

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SLUHCV 2007/0203

BETWEEN:

(1) CHERYL DUYETTE
(2) MICHAEL KIDD
(3) STEPHEN BARTLETT
(4) LINDA BARTLETT
(5) SHAWN MARTELLY

V

(1) ALLAN MAY
(2) MICHELLE MAY
(3) ALLAN MAY TRADING as "iguana Wanna"
(4) SHELLY MAY LTD

Appearances:

Mr. Henry Shillingford and Mrs. Esther Greene – Ernest for Claimants 1, 2, and 5
Mrs. Michelle Anthony – Desir for Defendants 1, 2 and 3

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2008: December 1
2009: April 1
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JUDGMENT

COTTLE J:

[1] On 16th March, 2007 the Claimants brought a fixed date claim against the Defendants. They sought remedies under section 241 of the Companies Act cap 13.01 of the Revised Laws of Saint Lucia 2001 (Oppression relief). Alternatively they sought an order for the winding up of the 4th Defendant. On the same date the Claimants also applied for interim relief. They wished to have the first and second Defendants account for the takings of the third and fourth Defendants and to have the books and accounts produced for inspection.

[2] On 27th March, 2007 of Mason J made the following order:

- (1) The Defendants are hereby directed, within 7 days of the date of service of this order on them, to produce statements of accounts of daily takings and expenditures of the Third and Fourth Defendants with effect from 9th June, 2006*
- (2) The Defendants are hereby directed, within 7 days of the date of service of this order on them, to provide to the Court and the Claimants copies of all cheques drawn on the bank account/s as well as payments made out of the daily takings of the Third and Fourth Defendants with effect from 9th June, 2006;*
- (3) The First and Second Defendants are hereby directed, within 7 days of the date of service of this order on them, to provide to the Court and the Claimant's information about all bank accounts held in the name of the Third and Fourth Defendants with effect from 9th June 2006;*
- (4) The First and Second Defendants are hereby required, within 7 days of the date of service of this order on them, to produce all Bank Statements and daily or weekly Bank reconciliations in respect of all the Bank Accounts of the Third and Fourth Defendants to the Claimants with effect from 9th June, 2006.*

- (5) *The First and Second Defendants are hereby directed with immediate effect to deposit all the company's takings into the Company's Bank Account at the 1st National Bank Account Number 6002507*
- (6) *The Defendants are hereby restrained with immediate effect from dealing with the bank accounts of the Third and Fourth Defendants the daily takings of the Third and Fourth Defendants except with the approval of the Claimants or one of them namely Stephen Bartlett.*
- (7) *The Defendants are mandated with immediate effect to ensure that all cheques to be signed on behalf of the Company are co-signed by Stephen Bartlett and that the First Defendant do all things necessary to ensure that the said Stephen Bartlett becomes a mandatory signatory on the Company's Bank accounts at the bank of Nova Scotia and the 1st National Bank.*
- (8) *The Defendants are hereby required with immediate effect to admit the Claimants or some of them together with police escort to enter the premises known as Iguana Wanna Restaurant, Sports Bar and Entertainment Center to preserve all documents regarding the daily takings and expenditures of the Company*
- (9) *The First and Second Defendants are hereby restrained with immediate effect from taking any food or beverage from the business of the Third and Fourth Defendants without paying for the food or beverage;*
- (10) *The Defendants are hereby required with immediate effect to set up a petty cash Accounting system for the business of the Third and Fourth Defendants*

(11) The First Defendant is hereby required, within 7 days of the date of service of this order on him, to account for the US\$45,000.00 deposited in his personal account number 104247 at Scotia Bank St. Vincent and the Grenadines on or about the 9th day of June 2006

(12) The order is to be served immediately on the Defendants.

(13) The Claimants undertake to pay any damages occasioned to the Defendants by granting of these interim orders if the Court later finds that this injunction was wrongly granted

(14) The return date for a hearing on notice of this application is the 17th day of April, 2007.

