

**THE EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE**

**SVGHCV2016/0214**

**IN THE MATTER** of sections 247 and 249 of the Companies Act Cap. 143

**and**

**IN THE MATTER** of Division B of Part III of the Companies Act Cap. 143

**and**

**IN THE MATTER** of Digital Wings Limited

**BETWEEN:**

**DIGITAL WINGS LTD.**

**APPLICANT**

**and**

**LEKEICHA CAESAR-TONEY**  
**in her capacity as Registrar of Companies**

**and**

**DILIANA ROUSSEV**

**DEFENDANTS**

**Appearances:**

Mr. Joseph Delves for the claimant.

Mr. Kezron Walters holding papers for Mr. Grahame Bollers for the first defendant.

Second defendant absent.

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2017: Oct. 18  
Nov. 28  
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**DECISION**

## BACKGROUND

- [1] **Henry, J.:** This case touches and concerns a certain amount of intrigue surrounding the management of the external company Digital Wings Ltd. ('Digital Wings') relative to the proprietary interests of Mr. Spas Roussev, his wife Mrs. Diliانا Rousseva and other persons. However, the central issue at this stage is limited to the viability of Digital Wings' application for an order directing the Registrar of Companies ('registrar') to register certain company documents. Mrs. Lekeicha Caesar-Toney was and remained the registrar at all material times.
- [2] Some time ago, Digital Wings Ltd. ('Digital Wings') was registered as a limited liability company in the British Overseas Territory of the Virgin Islands ('TVI') with a single named shareholder - Mrs. Diliانا Rousseva. Subsequently, Digital Wings was registered<sup>1</sup> as an external company in Saint Vincent and the Grenadines, pursuant to the Companies Act<sup>2</sup>. The registration documents were signed by the sole director Martin B. O'Connor.
- [3] Digital Wings pleaded that on 23<sup>rd</sup> May 2014, Mrs. Rousseva transferred her shares to GBS Trustees Ltd. (a limited liability company incorporated in Nevis). It claimed that the transfer was part of its consideration to Lemman Nominee Company Limited ('Lemman') to secure a mortgage loan to buy the 'Ocean Breeze' property on Mustique and shares in Mustique Company. Digital Wings asserted that it passed a resolution amending the share register to reflect the transfer of shares and also cancelling Mrs. Rousseva's share certificate. Martin O'Connor signed the resolution on its behalf
- [4] Digital Wings alleged that on 24<sup>th</sup> May 2014, it appointed Charles John Bennett to replace Mr. O'Connor as director and Ms. Jocelyn M. Bennett was appointed secretary. Digital Wings claimed that acting as its sole director, Mr. Bennett executed an Indenture on 19<sup>th</sup> June 2014, to re-convey the Ocean Breeze property to it. It alleged that a second director in the person of James-Stuart Bennett was appointed on 7<sup>th</sup> December 2015.

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<sup>1</sup> On 20<sup>th</sup> February 2013.

<sup>2</sup> Cap. 143 of the Revised Laws of Saint Vincent and the Grenadines, 2009 Revised Edition ('the Act').

- [5] Digital Wings failed to comply with the legal requirement to file Notices of Change of Directors within 30 days of the new directors' appointments. However, on 2<sup>nd</sup> September 2016, it presented to the registrar for filing, a certified copy of the resolution appointing Charles John Bennett as director and a certified copy of the resolution accepting Martin O'Connor's resignation; annual returns for 2013, 2014 and 2015 and a certified copy of certificate of share transfer. It claimed that the registrar has failed or refused to mark the documents as filed.
- [6] The registrar denied this. She alleged that every document 'entering the Commerce and Intellectual Property Office (CIPO) is stamped as filed upon receipt and the payment information is recorded and thereafter placed in the file.' She insisted that this was done with the referenced documents. The companies' registry is housed at the CIPO.
- [7] Digital Wings complained that on 9<sup>th</sup> August 2016 the registrar accepted and stamped as filed, annual returns for the years ending December 31, 2013, 2014 and 2015 that were signed by Mrs. Rousseva as director and sole shareholder. It alleged that the documents are fraudulent because Mrs. Rousseva has never been a director and ceased to be shareholder in May 2014. It alleged further that Mrs. Rousseva has not sought to file any documents in the TVI on its behalf since May 2014.
- [8] Digital Wings contended that in breach of her statutory duties, the registrar has refused to register the proper annual returns. It seeks an order pursuant to sections 247 and 249 of the Act, directing the registrar to:
1. cancel the filings signed by Mrs. Rousseva; and
  2. stamp as filed the documents it presented in September 2016.
- It also claimed costs.
- [9] By Amended Fixed Date Claim Form filed on 7<sup>th</sup> July 2017, Digital Wings added Diliانا 'Roussev' as a defendant. It sought against her 'a declaration that her utterance, reference to, reliance on and submission of, a purported resolution dated 20 February 2014 was a fraudulent misrepresentation'. Learned counsel for Digital Wings Mr. Delves, has indicated that Mrs. Rousseva has not been served with the claim form as at the hearing date.

