SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 32 OF 2003

IN THE MATTER OF THE COMPANIES ACT 1996
and
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 241 OF THE COMPANIES ACT 1996

BETWEEN:

JOAN DEVAUX

Appellant

and

(1) DU BOULAY HOLDINGS LIMITED
(2) FOND CACOA LIMITED
(3) THERESE ROBINSON
(4) CHARLES DEVAUX
(5) RACHAEL DU BOULAY
(6) DAWN KRONE
(7) RACHAEL Du BOULAY and DAWNE KRONE (as Trustees of the MARGUERITE SALTMAN TRUST)

Respondents

Before:

The Hon. Mr. Adrian Saunders	Chief Justice (Ag.)
The Hon. Mr. Brian Alleyne	Justice of Appeal
The Hon. Mde. Suzie d'Auvergne	Justice of Appeal (Ag.)

Appearances:

Mr. James Bristol with Mr. Anthony Bristol for the Appellant
Mr. Kenneth Monplaisir, Q.C with Ms. Charmaine Nathaniel for the 3rd and 4th Respondents
Mr. Peter Foster with Ms. Claire Greene-Malaykhan for the 5th -7th Respondents

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2004: October 19, 20;
2005: February 28.

JUDGMENT

[1] SAUNDERS, C.J. (Ag.): Mrs. Joan Devaux is the Managing Director of Du Boulay Holdings Limited ("the company"). She owns 40% of its shares. The

company in turn owns all the shares in another corporation called Fond Cacao Limited ("Fond Cacao"). Mrs. Devaux instituted these proceedings alleging that the affairs of these two companies were being carried on in a manner that was oppressive, unfairly prejudicial to and in unfair disregard of her interests. She claimed relief pursuant to section 241 of the Companies Act. She sought injunctions against the majority shareholders. She also asked the court for an order that she be permitted to purchase the shares of the majority or alternatively that the majority be required to purchase her shares or, failing any of those alternatives, that the companies be wound up. The trial Judge, Hariprashad-Charles, J., ruled against Mrs. Devaux. She has appealed to this court.

Background facts

[2] The company was incorporated in 1973 by Andre Du Boulay and his wife Marie, the original shareholders. The principal asset was the Soufriere Estate. The estate included the Diamond Mineral Baths, the Old Mill Restaurant, Soufriere House and the Botanical Gardens. It originally comprised 90 acres but some time later, 30 acres were separated and placed in Fond Cacao which was formed in 1987. Lots were developed and sold from these 30 acres in order to raise money for the company.

[3] Andre Du Boulay died in 1982. After his death, the company was managed by his daughter, Mrs. Devaux. By all accounts she is an amazing lady. The trial judge described her as an excellent businesswoman, a successful entrepreneur. At the time of the trial, she was 81 years old but age had not deprived her of any of the vigour and dynamism lesser mortals enjoy only in their youth. She is possessed of a shrewd mind and an indomitable personality. At some sacrifice to herself, she built up the company and ran it well, with an iron hand. And it prospered. The company's gross annual revenue grew to $1.5 million. It boasts retained earnings of $2.44 million and net assets of $2.9 million. It enjoys healthy fixed deposits and other cash of over $1 million. Some 44 persons earn their livelihood from employment with it.

[4] Initially, the company's shares, some 5000 in all, devolved equally to the five children of Andre and Marie Du Boulay. These children are Joan Devaux (the appellant), Michael, Camille (now deceased), Therese and Marguerite. The following table shows the present shareholders and the manner in which they obtained their shares:

1.	Mrs. Joan Devaux. Having inherited 1000 shares from her father, she purchased all of her brother Michael's shares and then gave one share to Richard Peterkin	1999
2.	Mr. Richard Peterkin	0001
3.	Mr. Charles Devaux who inherited his shares from his mother, Camille, a daughter of Andre du Boulay	0002
4.	Ms. Dawn Krone who is a daughter of Marguerite but who inherited her shares from her Aunt Camille	0489
5.	Rachael Du Boulay, another daughter of Marguerite's, who also inherited her shares from her Aunt Camille	0509
6.	Trustees of Marguerite Saltman in whom were vested the shares inherited by Marguerite, a daughter of Andre du Boulay	1000
7.	Therese Robinson, a daughter of Andre du Boulay	1000

[5] The majority shareholders, Mrs. Devaux's siblings, nephew and nieces (listed above at nos. 3-7) say that they have no wish to unseat Mrs. Devaux as Managing Director. But they find some of her management methods somewhat autocratic. They feel excluded and seek to be more assertive in the running of the company. They have proposed some changes in the decision-making processes of the company.

