

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO. SLUHCV2003/0477

BETWEEN:

JAMES CURRY

Claimant

and

- (1) ST. LUCIA ESTATES LTD.**
- (2) JOSEPH POINDEXTER**
- (3) CAROLL CAVANAGH**
- (4) DEIRDRE CAVANAGH**

Defendants

Appearances:

- Mr. Horace Fraser for the Claimant
- Ms. Diana Thomas for J. Poindexter, Shareholder
- Mr. Dexter Theodore for M. Brill and the Cavanagh family, Shareholders
- Mr. Bota McNamara for D. Bickford, Shareholder

2009: July 14
2010: January 22

JUDGMENT

[1] **COTTLE J.:** I must begin this Judgment with an explanation for the delay in its delivery. I had intended to complete it during the long vacation to have it ready for delivery at the beginning of the New Law Year in September 2009. Unfortunately, I was transferred from St. Lucia to sit in the Commonwealth of Dominica from September 1, 2009. The difficulties inherent in relocating my entire household and family and the need to prepare and

familiarize myself with a new territory meant that I could not devote the attention that this long protracted and involved bit of litigation required.

[2] It took six years and many court hearings in this claim before the area in dispute became narrowed to the point now to be decided. The parties wish to have this court determine the shareholders list of St. Lucia Estates Limited. That determination will guide the distribution of surplus assets on the winding up of St. Lucia Estates Limited. Volumes have already been written concerning this twisted litigation. I am loath to add to the mass but an outline, albeit a minimal one, is still required.

[3] St. Lucia Estates Limited was incorporated as Company No. 3 of 1962. From the outset the management of this Company was extremely lax when it came to carrying out reporting and filing obligations. That set the stage for the present difficulties which face the parties.

[4] It is not until 1972 that the Company first filed with the Companies Registry, copies of its Annual Returns evidencing its shareholding. The records reveal Annual Returns which display very little shareholding activity between 1972 and 1987. The Annual Return which shows the shareholders of the Company at 31st May, 1988 is an important starting point. This is because it represents a concerted effort by St. Lucia Estates Limited to regularize its shareholdings and report a definitive shareholders list. The Company had sold a parcel of land (Honeymoon Beach) and the members wished to cash out of the Company in some cases and to retire debentures which some held in the Company. The list as per 1988 Annual Return shows as follows:-

(1)	W. Brill	1905 shares
(2)	E.F. Poindexter	3810 shares
(3)	F.G. Poindexter (Trust)	1905 shares
(4)	J. Poindexter	1905 shares
(5)	H. M. Scott	1905 shares
(6)	C.J. Cavanagh Jr.	1905 shares
(7)	G. Palmer (Trust)	1905 shares

(8)	J.C. Strachan	1905 shares
(9)	C. Cavanagh et al	1905 shares
(10)	L. Cavanagh (Trust)	1905 shares
(11)	D. Bickford	1905 shares
(12)	B. and I. Nelson	1905 shares

[5] To evidence this shareholding, certificates were issued. These were signed by Joseph Poindexter as Secretary Treasurer and David Bickford as President of St. Lucia Estates Limited.

[6] I propose to treat this 1988 list as an agreed baseline. I understand that at the hearing, Mr. David Bickford had a differing view as expressed in his affidavit evidence in chief and upon his cross examination. However, I do not intend to go behind his filed Annual Return upon which he himself relied in preparing Annual Returns subsequent to 1988. It is true that there was no registration of the shares 'redistributed' in 1988.

[7] Section 105 (1) (c) of the Companies Act of St. Lucia defines a shareholder of a Company as including "a person in whose favor a transfer of shares has been executed but whose name has not been entered in the register of members of the Company or, if 2 or more such transfers have been executed, the person in whose favor the most recent transfer has been made." I thus take the shareholders list as found on 31 May, 1988 as the accepted position.

[8] After 1988 the Claimant, Mr. Curry joined the Company. A decision was taken to donate shares to a United States organization. This was apparently to secure tax benefits to the donors. Many shares were transferred and there was as well the creation of options to buy shares. As seems to have been the norm with St. Lucia Estates Limited the sudden frenzy of share trading activity without the proper record keeping and registration and reporting led to a situation where once more the shareholding became muddled.

[9] The company secretary wrote to each shareholder. She sought to have them confirm that their shareholdings were as listed. Twelve of the fourteen shareholders responded. They agreed that their shareholdings were as reflected in the Company records. James Curry did not respond. David Bickford responded. He disagreed with the Company's records.