[10] The registrar contended that she had no notice of the appropriate timing of Digital Wings' changes to directorship and shareholdings. She asserted that Digital Wings failed to ensure that its records were kept current. She pleaded that civil suit SVGHC2016/0117 involves an extant claim before the High Court regarding a determination of who are Digital Wings' directors and shareholders. She contended that she must await the outcome of that case before taking any further steps.

[11] The registrar indicated that on 2<sup>nd</sup> September 2016, the law firm Elizabeth Chambers requested validation on Digital Wings' behalf. She alluded to annual returns submitted by Elizabeth Chambers and stated that they cannot be registered because they were not filed by the attorney on record. She pleaded that share transfers attract stamp duty which must be paid in accordance with law. She asserted further that she has not refused to 'file in the form submitted to her any articles or other document required' to be filed.

[12] The registrar contended that the claim should be dismissed. By Notice of Application<sup>3</sup> she applied for the claim form and statement of claim to be struck out as disclosing no reasonable ground for bringing the action. Digital Wings resisted the application.

## **ISSUE**

[13] The issue is whether the court should strike out the fixed date claim form and statement of claim.

## **LAW AND ANALYSIS**

### **Issue – Should the claim form and statement of claim be struck out?**

[14] Where a claim and statement of claim<sup>4</sup> discloses no reasonable grounds for initiating a case, the court is empowered to strike it out.<sup>5</sup> The courts in this jurisdiction have rehearsed the legal principles which guide them in exercising this discretion. Digital Wings and the registrar summarized them in their submissions and cited several cases.

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<sup>3</sup> Filed on 24<sup>th</sup> July 2017.

<sup>4</sup> Referred to collectively as 'statement of case'.

<sup>5</sup> Rule 26.3 (1) (b) of the Civil Procedure Rules 2000 ('CPR').

[15] The respective judgments of the Court of Appeal and the Privy Council in **Tawney Assets Limited v East Pine Management Limited**<sup>6</sup>, **Attorney General of St. Lucia v Allen Chasten et al**<sup>7</sup>, **Didier et al v Royal Caribbean Cruises Ltd.**<sup>8</sup>, **Norde v Mannix**<sup>9</sup> and **Real Time Systems v Renraw Ltd.**<sup>10</sup> were highlighted by the parties. They are representative and instructive. The following principles have been distilled from the judgments as endorsed by the parties.

[16] An order striking out a statement of case is considered to be nuclear<sup>11</sup> in its effect. It is used sparingly, as a final option, and only if the court is satisfied that 'the statement of case is just plain bad in law'<sup>11</sup> or cannot be sustained on the allegations<sup>12</sup>. The sanction is reserved for cases where the claim 'has no real prospect of succeeding at trial'.<sup>7</sup> An order striking out a claim seeks to ensure that 'court resources are not wasted on claims which should not be allowed to go past the initial stages'<sup>9</sup> or which would amount to 'an abuse of the process of the court'<sup>13</sup>.

[17] Where the statement of case raises an issue which the judge must decide, the court generally errs on the side of allowing the case to proceed to trial, even where it is weak. In such instances, the court must consider whether justice can best be served by ordering 'the claimant to supply further details or to serve an amended statement of claim.'<sup>11</sup> The court also takes into account the effect of the order on any parallel proceedings.<sup>14</sup>

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<sup>6</sup> BVIHCVAP2012/007 (unreported).

<sup>7</sup> SLUHCVAP2015/007 (unreported).

<sup>8</sup> SLUHCVAP2014/0024 (unreported).

<sup>9</sup> ANUHCVAP2015/0034 (unreported).

<sup>10</sup> [2014] UKPC 6.

<sup>11</sup> Didier case at para. 24 per Pereira CJ.

<sup>12</sup> Michael Wilson and Partners Limited v Temujin International Limited et al BVIHCV2006/0037.

<sup>13</sup> Baldwin Spencer v The Attorney General of Antigua and Barbuda, ANUHCVAP1997/0020A (unreported).

<sup>14</sup> Citgo Global Custody NV v Y2K Finance Inc. BVIHCVAP2008/0022 (delivered 19<sup>th</sup> October 2009, unreported) per Edwards JA at para. 14.

[18] The court's assessment involves an evaluation of the parties' respective pleaded cases. For this purpose, the facts relied on are assumed to be true. The court must also seek to give effect to the overriding objective to act justly. In determining this application, I will have regard to these principles.

[19] The instant application was filed on 24<sup>th</sup> July 2017 and is supported by affidavit sworn to by the registrar. Although the application and supporting affidavit make no explicit reference to the amended FDCF, learned counsel Mr. Kezron Walters submitted that the application relates to the amended FDCF. In view of the chronology of events, this appears to be the case.

