THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCM2016/0214

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. Stephen Smith Q.C. with him Mr. Mikhail Charles for the claimant.
Mr. Grahame Bollers for the first defendant.
Mr. Alan Gourgey Q.C. with him Ms. Ashelle Morgan for the second defendant.

2018: Apr. 25
Jul. 11

DECISION

BACKGROUND

[1] Henry, J.: Digital Wings Ltd. ('Digital Wings') is a corporate entity. Mrs. Diliana Rousseva claims to have proprietary interests in it. Digital Wings was incorporated in the Virgin Islands ('BVI') and later registered[1] as an external company in Saint Vincent and the Grenadines, pursuant to the Companies Act[2]. Prior to that, it was registered as a limited liability company in the British Overseas Territory of the Virgin Islands ('TVI') with a single named shareholder - Mrs. Diliana Rousseva.

[2] Digital Wings alleged that since its inception a number of changes have been made in its corporate structure relative to transfer of shares and the appointment of directors. Ms. Joycelyn Bennett provided affidavit testimony[3] of those alleged changes. In it, Digital Wings claimed that Mrs. Rousseva has never been one of its directors and ceased being a shareholder on May 23rd 2014, when she allegedly transferred all of her shares to GBS Trustees Ltd. ('GBS'). It claimed further that Ms. Bennett and James Stuart Bennett became its directors in December 2015. It alleged that nonetheless in August 2016, the Registrar of Companies in Saint Vincent and the Grenadines ('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.

[3] Digital Wings contended that the documents are fraudulent because Mrs. Rousseva lacks the capacity to represent it as director or shareholder. By Fixed Date Claim Form filed on 25th November 2016, it initiated action against the Registrar for among other things, an order directing her to cancel the annual returns filed by Mrs. Rousseva. The Registrar has resisted the claim.

[4] Mrs. Rousseva was added as a defendant by Amended Fixed Date Claim filed on 7th July 2017. She filed this application in the instant claim ('the Digital Wings' claim') which was set down for

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[1] On 20th February 2013.

[2] Cap. 143 of the Revised Laws of Saint Vincent and the Grenadines, 2009 Revised Edition ('the Act').

[3] Filed on 25th November, 2016.

hearing on April 25th 2018. In it, she sought an order:

1. to stay the proceedings;
2. striking out the claim against her;
3. granting her an extension of time to file her defence; and
4. costs.

[5] In a related but separate proceedings, ('the Martin Trott Motion') Mr. Martin Trott filed an ex parte motion on 20th December 2017 in which he sought an order to recognize as conclusive that, Digital Wings is insolvent and that he is its foreign representative within the meaning of Part XI of the Bankruptcy and Insolvency Act, Cap. 136. That matter has proceeded in accordance with the rules and by order dated 5th March 2018 the substantive hearing was adjourned to a date to be fixed by the Registrar after the hearing of the Digital Wings claim.

[6] When the Digital Wings application was called on 25th April 2018, learned Queens' Counsel Mr. Smith and his junior Mr. Mikhail Charles entered an appearance for Mr. Trott. The court's direction was directed to the Martin Trott Motion. It was not filed in the Digital Wings matter and did not appear in that case file. However, it was included among numerous documents filed 2 days before the hearing in a large bundle in the Digital Wings claim. It was one of 33 extensive documents submitted by the parties in that bundle. Between 12th April 2018 and the hearing date, each party had also filed substantive bundles including submissions and authorities. It was impossible to read all of them documents within that time.

[7] The Court was invited to consider the Motion along with the Digital Wings application. It was not immediately apparent that the second of the two involved a separate case. No counsel brought this to the Court's attention. Although I was unable to locate it in the Digital Wings case file, it was in the hearing bundle. Assuming (incorrectly) that it was part of the Digital Wings case, I indicated that both would be heard together.

[8] In her written submissions, Mrs. Rousseva averred that on 14th February 2018 the Court had made an order in the Martin Trott Motion adjourning the hearing to 25th April 2018 with the intention that it would be heard along with the Digital Wings claim. This is not so.

[9] In any event, about two days after the hearing on 25th April 2018, while reviewing the file in the Digital Wings claim and on seeking clarification regarding how the matters became intertwined, I realized what had happened. I invited the parties to attend court on 14th May 2018 to provide submissions regarding how the court should deal with this conundrum.

[10] Learned Queen's Counsel were both absent as were learned counsel Mr. Grahame Bollers and Mr. Mikhail Charles. Present were Ms. Moureeze Franklyn holding papers for Mr. Mikhail Charles counsel for the claimant and Ms. Ashelle Morgan counsel for the defendant. They made no submissions. It was ordered that the parties should file submissions on or before 28th May 2018 addressing this matter. They (Mr. Trott and Mrs. Rousseva) filed joint submissions on 28th May 2018.