[6] Mrs. Devaux regards these proposals not just as a challenge to her leadership but rather as a means to oppress her. She cites five discrete areas which, singly or cumulatively, according to her, provide a sufficient basis for entitlement to the relief that she claims. These areas include:

a) The waiving of interest on a loan made to Therese Robinson.
b) A proposal that the company pay certain legal fees of the majority.

c) A proposal to alter the quorum requirement for general meetings.
d) A proposal to declare large dividends and lending back to the same company
e) A proposal to alter the clause restricting transfers of shares.

We shall go through these areas serially in order to determine whether Mrs. Devaux's claim is well made out but first, a brief word on the applicable law.

[7] Section 241 of the Companies Act gives a shareholder the right to apply to the court to restrain oppression. If, upon the application of the shareholder, the court is satisfied that the affairs of a company are or have been conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of the shareholder, then the court may make an order to rectify the matters complained of[1]. The court has extremely wide powers in this regard[2] and the reliefs claimed by Mrs. Devaux certainly fall within the ambit of those powers.

[8] The oppression remedy is a most flexible device given by Parliament to the court in order to protect the interests of minority shareholders. Since this remedy is a peculiar creature of statute, the court must, before resorting to it, ensure that certain essential elements are present[3]. The court must also engage in a fine balancing act. On the one hand it must protect the legitimate interests of the minority shareholder. But at the same time it must take care not to usurp the function of the board of directors. While the minority must not be treated unfairly, the court should respect the justifiable exercise of control by the majority[4].

[9] Butterworths "Shareholder Remedies in Canada"[5], at Para 18.40.1, notes that certain factual patterns have emerged from those cases where relief has been granted under the oppression remedy. Austin, J. in *Arthur v Signum Communications Inc.* [6] is cited as summarizing some of these patterns as follows:

[1] See: section 241(2)(b) of the Companies Act 1996
[2] See: section 241(3) of the Companies Act 1996
[3] See: Butterworths "Shareholder Remedies in Canada", at Para 18.21
[4] See Brant Investments Ltd. v Keep Rite Inc. (1987) 37 B.L.R. (Ont. H.C.) at page 99 CHECK
[5] Edited by Dennis H. Peterson, 1989
[6] Unreported, January 23, 1991, Ont. Gen. Div. (Court No. To. 1767/85) at pp. 74-75

- lack of a valid corporate purpose for the transaction;
- failure on the part of the company and its controlling shareholders to take reasonable steps to simulate an arm's length transaction;
- lack of good faith on the part of the directors of the company;
- discrimination between shareholders with the effect of benefiting the majority shareholder to the exclusion or to the detriment of the minority shareholder;
- lack of adequate and appropriate disclosure of material information to the minority shareholders; and
- a plan or design to eliminate the minority shareholder

[10] As we go through the complaints of Mrs. Devaux, we shall develop some of these principles and seek to apply them to the concrete circumstances at hand.

The waiving of interest

[11] As indicated above at paragraph 4, Mrs. Therese Robinson is a 20% shareholder of the company. She resides ordinarily in Canada. In 1988 she was undergoing personal difficulties. The company too, at that time, was experiencing cash problems. Nonetheless, the directors agreed to lend Mrs. Robinson $163,830.00. Mrs. Robinson signed a promissory note to repay that sum together with interest at the rate of 6% per annum. Mrs. Robinson has been repaying the loan by applying dividends due to her from the companies.

[12] On the 12th May, 2003, at the continuation of a special general meeting of the company requisitioned by the majority, the majority voted to write off the interest on the loan. The interest then stood at $139,247.00. Mrs. Devaux, who was present at the meeting by her proxy, voted against the measure.

[13] The learned trial judge did not agree with Mrs. Devaux that the resolution to waive the interest was sufficient to entitle the latter successfully to invoke the oppression remedy. The judge so found on several different bases. First of all she rested her decision on the finding of certain facts as to whether the company actually intended to levy interest on the loan. Therese Robinson and Charles Devaux had stated in their respective witness statements that it was never the intention of the

company to charge interest on this loan and that interest was only included in the promissory note in order to appease the likely concerns that might have been raised, at the time, by Michael Du Boulay. On the other hand, the then Chairman of the company, William Rapier, said in his witness statement that the interest charged was a matter of prudent commercial practice and not a device to pacify Michael Du Boulay.