[20] The registrar contended that section 247 of the Act grants a right of appeal from the registrar's refusal to file a document. She maintained that section 359 of the Act specifies which parts of the Act 'expressly apply to external companies'. She pointed out that it does not mention sections 247 and 249. She reasoned that those provisions do not apply to external companies.

[21] Section 359 of the Act states:

'The provisions of sections 18 to 23, 515 and 516 and the provisions of Division E of part II and Division B of Part V apply, mutatis mutandis, to external companies.'

Sections 247 and 249 are not expressly referred to in section 359. They are contained in Division L of Part I.

[22] Section 249 stipulates the procedure which must be used by a person seeking relief from the court.<sup>15</sup> It states:

'Subject to this Act, where it is provided that a person may apply to the court, the application may be made in a summary manner by originating summons, originating notice of motion, **or otherwise as the rules of court provide**, but subject to any order respecting notice to interested parties or costs or any other order the court thinks fit.'  
(bold added)

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<sup>15</sup> That is, in a summary manner by originating summons, originating motion or in accordance with rules of court.

- [23] By commencing its suit by FDCF, Digital Wings is fully compliant with that provision. In this regard, the rules of court direct that such proceedings be commenced by FDCF.<sup>16</sup>
- [24] The registrar argued that Digital Wings, being an external company, is precluded from invoking the appellate regime provided under sections 247 and 249 of the Act. She submitted that in interpreting the provisions and in light of section 359, the court should apply the '*expressio unius personae vel rei, est exclusio alterius*' rule of construction. Expressed in English, that Latin maxim means that where a statute expressly mentions a specific person or thing, those not mentioned are excluded.
- [25] Digital Wings submitted that none of the provisions mentioned in section 359 restricts rights or hinders access that the Act extends to other companies. It argued that the interpretation advanced by the registrar would practically result in denial of an external company to access to the court for redress, regarding problems which are contemplated by that Part of the Act. It submitted that this cannot be the case.
- [26] It contended that the sections which are expressly listed in section 359, extend rights and administrative procedures to external companies, and make clear for the avoidance of doubt, that certain revenue collection measures apply to them. It pointed out for example, that section 195 (1d) begins with the phrase 'for the avoidance of doubt'.
- [27] Digital Wings contended that application of the *exclusio unius* rule in the instant case would lead to undoubted absurdity, hardship and injustice. It argued that it is dangerous to apply the maxim without more. It relied on the pronouncement of Lopes LJ in **Colquhoun v Brooks**<sup>17</sup> where he said that the maxim:
- 'is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* often is the result of inadvertence or accident, and the maxim ought not to be applied when its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice.'

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<sup>16</sup> Civil Procedure Rules 200 ('CPR'), rule 8.1(5)(d).

<sup>17</sup> (1888) 21 Q.B.D. 52, at page 61.

In that case Lopes L.J. refused to apply the maxim, opining that to do so would make other provisions in the legislation inconsistent and absurd and result in injustice.

[28] Digital Wings submitted that applying the *exclusio* rule would have astounding ramifications for public policy, the international business community and for the reputation of Saint Vincent and the Grenadines. It contended that this would mean that an external:

1. company functioning within the Act would not be able to rectify its own registration documents, if a related or unrelated party fraudulently or innocently filed documents contradictory to those filed afterwards by the external company; and
2. corporate victim of fraud, who sued the fraudster and eventually succeeded, may not be able to have the fraudulent documents expunged or corrected at the company's registry.

[29] Digital Wings submitted that the golden rule is the first and most elementary rule of construction, since it requires that words and phrases be given their ordinary meaning, except where such a meaning produces injustice or absurdity. It argued that the 'golden rule' of statutory interpretation must be applied. It quoted Lord Simon in **Maunsell v Olins**<sup>18</sup>, where he opined:

'... in statutes dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred, so as to obviate the injustice, absurdity, anomaly or contradiction, or fulfil the purpose of the statute.'

[30] Digital Wings submitted that although the appellant argued for a literal interpretation of a statute in the case of **Enmore-Hope Village DC v Mahamood Shaw et al**<sup>19</sup>, Bollers CJ held that words in statutes must be interpreted based on the context and not simply in isolation. Bollers CJ explained:

'... it is well settled that in respect of a construction to be placed on a statute, words, and in particular general words, cannot be read in isolation as their colour and content are derived from their context; and every word of a statute must be read in its

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<sup>18</sup> [1975] AC 373, at page 391.