- [3] The first and second Defendants failed to comply with the order of the court and the Claimants sought leave to issue contempt proceedings. At the hearing of that application for leave Mason J ordered that the Defendants furnish the Claimants, within 10 days, with copies of the financial documents which the Claimants had supplied to the 1st National Bank of St. Lucia to secure a business loan. The Defendants again failed to comply with this order. The actions of these Claimants to this point had been aimed at securing or recovering funds allegedly invested in the business being run by Defendants three and four, a restaurant and bar at Rodney Bay.

- [4] Unfortunately the litigation had the opposite effect. The owner of the property on which the business was being carried on decided against selling the property and demanded the keys to the premises. The business thus ceased trading. This occurred towards the end of April, 2007. The business was then in arrears of rent for 2 months.
- [5] The Claimants had no knowledge of this fact.
- [6] As noted at the outset the Claimants application for relief is premised on the grounds that they are shareholders whose interests have been unfairly disregarded by the Defendants.
- [7] At paragraph 4 of the affidavit of the first Claimant, filed on 6th march, 2007 the list of shareholders is set out. These are, Allan May, Michelle May, Cheryl Duyette, Michael Kidd, Stephen Bartlett, Linda Bartlett, Bill Kordupel, Deiter Lehman and Shawn Martelly. However when the corporate records are examined the only persons to whom shares were allotted were Allan and Michelle May.
- [8] In her written submissions Counsel for the Defendants admits that the Claimants are "impliedly shareholders in the business notwithstanding that shares had not been allotted and issued". In any event the Claimants had at the very least an equitable interest in the company and the legislation as I view it is broad enough to protect equitable interests.
- [9] Having concluded that the Claimants fall within the category of persons who section 241 of the Companies Act is designed to protect I turn to consider the evidence.

- [10] The Defendants did not attend at the trial. The witness statements they filed as evidence in chief could not be tested by cross examination. But it remains for the Claimants to demonstrate the conduct which they contend is oppressive or unfairly prejudicial or which unfairly disregards their interests.
- [11] The First Claimant invested US \$130,000. She began to work at the business. She became concerned as she thought that the financial management of the business, a restaurant and bar, was poor. She found that the first and second Defendants would take drinks without paying. They would merely sign a receipt. Their privilege of signing was also extended, to a stepson of the First Defendant. She also thought that the First Defendant was using business funds to pay his rent for his home. In short she considered that the first and second Defendants were using the business as if it were their own with no regard for the other shareholders.
- [12] The first Claimant also complains that the Defendants – especially the First Defendant – have made representations to her which were false and caused her to enter into contract for sale. I am not convinced that an action lies under section 241 for misrepresentations which occurred before the Claimants became “shareholders” of the company.
- [13] In any event the Claimants were aware of the possibilities of seeking redress for the alleged misrepresentation by seeking to have the contract for sale of shares rescinded. They opted not to do so. They wished to continue the business and merely wished the court to act under s.241 to permit the business to continue to operate in a manner that they considered fair.
- [14] Unfortunately events overtook the Claimants, The anticipated purchase of the property at which the business was run did not materialise. The owner took possession and the business closed down.
- [15] From the evidence before the court I found the following facts:

1. *The first and second Defendants ran the affairs of the business without regard for adequate financial controls. There was no proper system of accounting. Indeed the defendants were unable to comply with the order of Mason J which was designed to give information concerning the finances of the business.*
2. *The first Defendant made statements about the existence of a contract with cruise lines. He knew these statements to be untrue. By dint of these representations he induced the Claimants to invest*
.
3. *The Claimants were not as careful as they should have been*
4. *The business has now failed and the company appears to have no assets*

[16] I conclude that the conduct of the Defendants can properly be described as conduct which unfairly disregarded the interests of the Claimants. Incompetent management will not always amount to conduct which falls foul of section 241. It is a question of degree. I find that the complete absence of financial controls was grave enough to merit censure and offend the section.

The Remedy

[17] Much of the relief that the Claimants sought at the time of filing of the fixed date claim is now unavailable due to the events which have since occurred. However under section 241 (3) (j) the court has power to order compensation for an aggrieved person.

[18] I am content to make an order directing that the fourth Defendant be wound up and dissolved.

[19] I also order the first and second Defendants to compensate the first, second and fifth Claimants by returning to them all sums invested in the business.

{20} I also award costs to the Claimants in the sum of \$14,000.00.

BRIAN COTTLE
High Court Judge