[14] The judge concluded that, by reason of their demeanour, the evidence of Therese Robinson and Charles Devaux was to be preferred to the evidence of William Rapier. The judge held in consequence that, as a matter of fact, the company never intended Mrs. Robinson to pay any interest on the loan.

[15] These findings by the learned judge have been rightly challenged by counsel for Mrs. Devaux. Charles Devaux never took the witness stand and therefore the judge could not properly have referred to his demeanour as a premise for preferring his evidence. Moreover, so far as this loan was concerned, what was stated by Mr. Rapier in his witness statement was consistent with the content of the promissory note and also with what was expressed by him and others in letters written on the matter that were contemporaneous with the events in issue. Further, Mr. Rapier's evidence in this regard was not challenged in cross-examination. There therefore was no or no sufficient basis for the judge to disbelieve the evidence of Mr. Rapier on this issue.

[16] In any event the real question here was not so much the witnesses' recollection of the intention or motives behind the conditions set out in the promissory note but rather the plain words, the actual terms of the note itself. Article 1164 of the Civil Code clearly states that testimony cannot in any case, be received to contradict or vary the terms of a valid written instrument.

[17] The trial judge was on safer ground when she opined that there was "nothing burdensome, harsh or wrong with … the company waiving interest in these

circumstances". It is of some interest to note that during the course of the meeting at which the vote was taken to waive the interest, the Chairman had taken the view that "the interest issue was not basic to the company's future and so should not be allowed to prejudice it".

[18] At the trial, Mrs. Devaux was questioned about her opposition to the waiving of the interest. She re-affirmed that she had been prepared to agree, in 2001, to the waiver. Indeed, in 1998 she had appealed to the Board of Fond Cacao to agree to the suspension of interest. But now she is against the waiver. When pressed as to the reason for this change of heart, her response was not that the company's financial position had deteriorated since 2001. The truth is that the company's financial position has improved. Her current objection is not rooted in any principle that, as a matter of company policy, interest on loans from the company should not be waived. Indeed, during her father's lifetime Mrs. Devaux herself was the beneficiary of the then Directors' decision to waive interest on a loan she had been granted by the company.

[19] Mrs. Devaux in her evidence frankly admitted to the court the sole reason for her current stance on the waiver. What was that reason? She disclosed that in the period between 2001 and now, Mrs. Robinson had evinced a change in attitude towards her personally. Mrs. Devaux does not like how her sister has been treating her lately. Her objection therefore is based not on any principle but rather on purely personal considerations.

[20] In support of the contention that the waiver could properly ground an application for relief from oppression, counsel for Mrs. Devaux cited Low v Ascot Jockey Club Ltd.[7] and Re Little Billy's Restaurant (1977) Ltd.[8] I think each of these cases must be distinguished. In the former, the unlawful conduct in question had not been supported by a company resolution and it is interesting to note that, as

[7] (1986) B.C.J. No. 3001
[8] 21 B.L.R 246

egregious as that conduct was, Southin, J. pointedly declined to decide whether the court would have intervened if in fact there had been a company resolution purporting to authorize the impugned conduct. In the Re Little Billy's case, the actions of the majority were clearly and outrageously to the detriment of the minority and in the narrow selfish pecuniary interests of each of the members in the majority.

[21] In this case it is of some significance that the matter of the waiving of the interest had occupied the attention of the Board since 2000. The company at a meeting of 8th June, 2000, had resolved that the accumulated interest accrued should be separated from the principal debt in order that the Board may consider writing off all or part of the interest. This resolution was again reiterated at another meeting of the company held on 5th February, 2001. Mrs. Devaux voted in favour of both of these resolutions.

[22] It would be somewhat strange if a shareholder could agree, unreservedly, that a particular question should, in good faith, be placed before the Board for its determination, and then successfully claim to be oppressed merely because the Board considers the matter and ultimately decides the question in a way that displeases the shareholder. This company is essentially a family company, one that has in the past agreed to waive interest due by a family member. The company here, in my view, engaged in a legitimate exercise. The members were acting within the scope of their powers. Their decision was not patently unreasonable nor was it motivated by bad faith or spite or prejudice towards Mrs. Devaux. Nor was the decision in the narrow interests of each of those who voted for it. Indeed, all the other shareholders (save Mrs. Robinson of course) were affected in the same way as Mrs. Devaux was. In my opinion, in an instance of this nature, it is not for this court to question the manner in which the shareholders chose to exercise the undoubted discretion they possessed. The learned trial judge was right to reject the notion that the Resolution to waive the interest due by Mrs. Robinson should properly ground an application for relief under the

oppression remedy. Moreover, the resolution has to be seen merely as an intimation to the Board of the feeling of the majority as ultimately, it would be for the directors to take a binding decision on this issue.

