

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. BVIHCV 222 of 2013

BETWEEN:

MARIA HELENA MORAES SCRIPILLITI

(BOTH IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS ADMINISTRATRIX OF
THE ESTATE OF CLOVIS SCRIPILLITI)

Claimant

and

CLOMAR CORPORATION

Defendant

Appearances:

Mr. Robert Nadar of Forbes Hare for the Claimant

2013: November 27

REASONS FOR DECISION

- [1] **BYER J.:-** On the 31st day of July 2013 the Applicant filed an application by Fixed Date Claim seeking the following relief relying on Section 43(1) of the Business Companies Act 2004 as amended(hereinafter called the "BCA")
- (a) A declaration that 50% of the issued shares in the Company (the "Estates Shares") are legally and/or beneficially owned by the estate of Clovis Scripilliti deceased;
 - (b) A declaration that 50% of the issued shares in the Company ("the Claimant's shares") are legally and/or beneficially owned by the Claimant;
 - (c) A declaration and order for rectification pursuant to section 43(1) of the BCA requiring the Company's register of members be rectified to reflect the fact that the Estate's shares are legally owned by the estate of Clovis Scripilliti deceased and
 - (d) A declaration and order for rectification pursuant to Section 43(1) of the BCA requiring the Company's register of members to be rectified to reflect the fact that the Claimant's shares are legally owned by the Claimant.
- [2] The Application was supported by the affidavit of the Claimant.
- [3] At the first hearing Counsel was directed to file supplemental submissions on the issue of service in the circumstances where service was effected on the registered agent who had previous to service resigned as registered agent and further to satisfy the court, that despite not having adhered to the mandatory provisions of the BCA regarding bearer shares, that the Claimant was nonetheless entitled to the prayers as made.
- [4] The matter came on for a second hearing on the 25th November 2013 and the application as filed was dismissed.
- [5] Counsel asked for reasons for the decision to dismiss to be reduced into writing and I now so do.

Issue of Service

- [6] The Claimant on the 5th September 2013, filed an affidavit of Service in the matter stating that the Registered Agent who they sought to serve had refused to take the documents. (*Reference to the Affidavit of Daniel Mitchell filed in the proceedings*).

- [7] The Claimant knew full well at time of serving that the registered Agent had in fact resigned as Registered Agent for the Defendant company pursuant to the provisions of the BCA. *(reference is made to the Affidavit of Maria Scripilliti)*
- [8] The question the Court therefore posed to the Claimant was whether this was proper service, having left it at the Registered Agent with the knowledge that the Registered Agent had resigned.
- [9] Despite the arguments of Counsel for the Claimant that service could be affected by section 101 of the BCA by leaving it or sending it to the Company's registered office or the office of the registered agent, there was no evidence before the court that the registered office was in fact being served and **not** the registered agent, especially when they were one in the same.
- [10] The Court being aware under section 90 (2) of the BCA of who or what place could be designated as the registered office, was however, not satisfied that this distinction was made on the evidence before it and therefore determined that the service was improper it having been served on the resigned Registered Agent and not the registered office.

Conversion of Bearer Shares

- [11] From the evidence of Maria Scripilliti in support of the application, the Claimant was well aware that the shares in issue in the Defendant company were bearer shares.
- [12] Counsel for the Claimant from the start of the Application was also well aware that the BCA made specific provisions for the conversion of those shares and so submitted to the Court.
- [13] The Court having referred Counsel to Section 35, Schedule II of the BCA where the mandatory requirements were stated with regard to the ability to deal with bearer shares, the Court required Counsel to identify how these mandatory provisions could be dispensed with in the manner sought.
- [14] Counsel by supplemental submissions sought to rely on the provisions contained in sections 68(3) (b) and 70 (3)(b) of the BCA and seem to ask that the Court not to read them referable to the requirement of the mandatory provisions contained in Schedule II. That in fact they should be read in isolation of those provisions.

[15] The Court was of the view that these provisions could not be read in isolation and that they would only operate if the mandatory provisions had been complied with and that it was not sufficient to posit that those provisions had not been complied with due to inadvertence.

[16] For these reasons the court was of the view that the Claimant was not entitled to the relief as sought and dismissed the application as filed.

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Nicola Byer

High Court Judge