[10] The Company issued new share certificates in the agreed amounts to all members save Messrs Curry and Bickford. A single certificate was issued in the joint names of Curry and Bickford for all the remaining shares of the Company as the Company took the position that they were unsure how to allocate these shares between them.

[11] On 26th October, 2006 Edwards J. (as she then was) having heard arguments from all parties, declared the list of shareholders and their shareholdings as follows:

(1)	David Bickford	511 shares
(2)	William Brill	1203 shares
(3)	Carroll Cavanagh	1322 shares
(4)	Deirdre Cavanagh	1905 shares
(5)	James Curry	622 shares
(6)	Christie Dennis	1542 shares
(7)	The Nature Conservancy	3362 shares
(8)	Borge Nielsen	1558 shares
(9)	Elinore Palmer	1558 shares
(10)	Leslie Poindexter	1542 shares
(11)	Joseph Poindexter	1558 shares
(12)	Barry Romeril	1552 shares
(13)	Michael Seely	1905 shares
(14)	Unallocated Treasury Shares	4970 shares

[12] The unallocated treasury shares represent shares which were transferred back to St. Lucia Estates Limited Treasury by the Nature Conservancy in exchange for land given by St. Lucia Estates Limited to the Nature Conservancy.

[13] It appears that the shareholders list as settled by Edwards J. contained minor clerical errors. There were three: Bickford's shareholding was listed at 511 shares when it ought to have been 521. This latter figure is actually represented on the letter sent out by the Secretary of St. Lucia Estates Limited to shareholders seeking to verify the shareholding. Secondly, the shareholding of Lawrence Cavanagh was omitted - he should hold 1905 shares. And lastly, the total shares of Deirdre Cavanagh were overstated at 1905 shares. The gifts to the Nature Conservancy of 206 shares and to Carroll Cavanagh of 239 shares were overlooked. So too was the acquisition of a further 90 shares from William Brill. Deirdre Cavanagh's total shareholding should thus be 1550 shares.

The Evidence:

[14] In the absence of proper reporting and returns demonstrating their shareholding, I required all persons to file affidavits evidencing their shareholding with documents, if any, in support of their respective claims. I will deal with each claim individually.

Borge Nielsen

[15] Borge Nielsen filed an Affidavit on 26th June, 2009. It evidenced his ownership of shares in St. Lucia Estates Limited. He annexes share certificates. From his original total of 1905 shares he has transferred 347 to the Nature Conservancy. This is confirmed by the Nature Conservancy and is in accordance with the records of the Company. In 2001, Mr. Nielsen signed a document confirming his shareholding. I have little difficulty in concluding that he now holds 1,558 shares. This is also the same total found by Edwards J. in 2006.

Barry Romeril

[16] Barry Romeril filed an Affidavit on 30th June, 2009 he details and documents his shareholding. I find that he holds 1552 shares as claimed. Again this is consistent with Edwards J's finding.

Michael Seely

- [17] Michael Seely's Affidavit was filed on 30th June, 2009. He annexes documents including share transfer certificates and filed copies of the Annual Returns. I find that he holds 1905 shares. Edwards J. did the same.

Joseph Poindexter, Leslie Poindexter, Christie Dennis

- [18] Joseph Poindexter swore to an Affidavit filed on 30th June, 2009. The Affidavit and exhibits are in support of the shareholdings of Joseph and Leslie Poindexter along with Christie Dennis.

- [19] Joseph Poindexter swears that he owns 1558 shares. By the 1988 Annual Return he was listed as owing 1905 shares. He transferred 347 to the Nature Conservancy in 1995. The Nature Conservancy confirms this. He exhibits the relevant share certificates. Like Edwards J. I conclude that he owned 1558 shares of St. Lucia Estates Limited stock. The evidence concerning the shareholding of Leslie Poindexter and Christie Dennis is equally clear. I am persuaded that Christie Dennis owns 1542 shares and Leslie Poindexter owns 1542 shares in St. Lucia Estates Limited.

Carroll Cavanagh

- [20] Carroll Cavanagh filed his Affidavit to evidence the shareholding of himself along with Deirdre Cavanagh, Lawrence Cavanagh and Marcia Brill on 30th June, 2009. According to his Affidavit, he owns 1322 shares, Deirdre Cavanagh owns 1550 shares, Lawrence Cavanagh owns 1905 shares and Marcia Brill owns 1203 shares in St. Lucia Estates Limited. These numbers accord with the findings of Edwards J. with the exception of the shares of Lawrence Cavanagh whose name does not appear in the list of shareholders as found by Edwards J. Carroll Cavanagh explains this as a slip or clerical error in compiling the list. I am content to accept this explanation. Lawrence Cavanagh appears on the 1988 shareholders list. In late 2001 when the letters were sent to all shareholders he too was written to. He wrote and confirmed his shareholding. No other member of the Company challenged this. I am satisfied that Lawrence Cavanagh is still a holder of 1905 shares.