The proposals

[23] On 12th May, 2003 at a special general meeting of the company attended by attorneys for both Mrs. Devaux and for the majority shareholders, the latter tabled a number of resolutions. Among these was the above-mentioned resolution to waive the interest due by Mrs. Therese Robinson. Other resolutions included the following:

a) That the fees of $20,000.00 due certain attorneys on behalf of the majority be paid by the company;

b) That any cheque in excess of $20,000.00 payable by the company shall require two signatures of any of the following, namely managing Director, a Director or the company secretary;

c) That the Board of Directors should meet quarterly and more frequently if necessary;

d) That quarterly reports should be produced and circulated to all directors and shareholders and that these must be in the hands of directors one week before each quarterly meeting;

e) That the quorum at general meetings should be increased from 2 to 4 members present in person or by proxy, holding in total not less than 60% of the shares;

f) That shares should be first offered to existing shareholders in proportion to their respective shareholdings and be held open for three months after which they could be sold to any other persons;

g) That a large portion of retained earnings should be declared as shareholders dividends. These should be reinvested into the company and not paid out. The company can make a decision at a later point to compensate shareholders for investment.

[24] These proposed resolutions were prefaced with the following explanatory statement :

> "As shareholders with a major interest in Du Boulay Holdings Limited we are very concerned that the Board of Directors is not functioning in an effective manner. A Board of Directors is set up to conduct operations of a company and it is paramount that the Board begin to function in this manner immediately. It is with this in mind that we propose to pass the following resolutions. The intention is that they will be overseen and carried out by the Board of Directors of Du Boulay Holdings Limited".

[25] I have deliberately set out all of the above because it seems to me that a common thread runs through these proposals that Mrs. Devaux so bitterly opposes. It is this. Notwithstanding the financial successes of the company under Ms. Devaux's stewardship, the majority had evidently had enough of her management methods and were seeking to implement, in the interest of the company, measures with which they were more comfortable.

[26] Earlier, by letter of 11th March, 2003, the majority had written to Richard Peterkin, the company Chairman, allaying any fears that there was a desire to unseat the Managing Director, but noting a number of matters with which they were deeply concerned. They adverted to some of the issues which later were formulated as resolutions. Later in this judgment I shall make some general comments in relation to these proposals. Suffice it for now however to examine the proposals complained of individually.

The proposal that the company pay certain legal fees of the majority

[27] On March 13th 2003, at a continuation of an adjourned meeting of the company, (and which was also attended by attorneys for all sides) it was agreed to further adjourn the meeting to allow legal representatives of the shareholders and the company to meet to see whether they could arrive at a shareholders agreement. Looking at the Minutes of the company's meetings, it is clear that all sides attached great importance to the negotiation and preparation of a shareholders agreement.

[28] The Chairman wrote to lawyers for the majority requesting an indication of a date for this meeting. However, for reasons that are not entirely clear, the lawyers did not meet. There is a suggestion, in the Minutes of May 12th, that part of the reason why the lawyers' meeting never took place may well have been the fact that the members constituting the majority were unable personally to defray the mounting legal costs associated with preparing for and ultimately negotiating the shareholders' agreement. Mrs. Devaux wrote to the company Chairman on 18th March, 2003 strenuously objecting to any suggestion that the company should bear the legal costs of the majority and stating that she intended personally to pay for any legal representation which *she* had solicited in "defending" the "motions" brought by the majority. It must be borne in mind that Mrs. Devaux is a very wealthy woman in her own right. When she purchased the shares of her brother, Michael, in November 2001, for $1.25 million, she did not need to trouble any potential mortgagee.

[29] The issue here, therefore, is whether the proposal that the company bear the legal fees of the majority was oppressive to Mrs. Devaux. Counsel for Mrs. Devaux submits that these expenses were personal to the majority and conferred a benefit upon one group of shareholders to the exclusion of Mrs. Devaux. He notes that it was never proposed that Mrs. Devaux's legal fees also be paid.

[30] A successfully negotiated shareholders' agreement would have been to the benefit of all shareholders and the company itself. There does seem to be an element of discrimination in a proposal that the company should bear the legal fees of the majority only. But it must be borne in mind that it was Mrs. Devaux who pre-empted the issue by boldly declaring that she would herself bear *her* legal expenses. Moreover, there does seem to be some doubt as to whether the $20,000.00 owed to the lawyers by the majority is entirely in respect of efforts with regard the shareholders agreement or whether some of those fees were incurred on other matters.