[11] They submitted that following the hearing of the Martin Motion on 14th February 2018 they submitted a draft consent order that the recognition application and the present application be heard together on 25th April 2018. They acknowledged that they were not provided with a sealed copy of the proposed consent order. They argued that its submission led to the hearing of the Recognition application being vacated from 12th March 2018 and was confirmed by two telephone calls on 9th and 12th March 2018. I am not aware of those events.

[12] They accepted that they received no confirmation from the Court Registry or the Court Administrator that both matters would be heard together. They proposed that the Court should proceed as if the Recognition Application was before it on 25h April 2018 and that it is in a position to give judgment on that Application and the Rousseva Application. They indicated that they do not wish to have a hearing on either application.

[13] They contended that the Court had the power to hear the Recognition Application on April 25th 2018 where the parties consented to it. They submitted that pursuant to CPR 11.14 (d) the Court may deal with an application without a hearing if the parties agree. They submitted further that it may proceed to hear a matter for which there is no listed hearing, if the parties agree. They argued that the parties have so consented in the instant case. They requested that the Court proceed to do so.

[14] They submitted further that the Court may also hear matters relating to the same subject matter simultaneously regardless of whether they are formally consolidated. They argued that the Court

would be giving effect to the overriding objective if it took that course in the case at bar. In this regard, they contended that the Court would be saving expense, dealing with the applications expeditiously and ensuring that an appropriate share of its resources and not more are expended on them. They indicated that requiring them to attend again and rehearse the same arguments at great expense to them would be contrary to the overriding objective. Although the foregoing outlines a compelling argument, I adopt a different course for the reasons provided later.

[15] They submitted that by inviting them to open the Recognition Application the Court was directing that the hearing in it be brought forward to that date. They contended that the Court should put matters right pursuant to its powers under CPR 26.9 (3) by recording an adjournment of the Recognition Application by consent. This approach does not commend itself to me.

[16] No order has been made consolidating the matters and no application has been made to such effect. Mr. Trott has filed no ancillary claim or made an application to be added as a party to the present claim, as he is entitled to do. In the circumstances, I am satisfied that only the Digital Wings application was before me and that it is appropriate to make an order at this stage regularizing the referenced oversight and irregularity.

[17] It is accordingly ordered:

1. The direction made on 25th April, 2018 that both applications be heard jointly, is set aside.
2. The order dated 5th March 2018 adjourning the substantive hearing of the Martin Trott Motion to a date to be fixed by the Registrar, is affirmed.

I apologize to the parties for any inconvenience this might cause.

ISSUES

[18] The issues are whether the Court should:

1. stay the present proceedings;
2. strike out the claim against Mrs. Diliana Rousseva; or
3. grant Mrs. Diliana Rousseva an extension of time to file her defence and costs.

LAW AND ANALYSIS

Issue 1 – Should Court stay the present proceedings?

[19] Mrs. Rousseva provided no affidavit testimony. Her husband Spas Roussev did on her behalf. He

attested that he notes Ms. Bennett's assertions that a share transfer document was executed which purportedly transferred all Digital Wings' shares to GBS, a subsidiary of Leman. He remarked that he took note of Ms. Bennett's further claims that Mr. O'Connor as sole director appointed Charles John Bennett as sole director and that he was subsequently succeeded by Ms. Bennett and her son James Stuart Bennett as directors on 7th December 2015.

[20] Mr. Roussev acknowledged that the referenced transfer was recorded in the share register kept in the BVI. However, he claimed that this was not enough. He described a number of alleged deficiencies including Digital Wings' failure to:

1. register the transfer in its external register in Saint Vincent and the Grenadines;
2. have it signed by the Registrar; and
3. pay stamp duty on it as stipulated by the laws of Saint Vincent and the Grenadines.

[21] He averred that he has been advised and believes that the purported transfer of shares to GBS is a nullity, and as a consequence Mrs. Rousseva remains Digital Wings' sole shareholder. Mr. Roussev asserted further that Mrs. Rousseva remained the sole director pursuant to a shareholder's resolution made on 20th February 2014. This is disputed by the Ms. Bennett. Mr. Roussev deposed that Mrs. Rousseva does not accept that the present proceedings have been authorized by Digital Wings.

[22] Mrs. Rousseva submitted that the central question underlying the stay application is who is Digital Wings' shareholder for the purposes of Saint Vincent and the Grenadines ('SVG') law. She contended that regardless of the dispute as to who were its directors when the proceedings were commenced she was at all material times and remains its sole shareholder as a matter of SVG law. She submitted that this is the position in view of section 195 of the Companies Act, Cap. 143 (the Act'). She made extensive submissions on this point.

