

BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEAL NOS.15 AND 21 OF 2003

BETWEEN:

THE ATTORNEY GENERAL

Applicant

and

[1] CONRAD SEGHERS
[2] KOMODO HOLDINGS

Respondents

Before:

The Hon. Mr. Brian Alleyne, SC
The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Albert Redhead

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Terrence Williams and Ms. Candice Huggins for the Applicant
Mr. Terrence Neale for the Respondent

2004: July 12;
July 15.

JUDGMENT

[1] **ALLEYNE, J.A.:** This is an application by the Attorney General for an order discharging the order of Saunders C.J. (Ag.) made in Chambers as a single Judge on June 9th 2004, and seeking an order of the Court granting the Attorney General leave to appeal an order of Rawlins J. refusing the applicant's application to vary a restraint order of d'Auvergne J. which had granted Komodo Holdings permission to withdraw from its bank accounts in the British Virgin Islands up to \$70,000.00 to meet legal expenses.

[2] The ground of the Attorney General's application for a variation was that the legal representatives purporting to act for the Komodo Holdings had no authority from the company to act. The order against which the applicant seeks to appeal was a consent order and Counsel conceded early that if the legal representatives of the company can establish their authority to act, the appeal would serve no purpose.

[3] By an affidavit sworn by Melanie Williams, an attorney at law in the firm of McW. Todman & Co., the firm acting for the Respondents, the Respondents have produced a letter dated May 14, 2002, purportedly from Komodo Holdings Ltd. and signed by Conrad Seghers and Jan Vandervenne, the acknowledged sole director of the company. The second paragraph of the letter is in the following terms:

"Jan Vandervenne as sole director of Komodo Holdings, Ltd., hereby authorizes McWelling Todman & Company to act on the firm's behalf in the referenced lawsuits."

The lawsuits to which reference is made at the head of the said letter are the subject matter of this application and the related proceedings.

[4] Learned Counsel for the applicant challenges this authorization on the ground that it has not been shown by the company records to be a resolution of the company and is not authenticated by a notarial certificate or otherwise, and that it is clearly not a power of attorney. Counsel claims that he is not alleging that the document is fraudulent, but only that the onus lies on the persons seeking to rely on it to prove its authenticity. Learned Counsel relies on article 62 of the company's Articles of Association, which provides that the directors may by power of attorney appoint any person or firm to be the attorney or attorneys of the company. By its context this clause clearly refers to attorney in the sense of agent, and not in the sense of legal practitioner.

[5] In our view, the relevant article is article 69, which provides in part:

"If the Company shall have only one director, the provisions hereinafter contained for meetings of the directors shall not apply but such sole director shall have full power to represent and act for the Company in all matters and

in lieu of minutes of a meeting shall record in writing and sign a note of (or?) memorandum of all matters requiring a resolution of the directors. Such note or memorandum shall constitute sufficient evidence of such resolution for all purposes.”

- [6] It seems to us that the letter signed by Jan Vandervenne, the sole director of the company, whose signature is not alleged by the applicant to be forged nor do we have any reason to question its authenticity, satisfies that requirement of the Articles of Association of the company, and that there is therefore no good ground to question the authority of McW. Todman & Company to act in these matters on behalf of the company.
- [7] For this reason we are of the view that this application is without merit and is dismissed, with costs to be paid by the applicant to the Respondent Komodo Holdings in the sum of \$5000.00.
- [8] The stay of execution ordered by d’Auvergne J. is in consequence of this order hereby set aside.

Brian Alleyne, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal [Ag.]