[31] In all the circumstances it seems fair and just to me that, given the fact that everyone accepts that the shareholders agreement was in the company's best interests, the Board should reconsider implementing this proposed resolution. Instead it may choose to decide, with respect to costs associated with resolving the impasse between the members, either that each party bear their own legal costs or that the legal fees of all the parties, and not just the majority's, should be borne by the company. Indeed at the meeting held on 13th March, 2003, Mr. Rapier, a former Chairman and a person upon whose advice Mrs. Devaux often relied, suggested sensibly that certain consultancy fees incurred by shareholders should be met by the company.

The proposal to alter the quorum requirement for general meetings

[32] The Articles of Association of the company required a quorum for General Meetings of two members. This was at the time when the only shareholders in the company were Mr. and Mrs. Andre Du Boulay. The learned trial judge rejected the argument that the proposal to alter the general meeting quorum requirement, from 2 to 4 members holding in total not less than 60% of the shares, provided a sufficient basis to trigger the oppression remedy. Counsel for Mrs. Devaux had argued that the effect of this resolution, if passed, would be to allow the majority to hold meetings to the exclusion of Mrs. Devaux and to stymie meetings at their whim by failing to attend. The judge held that there was no evidence presented to suggest that the proposal was designed to allow the majority to wrest control of the company without recourse to Mrs. Devaux. Curiously enough, in cross-examination on this issue, Mrs. Devaux had stated that she opposed the proposal to increase the quorum to four because 4 was an even number and she would have preferred to see 5.

[33] I agree with counsel for Mrs. Devaux that what the court has to focus on is not so much the intentions of the majority in making this proposal but rather its effect on the minority. The court has to consider whether the proposal effects a result that is

wrongful, unfair in regard to the interests of Mrs. Devaux[9]. Case law suggests that for section 241 to be invoked, the courts do not necessarily look for bad faith on the part of the majority. In some cases bad faith may be relevant, but there may be instances where particular acts effect an unfair result, but where there has been no bad faith whatsoever on the part of the actors[10]. The court must consider all the circumstances including even, the bona fides of the applicant.

[34] In the circumstances that exist here, the majority are clearly not content to have Mrs. Devaux manage the company in the manner she has been allowed to do in the past. The majority want to participate more fully, more effectively in the running of the company. They want to be kept more informed. I see nothing wrong in this *per se*. Because of the apparent friction that currently exists between the majority and Mrs. Devaux, the latter is obviously apprehensive that if the majority should have their way and this resolution is passed, she will or might be unfairly treated. But is this an assumption that the court should make? It seems to me that it is too early for the court to decide that this will be a necessary or inevitable result. I therefore agree with the trial judge that at this point there is a dearth of evidence to suggest that the fears of Mrs. Devaux are justified or that the oppression remedy should at this time be invoked.

The proposal that a large portion of retained earnings should be declared as shareholders dividends and be reinvested into the company.

[35] Among the resolutions tabled at the 12th May, 2003 special general meeting was that "a large portion" of retained earnings should be declared as shareholders dividends and that in turn the dividends should be reinvested into the company and not paid out. As was pointed out at paragraph 3 above, the company had considerable retained earnings much of which was cash in the bank. Mrs. Devaux opposed this proposal as she was of the view that in the prevailing economic climate the company should exercise prudence in the paying out of dividends.

[9] See: Westfair Foods Ltd. v. Watt et al 48 B.L.R. 43 at para 53
[10] See: Brant Investments Ltd. v Keep Rite Inc. (1991) 3 O.R (3d) 289 at pp. 305 and 306

[36] Counsel for Mrs. Devaux submitted that in this proposal, the majority were usurping the statutory and corporate powers of the Board of directors to declare dividends and that the consequence of the resolution was or might be to flout the solvency test laid down for the declaring of dividends in section 51 of the Companies Act. I have seen little evidence to support counsel's fears. In the first place, this proposal, as indeed all the other proposals, could, if passed, only be regarded as a suggestion by the shareholders to the Board of directors. The latter would have been free to adopt and pass or to reject the resolution. While it is true that, in the event the Board considered and rejected the proposal if and when it came before them, it would be possible for the majority to go further and use their voting power to stack the Board so as to assure the passage of such a resolution, it was never suggested throughout this case that there was a likelihood that the majority would resort to such action. I do not accept therefore that either the tabling or the possible passage of this resolution interfered with the Board's discretion and powers in the declaring of dividends. It would still be for the Board to consider the proposal in light of the economic position of the company, and as a Board, to act "honestly and in good faith with a view to the best interests of the corporation"[11]. As to the section 51 solvency test issue, the proposed resolution never referred to actual figures that should be declared and, in the circumstances, there is no basis to assume that declaring the proposed dividends was going to cause the company to infringe section 51. It must be said however that neither the company in general meeting nor the directors can require an unwilling shareholder to reinvest issued dividends back into the company.