[23] Mrs. Rousseva contended that the fact that other parties may be recognized as shareholders on the registers in other jurisdictions is entirely irrelevant in light of the clear wording and policy of that section. She argued that it would make a mockery of the section to recognize GBS as the

shareholder on the basis of the share transfer of May 2014 or to do anything other than recognize her as the sole shareholder.

[24] Mrs. Rousseva submitted that her actions as director are binding on Digital Wings, as a matter of the law in this jurisdiction. She argued that Digital Wings' appointment of Mr. Mikhail Charles as its attorney on instructions from Mr. Trott was also invalid. I make no finding on this submission as I am not required to do so at this point.

[25] Mrs. Rousseva contended that if the Court accepts that she is the only shareholder her stay application must be granted pursuant to Rule 26.1(2)(q) of the Civil Procedure Rules 2000 ("CPR') or its inherent jurisdiction. CPR 26.1 (2)(q) provides:

> '(2) Except where these rules provide otherwise, the court may-
>
> (q) stay the whole or any part of any proceedings generally or until a specified date or event;

[26] Digital Wings submitted that Mrs. Rousseva has relied on the first and second shareholder's resolutions and the directors' resolution to justify her application for a stay. It noted that she seems to no longer be placing reliance on the Rousseva resolution. Digital Wings submitted further that:

> 'as a threshold point, the validity of the resolutions depends upon Mrs. Rousseva establishing that, notwithstanding that the Company had been in liquidation since 6 December 2017: (1) she was, as at 23 January 2018, able as sole shareholder of the Company, to pass the first and second shareholder resolutions; (2) that the new board was able, on that same day, to pass the directors' resolution; and (3) that the directors remain able to act on behalf of the Company.'

Digital Wings argued that Mrs. Rousseva cannot do so.

[27] Digital Wings contended that under BVI law, and specifically the law of incorporation which determines who can act on a company's behalf, a shareholder's ability to exercise shareholder rights to change the board comes to an end once the company enters into liquidation. It argued that similarly the directors' authority to direct the company's affairs ends at that stage. Digital Wings

submitted that Mrs. Rousseva's rights to act as shareholder ended when Digital Wings went into liquidation and from the date of liquidation the only person able to act on its behalf has been, and continues to be the liquidator.

[28] Digital Wings submitted that Mrs. Rousseva has invited the Court to consider whether she remains the sole shareholder of the Company as a matter of Saint Vincent and the Grenadines law, on the basis that no stamp duty was paid on the Stock Transfer. Digital Wings argued that since Mrs. Rousseva can have no answer the threshold point, it is not necessary for the Court to explore whether her argument in relation to s. 195 of the Saint Vincent and the Grenadines Companies Act is correct.

[29] Digital Wings contended that the shares are shares in a BVI company. It submitted that the shares of a BVI company may be transferred based on BVI law - the place of incorporation. It cited in support Dicey, Morris & Collins[4]. Digital Wings pointed out that section 54(1) of the BVI Business Companies Act 2004 simply provides that registered shares are transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee. It argued that those requirements were satisfied in relation to the Stock Transfer from Mrs. Rousseva to GBS.

[30] Digital Wings explained that section 42(1) of the BVI Companies Act provides that the entry of the name of the person in the register of members as the holder of a share of a company is *prima facie* evidence that legal title in the share vests in that person. It contended that as a matter of BVI law GBS is therefore its sole shareholder. It added that this does not appear to be in dispute.

[31] Digital Wings noted that GBS passed a resolution appointing a liquidator of the Company. It pointed out that section 160 of the BVI Insolvency Act 2003 provides that the liquidation of a company commences at the time at which the liquidator is appointed under s. 159 of that Act. It submitted that it does not appear to be in dispute that as a matter of BVI law, a sole shareholder is able to pass a resolution appointing a liquidator under s. 159(2) of that Act.

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[4] (15th Ed.) Rule 175.

[32] Digital Wings argued further that section 175(1)(b) of the BVI Insolvency Act provides that, from the commencement of the liquidation, the directors and other officers of the company remain in office, but cease to have any powers, functions or duties other than those authorized by the Liquidator or required or permitted under Part V of the BVI Insolvency Act. It submitted further that s. 175(1)(f) of the BVI Insolvency Act provides that no member may exercise any power under the memorandum or articles of the company, or otherwise, except for the purposes of the BVI Insolvency Act.