<sup>19</sup> (1974) 21 WIR 275.



context in its widest sense which would include not only other enacting provisions of the same statute, but its preamble, the existing state of the law, and other statutes in *pari materia* in order to discern the mischief which the statute is intended to remedy.<sup>20</sup>

[31] Digital Wings also relied on the dictum of Lord Esher in **R v Judge of the City of London**<sup>21</sup> where he said:

'...if the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity, and the other does not, the Court will conclude that the legislature did not intend to lead to an absurdity, and will adopt the other interpretation.'<sup>21</sup>

[32] Digital Wings repeated the caution issued by Persaud JA in that case, where he warned:

'... As has been stated by Lord Blackburn in *River Wear Commrs v Adamson* ((1877), 2 App Cas 743, ... "...the office of the Judges is not to legislate, but to declare the expressed intention of the Legislature, even if that intention appears to the Court injudicious." ... and in interpreting the law, the courts are entitled to consider the history of the particular law, and to look at any other law which is in *pari materia*'<sup>22</sup>

and,

'It is legitimate for a court not only to look at the general scope of an Act, but also to consider the anomalous results to which a certain interpretation as opposed to another would lead.'<sup>22</sup>

[33] Digital Wings submitted that no part of the Act expressly excludes external companies from appealing to the High Court under section 247. It argued that section 247 prescribes one of several civil remedies. It reasoned that external companies may invoke any of those provisions and be granted all or any of the specified remedies.

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<sup>20</sup> The Enmore-Hope case at page 288.

<sup>21</sup> [1892] 1 QB 273.

<sup>22</sup> R v Judge of the City of London, at pages 296 and 297.

[34] Digital Wings contended that once registered, an external company can do all of the things other companies are entitled to do unless otherwise expressly stated. It submitted that this is the effect of section 340 which provides:

‘no external company can begin or carry on business in the State until it is registered under this Act.’

[35] While acknowledging that an external company can conduct business in the State only after registration, Digital Wings argued that section 357 is the other broad exclusion on the capacity of external companies. It contended that in both instances, registration under the Act is the acid test and the only bar. It submitted that there is no other ‘express restriction set out by the Act in relation to external companies.’ It reasoned that an external company registered in the State is ‘not hindered in its access to the Court in relation to contracts’ made wholly or partly in the State relative to their business here.

[36] Digital Wings cited the Antiguan case of **SDP Gestion SAS et al v Franciane Bakery Ltd.**<sup>23</sup> where certain provisions of that country’s Companies Act<sup>24</sup> were considered, specifically section 241 which deals with restraint of oppression. It pointed out that an identical section is contained at section 241 of the Act under consideration. In the **SDP Gestion case**, the petitioners were external companies who were not registered under the Antigua Companies Act. The court was asked to strike out their petition for non-compliance with the rules of court.

[37] Remy J. noted in passing that section 241 empowered the court to make an interim or final order to restrain oppression.<sup>25</sup> She found too that although the petitioners failed to register as external companies under the Companies Act, they nonetheless had the necessary *locus standi* under section 241 of the Companies Act, to maintain the action against the respondents who were registered companies.<sup>26</sup>

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<sup>23</sup> ANUHVC2010/0340 (unreported, ruling delivered on May 16, 2013).

<sup>24</sup> No. 18 of 1995 of the Laws of Antigua and Barbuda.

<sup>25</sup> SDP Gestion case at para. 46.

<sup>26</sup> SDP Gestion case at para. 64.

[38] While section 359 of the Antigua Companies Act and the Act are identical, that court was not asked to determine frontally, whether the petitioner external companies were prohibited by virtue of section 359 from invoking section 241. Instead, it was argued that because they were not registered in Antigua and Barbuda, the petitioners did not have legal capacity to maintain their petition because it related to a contract made in that State, in connection with business they were conducting there.

[39] I verified that section 241 of the Act is identical to the Antigua and Barbuda Companies Act. The court in that case accepted that while an external company is expressly forbidden by the law,<sup>27</sup> from conducting business in the State until it is registered, it determined that no cogent evidence was adduced to establish that the petitioners had violated that provision.<sup>28</sup> Be that as it may, this court has been asked to determine a different issue. In doing so, it will remain mindful of the determination by Remy J. in the **SDP Gestion case**.

[40] The primary opposing arguments by the litigants in the case at bar, revolve around the rules of statutory interpretation. In essence, this court must decide whether Digital Wings, an external company is precluded by section 359 of the Act, from appealing to the High Court under section 247, from a decision of the registrar. If it is, the registrar would have established that Digital Wings has no reasonable grounds for prosecuting its claim. It is necessary to examine the relevant part of section 247 of the Act and other related provisions, under the lens of the applicable interpretation rules.

[41] The referenced quotations from the judgments in **Colquhoun v Brooks, R v Judge of the City of London**, the **Enmore-Hope Village DC** and **Maunsell v Olins** cases capture succinctly some of the oft repeated legal principles governing interpretation of laws. In summary, they illustrate that when interpreting statutes, the court seeks to understand and give effect to Parliament's intention<sup>29</sup>

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<sup>27</sup> Section 357(1) of the Companies Act.

