 'sufficient interest' in relation to the locus standi requirement - **Arsenal Football Club v. Ende** (1979) A.C. 1 H.L. referred to - *Civ. Code* articles 436, 447 - Whether there was an effective transfer from the respondent company, of the share of the Judgment Debtor - Failure by the transferee to sign the transfer document - *Criminal Code* section 110 - *Halsbury's Laws of England* 4th ed. Appeal dismissed.

JUDGMENT

SATROHAN SINGH, J.A.

On October 20, 1993, the appellant obtained judgment against David Cram (the Judgment Debtor) for the sum of $797,015.45 with interest, and costs $5,000.00. The respondent was not a party to those proceedings. On July 5, 1995 the appellant had a writ of execution issued against the one share owned by David Cram in the respondent company. That Writ was served on the

respondent. On 31st August, 1995 the respondent issued a summons opposing the execution of the said writ on the ground that David Cram no longer owned that share in the respondent company and that such share had been transferred to and was then owned by Windjammer [Bahamas] Ltd. [the Bahamian company].

The respondent's application was heard by Matthew J., who on July 9, 1996, granted same and ordered that the writ of execution be dismissed with costs $500.00 to the respondent. The appellant has appealed from this decision and the main issues raised in the appeal concern:

[1] the locus standi of the respondent in opposing the writ of execution;
[2] whether the share of David Cram was effectively transferred to the Bahamian company;
[3] the effect of a U.S. Bankruptcy Order made against David Cram on the efficacy of the aforementioned writ of execution.

LOCUS STANDI

Learned Queen's Counsel for the appellant, challenged the locus standi of the respondent in opposing the execution of the writ, on the ground that the respondent was an interloper. Mr. Foster contended that the respondent had no relevant interest in the share owned by David Cram, and that the proceedings in which the judgment was obtained were between the appellant and David Cram and not the respondent. Mrs. Floissac-Fleming for the respondent however, contended that there was standing in the respondent, and referred to certain provisions of the Commercial Code of St. Lucia in support thereof.

Locus standi is a threshold requirement to the institution of legal proceedings. The person bringing such proceedings must be a person aggrieved and must have a sufficient interest. That person must be a bona fide litigant. Judicial definitions of "person aggrieved" have varied over the years. The present approach is to give a generous interpretation to the phrase. The approach should be not to give it a rigid or inflexible meaning but to take its meaning and colour from its content. In

Arsenal Football Club v. Ende (1979) A.C. 1, the House of Lords held that a ratepayer within the same percepting area had locus standi as a person aggrieved in respect of an entry in the valuation list relating to another rate player. There is no standing if the applicant is no more than a "meddlesome busybody". The test of "sufficient interest" has become an extremely flexible rule and pragmatic requirement in ascertaining locus standi. The state of the law on this concept is still fluid. [See **Zamir and Woolf** The Declaratory Judgment, Second Edition 1993].

Addressing the issue in the context of the above learning, I propose to give a generous interpretation to the concept of locus standi. In the instant matter, the respondent is a private company and **S168 [1][a] of the Commercial Code of St.Lucia** defines a private company as a company which by its articles restricts the right to transfer its shares. It is accepted as a matter of law by both sides that the shares in a company are categorised as movables. And **S447 of the Civil Code of Procedure of St. Lucia** provides that a seizure of movables in execution may be contested by opposition either by the debtor himself or by third parties. **S.436** of the said Civil Code states "the seizure of share in any financial, commercial or industrial company or association duly incorporated, is made by serving such company with a copy of the writ of execution, together with a notice that all the shares held by the defendant in such company are placed under execution ..... And Article 27 of the respondent's Articles of Association provides that "the Directors may in their absolute discretion and without assigning any reason thereof decline to register any transfer of share [whether fully paid or not] .....

I have set out these provisions because they show that a writ of execution is open to be opposed either by the debtor himself or by a third party who may have a relevant or sufficient interest. They show that a company has the right to restrict the transfer of its shares. They also show

that because Section 436 of the Civil Code makes it mandatory that for there to be seizure of the shares of a company that the company must be served with the writ of execution, that such a requirement presupposed a right in the Company to place himself as an opposant to the said writ if the circumstances so warrant.

Given the effect of these provisions, we are not prepared to hold that the respondent cannot be a bona fide litigant with a sufficient interest to intervene in this matter. The share upon which execution was to be levied was allegedly in the respondent's company. Levying execution on such a share would inevitably bring into the said company a new shareholder whom, by **S.168 [1][a] of the**

Commercial Code and by Art. 27 of the Company's Articles of Association, the Company would have the right to restrict or refuse without assigning any reason. We feel that in the interests of justice, that there was also standing in the respondent to oppose the execution of the writ, even if only to advise the Court that David Cram no longer owned that one share in the company.