James Curry

[21] James Curry filed his Affidavit on 26th September, 2009. He swears that he owns 1497 shares. He originally bought 1905. He transferred 117 then 124 shares to the Nature Conservancy. He transferred 167 shares to Mr. D. Bickford. He thus remains with 1497 shares. Under cross examination and confronted with share transfer certificates he agreed that he transferred a further 708 shares on 18th August, 1998 and 168 shares to David Bickford on 15th May, 1998.

[22] I would conclude that Mr. Curry is the holder of 621 shares. However, I note that Edwards J. concluded that Mr. Curry owned 622 shares. The difference being minimal, I will adopt 622.

David Bickford

[23] David Bickford filed his Affidavit on 30th June, 2009. He claims to be the owner of 3,734.5 shares. He arrives at this number by averring that he holds 936 shares and is entitled to a further 1270 shares under a contract for sale with Grapetree Inc and a further 1528.5 under various options to purchase.

[24] Mr. Bickford was cross examined. He did not impress this court favorably. He was Managing Director of St. Lucia Estates Limited for many years. He filed the Annual Returns. He now makes claims for shareholding which are not as reflected on the returns he prepared and filed.

[25] But to start at the beginning; Mr. Bickford swore that his "initial contact" with St. Lucia Estates Limited was in March 1988. He says he attended a board meeting in April 1988 and accepted a position in the Company in May 1988. In his cross examination he said that he joined the Company on 30th March, 1989. However, among the documents he exhibited to his Affidavit is a report to unit shareholders of a meeting of unit holders of St. Lucia Estates Limited held on 30th May, 1987. This report reveals that Mr. Bickford attended that meeting and reported certain things concerning his visit to St. Lucia Estates

Limited land holdings in St. Lucia in 1986. It is clear that Mr. Bickford's "initial contact" with St. Lucia Estates Limited was long before 1987.

[26] The Annual Return filed for 1988 lists David Bickford as a shareholder as of 31st December, 1987 and reveals his appointment as Director of St. Lucia Estates Limited as of 16th May, 1988. The share certificates issued in 1988 and dated 22nd May, 1988 are all signed by Mr. Bickford.

[27] When presented with these certificates in cross examination he could only say that he signed them in error and that they were thereby invalid. I had great difficulty in relying on any evidence adduced by Mr. Bickford. His claim to be entitled by contract to shares from Grapetree Inc (Dr. Durham) was not substantiated. He could not exhibit the alleged contract and in cross examination could offer no explanation as to why it was not exhibited. I therefore reject this aspect of his claim to the shares which were later sold to Mr. Seely and now form his shareholding in St. Lucia Estates Limited.

[28] The claim by Mr. Bickford to be entitled to shares under option agreements also fails. The options were created in 1994. They were expressed to be dependent on several occurrences, notable among them, a donation of land to the Nature Conservancy by 31st December, 1994. No land was donated to the Nature Conservancy by that date. The options thus became of no effect and cannot now found any claim to shares by Mr. Bickford.

[29] Having examined the evidence in the round, I conclude, like Edwards J. that Bickford owns 521 shares (correcting for the clerical error showing him owning 511 shares).

The Nature Conservancy

[30] There is no controversy in the shareholding of the Nature Conservancy. I am thus content to adopt the shares as found by Edwards J. in the sum of 3,362.

- [31] Certain legal arguments were advanced by Mr. Fraser on behalf of the claimant. These were aimed at persuading the Court that because of the failings by some shareholders their holdings should be invalidated. I wish to state from the outset that invalidating the shares of other members would not of necessity increase the shareholding of the claimant. For the purposes of completeness I deal with these arguments here.
- [32] Mr. Fraser correctly points out that this Company is wound up by order of the Court. He argues that it is being wound up because of oppression by the majority shareholders. Mr. Fraser says that some shareholders received shares in violation of the Companies Act and the Articles of Association of the Company. Only a special resolution can validate these unlawful acts. In the absence of ratification by special resolution the Court should not find that those who received shares illegally are members of the Company.
- [33] Specifically he points to Article 20 of the Companies Articles. This requires a signed instrument of transfer by both parties before a person can become a shareholder. Additionally, Articles 25 and 26 provide that every member who wishes to transfer his shares must give the other members through the Company an option to purchase those shares. The members then have 21 days to decide whether they will buy the shares at a price established by the Articles. If the other members fail then the holder of the shares is at liberty to transfer them to any other person within 6 months.
- [34] Mr. Fraser concludes that any transfers which violate of the Articles are thus invalid. He does not say what is to become of the shares. Are they to remain in the transferor? What of the transferees who have fully paid for these shares?
- [35] The difficulty that Mr. Fraser's client faces is that his shares too would fail on that basis. No evidence has been led to show that there was any offer of shares to other members of the Company prior to a transfer to the claimant. Neither is there evidence of any special resolution to validate the transfer of shares to him. Despite this, I note that in 1988 and again in 2002 when share certificates were re issued, all of the members of the Company were prepared to overlook these omissions.