<sup>28</sup> Para. 57.

<sup>29</sup> Per Viscount Dilhorne in *Stock v Frank Jones (Tipton) Ltd.* [1978] 1 WLR 231 (HL).

and not to legislate.<sup>30</sup> The exercise necessitates a holistic and contextual assessment of the impugned provisions. The sole objective is ‘to avoid any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute.’<sup>31</sup> It must also be remembered that:

‘The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the ‘intention of Parliament’ is an objective concept, not subjective.’<sup>32</sup>

[42] In an Opinion rendered by the Court of Appeal in 2013<sup>33</sup>, their Ladyships and Lordship outlined other guiding principles governing the interpretation of statutes. They were concerned with interpretation of a constitutional provision. Pereira CJ quoted approvingly from Sir Rupert Cross’ Treatise<sup>34</sup> where he opined that it is important that as far as possible:

‘... the courts should so far as possible stick to the ordinary meaning of statutory words,’<sup>35</sup> and further that

‘The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. ...  
... the court must be abundantly sure of ... the intended purpose of the statute or provision in question; ...’<sup>36</sup>

[43] She observed further that:

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<sup>30</sup> *Inco Europe Ltd. and Others v First Choice Distribution (a firm) and Others* [2001] 1 WLR 586 per Lord Nichols of Birkenstead.

<sup>31</sup> Halsbury’s Laws of England 4<sup>th</sup> Ed. Vol. 44 para. 872; cited with approval in *Universal Caribbean Establishment v James Harrison* [1997] ECSCJ No. 29, para. 6 (Byron C.J.)

<sup>32</sup> Per Lord Nichols of Birkenstead in the *R v Secretary of State ex Parte Spath* case.

<sup>33</sup> Attorney General’s Reference SLUHCVAP2012/0018 (Unreported, delivered on 24<sup>th</sup> May 2013).

<sup>34</sup> Sir Rupert Cross: *Statutory Interpretation* (3<sup>rd</sup> edn., Oxford University Press).

<sup>35</sup> Sir Rupert Cross: *Statutory Interpretation*, at page 105.

<sup>36</sup> Sir Rupert Cross: *Statutory Interpretation* at page 103.

'In identifying the meaning of the words used, the courts employ accepted principles of interpretation as useful guides. ... an appropriate starting point is that language is to be taken to bear its ordinary meaning in the general context of the statute. ... Additionally, the courts employ other recognised aids. They may be internal aids. Other provisions in the same statute may shed light on the meaning of the words under consideration. Or the aids may be external to the statute, ... This extraneous material includes ... a statute's legislative antecedents.'

[44] The Chief Justice echoed Lord Nicholls of Birkenhead by quoting directly from his judgment in **R V Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd.**<sup>37</sup> where he said:

' In adopting a purposive approach to the interpretation of statutory language, courts seek to identify and give effect to the purpose of the legislation. ... "...The source to which Parliament must have intended the citizen to refer is the language of the Act itself.'<sup>37</sup>

[45] The first rule of statutory interpretation is known as the literal rule. It dictates that if the words used in a statute are clear and unambiguous, the court must apply their natural and ordinary dictionary meaning in discerning Parliament's intention and give effect to them.<sup>38</sup> A court will not depart from the ordinary meaning of a legislative provision unless it is unclear and ambiguous.

[46] If applying the literal rule would result in an absurd outcome, the court turns to the golden rule of interpretation. It permits the court to give a secondary meaning to the words to 'eliminate the error'.<sup>39</sup> It is important to note that 'mere "manifest absurdity" is not enough: It must be an error (of commission or omission) which in its context defeats the intention of the Act.'<sup>39</sup>

[47] Almost invariably, Parliament includes definitions in statutes to assist with interpretation. In that respect, a useful and perhaps one of the first internal aids referenced by courts are the definitions

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<sup>37</sup> [2011] 2 AC 349.

<sup>38</sup> Fisher and Bell [1961] 1 QB 394 as applied in R v Secretary of State ex Parte Spath.

<sup>39</sup> River Wear Commissioners v. Adamson (1876-77) L.R. 2 App. Cas 743.

provided in the subject legislation and in the Interpretation Acts.