This argument - therefore of Mr. Foster on this issue is untenable and it fails. We hold as a matter of law that the respondent was not an interloper or a mere busybody and that there was standing in the respondent to oppose the writ of execution.

2. THE TRANSFER OF DAVID CRAM'S SHARE

In dismissing the writ of execution, Matthew J. found that there was an effective transfer from the respondent Company of the one share of David Cram to the Bahamian Company.

Mr Foster challenges this finding and argues, that there was no valid transfer of the share because the transferee [the Bahamian Company] did not complete the execution of the transfer since their signature was not on the transfer document.

Learned Queen's Counsel for the appellant referred to Art. 28 of the Articles of Association of the St. Lucia Company in support of this argument. This Article states as follows:

> "The instrument of transfer of a share shall be executed both by the transferor and the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof."

Mr. Foster also contended that the conduct of the transfer was impeachable because there was a delay of 7 years between the date of the alleged transfer and the return of the allotment. Mrs. Floissac-Fleming, in response to this submission, referred the Court to H**alsbury's Laws of England, 4th Ed. [issue 1988][Vol 7[1] para 482** to which I will refer momentarily.

It is an accepted fact that in the purported execution of the transfer of David Cram's one share to the Bahamian Company, that the Bahamian Company did not sign the transfer document. It is also an accepted fact that no return of the allotment of that share by the respondent was made until some seven years after the alleged transfer. However, the record before us disclosed that an extension of time to file such an allotment was granted by **Matthew J** thereby regularising the late filing of the allotment. This Order of extension was challenged by Mr. Foster before us but we can find no justifiable reason to interfere with the exercise of the Judge's judicial discretion when he made that order and we confirm that order. The only complaint therefore that is left that could challenge the effective transference of the said share, was the fact that the Bahamian Company did not sign the transfer document. The issue then is whether such a default made the transfer a nullity.

It is my considered opinion that such a default only made the transfer irregular and not a nullity. This opinion is supported by the provisions of ART 10 of the Criminal Code of St. Lucia

which provides for a continuing fine of $200: for every day the default continues and nothing else and by **para. 482 of Halsbury's Laws (supra)** which states in part:

> "When, as is usual, Articles of Association provide that the instrument of transfer shall be executed or signed **both by the transferor and** transferee non execution by the transferee only makes the transfer irregular and not a nullity, and if it has been acted on for a long period it cannot be impeached……"

Having thus found the transfer to be irregular, and not a nullity, the final issue would now be to decide whether it can be successfully impeached in the context of this matter. The determination of this issue depends on whether there was evidence to show that the transferee, the Bahamian Company, had acted for a long period on the premise that there was an effective transfer of the said share.

The evidence on record on this issue disclosed (1) a share certificate to the Bahamian Company showing two shares owned by them in the respondent company, one of those shares being the share purportedly transferred to them by David Cram (2) a shareholders' agreement between the Bahamian Company and David Cram in 1987 (3) an opinion expressed in a letter from a reputable firm of lawyers McNamara & Co. in January, 1988 in which it is represented that there was a valid transfer of the said share from David Cram to the Bahamian Company; (4) the fact that in 1988, those shares of the Bahamian Company in the St. Lucia Windjammer Company were pledged to Barclays Bank as security and (5) the return of the allotment of the said share, filed by the respondent in the registry in 1994. That was a public document that showed that the Bahamian Company owned two shares in the St. Lucian Company.

Given these revelations in the evidence, we are satisfied that the transferee, the Bahamian Company, despite the irregularity in the transfer of the shares, acted as owner of the shares for a long period after their transfer. Accordingly we hold that the said transfer cannot now be impeached.

For these reasons we see no merit in the submission of Mr. Foster that David Cram's share was not effectively transferred to the Bahamian Company.

3. THE US BANKRUPTCY ORDER

The third issue addressed to this Court, was whether an order of Bankruptcy made against David Cram by a court in the United States of America, could have affected the execution of the Writ on his one share asset in the respondent Company. Having regard to the conclusions we have arrived at on the issues of locus standi and the transfer of Cram's one share to the Bahamian Company, the determination of this issue has become academic because whichever way it would have gone it would have had no effect as we have found that Cram no longer has the asset of the share. We therefore do not propose to deal with it.

For the reasons given by us on the issues of Locus standi and the transfer of the shares, we would order that this appeal do stand dismissed with costs to the respondent to be taxed if not agreed.

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SATROHAN SINGH
Justice of Appeal

I concur

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ALBERT REDHEAD
Justice of Appeal

I concur

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ODEL ADAMS
Justice of Appeal [Ag.]