The proposal to alter the clause restricting transfers of shares.

[37] The final proposal objected to by Mrs. Devaux was the one that sought to alter the clause restricting the transfer of shares. The majority had proposed that shares should be first offered to existing shareholders in proportion to their respective

[11] See Westfair Foods supra at para 77

shareholdings and be held open for three months after which they could be sold to any other person. Counsel for Mrs. Devaux did not appear to emphasize this issue on the hearing of the appeal and indeed, had he done so, he would have been hard pressed to demonstrate just how such a proposal, even if ultimately adopted and passed by the Board, could have provided a basis for the oppression of Mrs. Devaux.

Conclusion

[38] In approaching this case, one has to consider that a company acts through its Board of directors. The company's Board comprises five persons, namely: Mr. Peterkin, the Chairman; Mrs. Devaux; her granddaughter Ms. Lovell; Ms. Rachel Du Boulay and Mr. Charles Devaux. It is generally accepted that Mrs. Devaux controls the Board. There has not been any hint of a suggestion that the majority intend to use their voting power to remove Mrs. Devaux or indeed any of the directors who are likely always to vote with her. As indicated above, the resolutions Mrs. Devaux opposes are really proposals to the Board. In all these circumstances it is difficult to see how Mrs. Devaux can properly claim to be oppressed.

[39] What has happened here is quite obvious. Mrs. Devaux was given a free hand in the past to run the company as she pleased. Her nieces were teenagers at the time she assumed control of the company. They are now grown up. One of them is an attorney at law. They and the other shareholders desire to participate more effectively in the running of the company. Having had that free hand for well over 20 years, Mrs. Devaux now baulks at the prospect of having, in her own words, "to take orders from these people". She wants unfettered control or she wants it all. She of course has the financial ability to buy out the majority but the latter lack the means to reciprocate if they were given the option.

[40] Mrs. Devaux is naturally unhappy with her current plight but, as was stated by Smith J. in *Re Mason and Intercity Properties*[12] when discussing the oppression remedy, "the door has not been opened wide to accommodate every disgruntled shareholder. Otherwise one form of abuse would be seen to be replaced by another form far more nefarious because of its effect of subjugating the will of the majority to the whimsical machinations of persons in minority positions with theoretically little risk".

[41] In order successfully to invoke the oppression remedy, Lord Cooper opined that the complainant should show that there has been conduct which "at the lowest involve[d] a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely"[13]. Lord Cooper further outlined that

> "The circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of the minority at being outvoted on some domestic policy"[14].

[42] This case does not in my view demonstrate any abuse of power on the part of the majority. They have for years indulged Mrs. Devaux, whose prudence and business acumen they have always admired and continue to laud. They desire now to play a more active role in the company and are pleading with the minority to facilitate this. As the trial judge noted, there is nothing abusive or harsh or wrongful about this. Section 241 was not intended to override the fundamental corporate law principle of majority shareholder control. It does grant to the court a remedy that is discretionary but a court of appeal would be slow to substitute its own findings for those of the trial judge unless we are persuaded that the trial judge has engaged in a wrongful exercise of her discretion. In this case the learned judge was entitled and right to dismiss the application before her.

[12] Unreported, December 10, 1984 Ont. H.C. as quoted in Butterworth's supra at note 3 to para 18.21
[13] See Elder v Elder & Watson Ltd. (1952) S.C. 49 at page 55
[14] Elder, supra at page 55

[43] In all the circumstances I would dismiss this appeal. There was no argument on the matter of costs in this court. At the trial below however, the issue was ventilated and it was agreed that the company would pay costs of $125,000.00 to the successful party. The trial judge therefore ordered costs of $125,000.00 to be paid by the company to the 3rd - 7th respondents. I would order that costs of the appeal in the sum of $40,000.00 be paid by the company to the 3rd to 7th respondents in keeping with an agreement among the parties.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Brian Alleyne, S.C
Justice of Appeal

I concur.

Suzie d'Auvergne
Justice of Appeal [Ag.]