- [48] The parties have helpfully catalogued many of the applicable interpretation principles and rules. The court accepts them as being authoritative. They have been supplemented to some extent by reference to other authorities. These rules and guiding principles provide the backdrop against which sections 247 and 359 of the Act will be analyzed.
- [49] The Act was passed in 1994 to 'revise and amend the law relating to companies, and to provide for related and consequential matters.' It contains upwards of 500 sections and is divided into 5 Parts, each of which contains a series of Divisions.
- [50] In Part I,<sup>40</sup> provision is made for incorporation, share capital, management of companies, directors and other officers, shareholders, meetings, amalgamations, civil remedies and related matters. Part II<sup>41</sup> provides for protection of creditors and investors, trustees, receivership, prospectuses and insider training.
- [51] Part III<sup>41</sup> deals with other registered companies including companies without share capital, external companies, former-Act companies and statutory companies. Part IV<sup>41</sup> covers winding up, liquidation and interpretation while Part V<sup>41</sup> addresses the registrar's functions, investigation of companies, makes provision for regulations, creates offences, incidental and consequential matters such as repeal. The instant case touches on aspects of Parts I, II, III and V.
- [52] Section 247 falls within Part I, Division L, under the rubric 'Civil Remedies'. Those remedies are provided for only in this Part of the Act. That Division contains 12 sections, starting from 238. Section 238 defines 'action' and 'complainant' as used in that Part. Sections 239 to 249 outline several procedures and reliefs available to shareholders, debenture holders, directors and officers

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<sup>40</sup> Comprising sections 1 through 249.

<sup>41</sup> Which respectively contains sections 250 through 325; sections 326 through 369; sections 370 through 491 and section 492 through 548.

of companies, the registrar or other persons regarding grievances about a company's operations. They contemplate that action be initiated in the High Court.<sup>42</sup>

[53] Sections 239 and 241 authorize a 'complainant' to apply to the court:

1. for leave to act on behalf of a company, in a derivative action; or
2. on behalf of a shareholder, debenture holder, creditor, director or officer of the company where the complainant alleges that the company's business is being carried on in an oppressive or unfairly prejudicial manner.

In either case, the court is empowered to grant relief, pursuant to section 240 or 243. However, such action may be stayed under section 242.

[54] 'Complainant' refers to a shareholder, debenture holder, former holder of a share or debenture of a company or its affiliates; a director or officer or former director or officer of a company or its affiliates; the Registrar; or any person whom the court considers is a proper person to make such an application.

[55] A company or other interested person may apply to the court under sections 244 and 248 for an order to:

1. rectify the company's records; or
2. direct the company or its officers to comply with or to refrain from acting in breach of the Act or regulations.

[56] External companies are dealt with expressly in Division B of Part III which comprises sections 338 through 359. Those provisions provide for registration of such companies, including amalgamated external companies. The sections provide for and prescribe among other things penalty for non-registration; the effect, cancellation and revival of registration; fundamental changes; appointment of attorney to act on an external company's behalf in the State; restriction of certain activities; filing of returns; incapacity of such company and resumption of legal action.

[57] The Act contains no provision which stipulates expressly that:

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<sup>42</sup> Pursuant to section 249.

1. sections 338 through 359, sections 18 to 23, sections 515 and 516 and the provisions of Division E of part II and Division B of Part V are the only provisions that apply to external companies; or
2. sections 247 and 249 do not apply to external companies.

Such an interpretation as argued for by the registrar, could arise only by implication.

[58] Section 247 (a) permits any person to appeal from the Registrar's refusal to file any document submitted to him/her. It provides:

'A person who feels aggrieved by the decision of the Registrar –

- (a) **to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him;**
- (b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 11 to 14;
- (c) to refuse to grant an exemption under section 10(2), 144, 150 or section 154(3) and any regulations; or
- (d) to refuse under section 366(2) to permit a continues reference to shares having a nominal or par value,

may apply to the court for an order requiring the Registrar to change his decision and upon the application the court may so order, and make any further order it thinks fit.' (bold added)

[59] No identical or similar provision exists expressly in the Act, in relation to an external company. If therefore, this provision is interpreted to exclude external companies from seeking such redress, their recourse would seemingly be either:

1. by application to the High Court by virtue of its inherent jurisdiction; or
2. simply non-existent.

[60] The first of those options is considered later in the decision. In my opinion, the second raises a constitutional issue which neither party addressed. Suffice it to say that section 13 of the Constitution forbids:

1. the State from making any law which is discriminatory of itself or by its effect; and



2. state functionaries such as the registrar from treating any person in a discriminatory manner, by affording them different treatment based solely on their place of origin.

[61] It appears that the result contended for by the registrar would run afoul of that constitutional protection because the court would in such case, be making a finding that an external company by virtue of its place of origin, is excluded by section 359 and its effect from invoking section 247. The fundamental legal presumption against unconstitutionality militates against such a construction being placed on section 359. This consideration disposes of the claim.

[62] For the sake of completeness, I go on to evaluate the parties' respective arguments. An examination of key words and expressions in section 247(a) is in order. No definition for 'person' appears in the Act. It is defined in the Interpretation and General Provisions Act ('Interpretation Act')<sup>43</sup> to include 'any company or association or body of persons, corporate or incorporate'. An external company is captured in that meaning.

[63] The terms 'who feels aggrieved' and 'the decision by the Registrar are expressed in ordinary language and are self-explanatory. The latter phrase is qualified by the words in paragraph (a). This means that the 'decision' under contemplation relates to a refusal 'to file in the form submitted to him any ... document **required by this Act to be filed by him.**' (bold added) Does the registrar have a duty to file the documents which Digital Wings submitted to her?