- [36] Mr. Fraser also attacks the transfer of shares to Mr. Seely from Grapetree Inc. (Dr. Durham). He says there is no evidence of the transfer in that the transfer purports to have been done by Dr. Durham and not by the Company, Grapetree Inc. I note that there has been no complaint by Grapetree Inc. that Dr. Durham acted without authority. I am unclear why the claimant takes it on himself to protest on behalf of Grapetree Inc. when its Principal, Dr. Durham, does not.
- [37] Mr. Fraser has concerns about shares going to Christie Dennis, Lawrence Poindexter and Barry Romeril. He says these share represented trust property. Mr. J. Poindexter who transferred, had no authority to do so. In addition, these transfers were unregistered. Again these concerns do not seem to lie comfortably coming as they do from the mouth of the claimant.
- [38] Assuming for the moment that Mr. J. Poindexter held these shares on trust, no beneficiary has complained of his dealing with the trust property. Certainly, Mr. Curry does not claim to be a beneficiary. The question also remains, what is to become of these gifts if they fail? They do not thereby accrue the claimant.
- [39] I pointed out earlier that Section 105 (1) of the Companies Act contemplates members of a Company whose names have not yet been entered on the register. This to my mind is sufficient answer to Mr. Fraser's argument that lack of registration would invalidate share transfers. Registration can be done after the transfer.
- [40] In **Re: Sussex Brick Company [1904] Chancery Div 598**, the Court permitted retrospective rectification of the register. The Company had already been voluntarily wound up. A transferee of shares had not been included on the register by mistake or omission. The Court ordered rectification of the register to enter the name of the transferee on a day prior to the winding up.
- [41] I have been also referred to the case of **Re: Swaledale Cleaners Ltd [1968] 1 W.L.R. 1710**. In that case, the Articles of a Private Company gave the directors an absolute and

unfettered discretion to refuse to register the transfer of any shares. The Court of Appeal held that such a right of refusal had to be exercised within a reasonable time. A delay of 4 months was held to be unreasonable and the directors thereafter lost the power of veto.

[42] In the present case any shareholder who wished to object to the transfer of shares without having first offered those shares to the members of the Company would have had to make his objection within a reasonable time. No such objection having been made, I am content that it is just to order the rectification of the register.

[43] Many of the shareholders as I have found above have yet to regularize their holdings with the Registrar of Companies. In cases the requisite duties and transfer taxes have not yet been paid. These will all have to be made right to the satisfaction of the Registrar of Companies before the shareholders can participate in any surplus on the winding up of St. Lucia Estates Limited.

Shareholders list

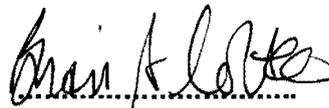
[44] The list as I have found it is as follows:

(1)	David Bickford	521 shares
(2)	Carroll Cavanagh	1322 shares
(3)	Deirdre Cavanagh	1550 shares
(4)	Lawrence Cavanagh	1905 shares
(5)	Marcia Brill	1203 shares
(6)	Christie Dennis	1542 shares
(7)	Leslie Poindexter	1542 shares
(8)	Joseph Poindexter	1558 shares
(9)	Borge Nielsen	1558 shares
(10)	Barry Romeril	1552 shares
(11)	Michael Seely	1905 shares
(12)	James Curry	622 shares
(13)	The Nature Conservancy	3362 shares

[45] Additionally there are a 4970 treasury shares which were redeemed for land conveyed by St. Lucia Estates Limited to the Nature Conservancy.

[46] No arguments were addressed to the court on the issue of costs. I therefore conclude that the parties are content that there be no order as to costs and I order accordingly.

Dated this ^{22nd} day of January, 2010


BRIAN COTTLE
HIGH COURT JUDGE