[64] The filings about which Digital Wings complains are:

1. annual returns;
2. certificate copy of share transfer; and
3. certified copies of resolutions respectively appointing and certifying the resignation of a director.

[65] Section 356 imposes an obligation on an external company to submit to the registrar for filing, annual returns in the prescribed form. Similarly, section 355(1)(d) stipulates that an external company file with the registrar certified copies of any instrument by which a change of directors is

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<sup>43</sup> Cap. 14 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

effected. The Act specifies forms to be used for such purposes. It follows that the registrar has a statutory duty to file such documents pursuant to the referenced sections, if they are submitted to her for filing, by an external company.

[66] The Act contains no requirement for an external company to lodge documentation with the Registrar regarding share transfers. Digital Wings has not directed the court's attention to any such section. I note however that the registrar has conceded that Digital Wings 'was obligated by s.355 of the ... Act to file the changes ... and failed to do so within the time stipulated.'<sup>44</sup> This might have been accomplished by an amendment. I was unable to locate such a provision in the absence of a comprehensive index of amending legislation. In the circumstances, I make no legal finding on that matter at this juncture.

[67] The phrase '...may apply to the court for an order requiring the Registrar to change his decision and upon the application the court may so order, and make any further order it thinks fit' is expressed in clear, ordinary and unambiguous language. Quite simply, it affords an aggrieved person, access to the court in response to the registrar's refusal to file a document which she has a statutory duty to file.

[68] In its ordinary and natural expression, section 247 conveys the idea that an individual, corporate or incorporate entity may apply to the court for an order directing the registrar to file a document which the:

1. Act requires to be filed; and
2. registrar refused to file.

[69] The conditions precedent to an appeal are:

1. a refusal by the registrar to file such document; and
2. the applicant's dissatisfaction with such refusal.

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<sup>44</sup> Paragraph 3 of the Defence filed on 23<sup>rd</sup> December 2016.

- [70] The provision appears to be an attempt by Parliament to provide redress to interested persons who are met with a refusal by the registrar to file documents prescribed by the Act. It is clear that an external company is not expressly excluded from among the categories of persons who may make such an application.
- [71] While the registrar may refuse to file any such documentation submitted for filing by a shareholder, officer of a company debenture holder or other person, such person may seek redress from the court unless disqualified from doing so as contended by the registrar or otherwise. In arriving at the purpose of this provision, the court must look at other sections in the Act to ascertain which of the two opposite interpretations embodies Parliament's intention.
- [72] The registrar's contention that the Act contains only 100 sections<sup>45</sup> dealing with external companies is belied by the contents of other provisions elsewhere in the Act. Those 100 provisions do not include Division F of Part I<sup>46</sup>. However, sections in that Division are expressed to be applicable to external companies. In this regard, sections 355 and 524 which apply to external companies, extend the provisions of Division F of Part I to external companies. Section 543 also appears apply to external companies.
- [73] Although section 359 does not refer expressly to Division F, an external company by virtue of section 355, is obligated to comply with the obligations imposed by that Division. It is arguable that section 355 does so by necessary implication and that no exception can be taken to this, since section 355 applies exclusively to external companies.
- [74] In the same manner, section 524 (another of the sections listed in section 359) refers to Division L. It empowers the registrar to enquire into the ownership and control of a share if questions arise about such matters. To follow the registrar's contentions to their logical conclusion, no part of Division F of Part I would apply to external companies, simply because section 359 is silent about such applicability. Such a result would be absurd for the reasons mentioned earlier.

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<sup>45</sup> Namely sections 18 through 23; 266 through 325; 338 through 359; 518 through 526.

<sup>46</sup> Comprising sections 137 through 148 which deal with proxies, share registrants and the court's remedial powers to address related concerns.

- [75] Significantly, the general interpretation section is not restricted to external companies. Moreover, it is not mentioned in section 359. Section 543 provides an extensive compendium of definitions including of 'company', 'court' 'director', 'external company' and 'record' which are not defined elsewhere in the Act. If the registrar's submissions are accepted and applied, this would translate to a ruling that sections 247 and also 543 do not apply to external companies. By extension, the very definition of external company would be excluded from consideration when treating with external companies. That would result in an absurdity which obviously Parliament did not intend.
- [76] Since the Act does not define those widely used terms elsewhere, such a finding would leave the administrators, companies, directors, shareholders, the court and the general public without useful and indispensable tools for interpreting and understanding its provisions. To my mind, this would be an unintended outcome. To so find would create a quagmire of problems for all external companies, the registrar and other affected persons including the public.
- [77] I am satisfied that the clear and ordinary language used in section 247 creates no ambiguity or absurdity which needs to be elucidated by going beyond the literal rule of construction or by resorting to 'aids' to interpretation such as the *exclusio* rule. Furthermore, a finding that section 247 has been excluded implicitly from application to external companies is not commensurate with the articulated objective and purpose of the Act to provide for matters related to companies, an important component of which is redress for statutory breach or administrative hurdles. I am fortified in this position having regard to the learning outlined earlier including the definition of 'person'.
- [78] Moreover, in view of section 13 of the Constitution, it would be difficult, if not impossible, to agree with the registrar's interpretation without construing section 247 in a manner which would be discriminatory in effect.
- [79] I am satisfied that an external company may apply to the High Court under section 247 (a) for an order compelling the registrar to file annual returns, notice change of director and any other document required to be filed under the Act. In the premises, I find that section 247 applies equally to external companies as it does to other companies regulated under the Act.

[80] Digital Wings contended that if its claim is struck out, it would be left without a critical remedy, because Mrs. Rousseva would be deemed to be true owner of Ocean Breeze, with control of a US\$14,000,000.00 asset in Mustique. It pointed out that she would be able to alienate the referenced property for US\$1.00 as Jocelyn Bennett<sup>47</sup> asserted that she has done.

[81] In her sworn statements in support of Digital Wings' case, Ms. Bennett alleged that Mrs. Rousseva signed a lease dated 9<sup>th</sup> February 2017, purportedly as director for Digital Wings, in which the Ocean Breeze property was leased for 999 years, to Mrs. Rousseva's son Evgeni Spasov Roussev at an annual rent of \$1.00. An uncertified copy of the referenced lease was exhibited.

[82] For her part, the registrar submitted that Digital Wings' amended statement of case is incurably bad because it is based in law and contains no live issues of fact to be decided between the parties. Having regard to the factual background on which Digital Wings' claim is allegedly founded, and the legal submissions made by the parties at this stage, there can be no doubt that there is a live factual and legal issue as to whether the registrar has failed to file the referenced company documents. Digital Wings may be entitled to pursue this claim in law or in equity.

[83] In this regard, the court possesses certain inherent powers described in the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act ('The Supreme Court Act').<sup>48</sup> Parliament has codified the court's inherent power to inquire into and in an appropriate case, to reverse such a refusal, on application by an interested party.

[84] The Supreme Court Act<sup>49</sup> empowers the High Court to:

1. administer the dual jurisdictions of law and equity which were exercised by the Common Law and Chancery Divisions of the High Court in England as at January 1968; and
2. recognize and give effect to 'equitable rights and matters of equity ... and all ... rights, duties, obligations and liabilities existing by the common law or by any custom, ... in the same manner as these matters have hitherto been recognized and given effect to.'<sup>49</sup>

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<sup>47</sup> In her fifth affidavit filed on 22<sup>nd</sup> May 2017, at paras. 5 – 7.

<sup>48</sup> Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

<sup>49</sup> Sections 7, 13 and 19.

[85] To the extent that Digital Wings' is seeking a mandatory injunction directing the registrar to file certain documents, it is an equitable relief that the court may grant if satisfied that it is just to do so. The court would be justified in doing so at common law and under rules of equity if an actionable wrong is made out.<sup>50</sup> The allegations made by Digital Wings are serious. They have significant implications for the parties and other players in the regulatory environment governing the operations of external companies.

[86] It seems to me that Parliament's objective in enacting section 247 was to provide an effective, authoritative and substantive avenue for investors and members of the local, regional and global business communities associated with corporate entities, including external companies, to access remedies for a myriad of ills which may arise in the course of their dealings. The court has an obligation to facilitate expeditious and efficient resolution within the applicable legislative framework.

[87] In those circumstances, and applying the referenced dicta from the decided cases, even if the registrar had prevailed on the interpretation of section 359, a more appropriate order would have been for amendment of the claim form and statement of case. An order striking out the claim would not be reasonable or just.

[88] Having found that Digital Wings may invoke section 247 by appealing to the High Court, I am satisfied that its statement of claim and statement of case demonstrates a reasonable ground for prosecuting its claim. For the foregoing reasons, I make no order striking out Digital Wings' statement of case. Having prevailed in this round, Digital Wings is entitled to receive costs, to be assessed on application to the court.

## **ORDER**

[89] It is accordingly ordered:

1. The registrar's application to strike out Digital Wings' fixed date claim form and statement of claim is dismissed.

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<sup>50</sup> Timothy White v Gustav Mellin [1895] A.C. 154 at pg. 163, per Lopes L.J. (House of Lords)

2. The registrar shall pay costs to Digital Wings to be assessed on application to be filed and served on or before 26<sup>th</sup> December 2017.

[90] The submissions supplied by both counsel were very helpful and I am grateful for the assistance.

**Esco L. Henry**  
**HIGH COURT JUDGE**

By the Court

Registrar