[33] Digital Wings reasoned that section 175(2) of the BVI Insolvency Act provides that anything or matter done or purported to be done in contravention of s. 175(1) is void and of no effect. It contended that therefore, even if Mrs. Rousseva were correct in stating that she remains the sole shareholder of the Company as a matter of Saint Vincent and the Grenadines law, that on any view following the commencement of the liquidation on 6 December 2017, she was not permitted to pass either the first or the second shareholder's resolutions. It submitted that those resolutions would in any event be void and of no effect as a result of s. 175(2) of the BVI Insolvency Act.

[34] Digital Wings submitted that even if Mrs. Rousseva and her husband had been appointed directors of the Company, they had no power to pass the directors' resolution following the commencement of the liquidation, because it would have been rendered void and of no effect by virtue of section 175(2) of the BVI Insolvency Act. It argued that furthermore, section 184(2) of the BVI Insolvency Act provides that a liquidator is the agent of the company in liquidation.

[35] Digital Wings submitted that section 186(1) of the BVI Insolvency Act provides that a liquidator of a company has the powers necessary to carry out the functions and duties of a liquidator; while section 186 (2) provides that, without limiting section 186(1), a liquidator has the powers specified in Schedule 2. It submitted that paragraph 4 of Schedule 2 provides that a liquidator has the power to commence, continue, discontinue or defend any action or other legal proceedings in the name of and on behalf of the Company.

[36] Digital Wings concluded that under the governing BVI law, the liquidator is the only person able to act on behalf of the Company in relation to the current action. It referred to a court order of Chivers J dated 12 February 2018 where the BVI Court expressly authorized the liquidator to act in Saint Vincent and the Grenadines. Digital Wings argued that it will be seen that the liquidator's authority to act on the Company's behalf arises as a result of BVI statutory provisions and does not depend

on whether or not any antecedent transfer of shares might or might not be regarded as valid under Saint Vincent and the Grenadines law.

[37] Digital Wings submitted that it is worth noting that no application has been made in the BVI by Mrs. Rousseva or her husband in relation to the liquidation of the Company. It contended that the Saint Vincent and the Grenadines Court will always recognize the authority of a liquidator, appointed in the jurisdiction of incorporation of a company to act on behalf of that company. In support, it referred to the textbook Dicey Morris & Collins.

[38] Digital Wings argued that the rule is justified because the law of the place of incorporation determines who is entitled to act on behalf of the corporation. It contended that if the liquidator is appointed to act under that law then based on the authority of Felixstowe Dock & Railway Co. v United States Lines Inc[5], his authority should be recognized in Saint Vincent and the Grenadines. He pointed out that similar statements were set out in an earlier edition of Dicey & Morris[6] and cited with approval by Hirst J at p. 374F-H of that judgment.

[39] Digital Wings submitted that in Re Founding Partners Global Fund Ltd[7] Kawaley J. cited the same Rule and paragraph from the 12th Edition with approval. Digital Wings contended that Lord Sumption's observations, of Singularis Holdings Ltd v Pricewaterhouse Coopers that:

> 'even without a winding up the court could, on ordinary principles of private international law, have recognised as a matter of comity the vesting of the company's assets in an agent or officeholder appointed or recognised under the law of its incorporation.'[8]

[40] Mrs. Roussev and Digital Wings advance opposing factual and legal contentions regarding the persons who are authorized to represent Digital Wings in the instant claim. Digital Wings through Mr. Trott insisted that the liquidator is so empowered having been appointed under BVI law. Mrs.

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[5] [1989] QB 360.

[6] (i.e the 10th ed.)

[7] [2011] Bda L.R. 22.

[8] [2014] UKPC 36, at paras. 12 and 14.

Rousseva on the other hand maintained that she is the sole director and shareholder recognized by Saint Vincent and the Grenadines law, and the only person authorized to represent Digital Wings. She reasoned that she is authorized to request and is entitled to have this claim stayed by virtue of such authority.

[41] At the centre of this dispute is a conflict of laws – BVI law and Saint Vincent and the Grenadines law. None of the deponents were cross-examined. The Court did not have the opportunity to evaluate their demeanour and their testimony was not tested.

[42] Mrs. Rousseva has not admitted the factual assertions made by Ms. Bennett or Mr. Trott on Digital Wings' behalf. Accordingly, the Court is not in a position to make conclusive findings on those matters and is therefore hindered in its ability to assess their veracity and the merits of Digital Wings' related legal submissions. By extension, the Court is similarly hampered in determining whether Mrs. Rousseva should be accepted as Digital Wings' sole shareholder. Those factual matters must be resolved at trial. It would be premature for the Court to attempt to make a definitive pronouncement at this juncture.

[43] Meanwhile, the parties acknowledged that an independent trustee was appointed on April 24th 2018 by order of the High Court in Nevis, to replace Leman as trustee of the Global Business Trust. When making the order, Smith J. found that an arguable case was made out that Leman is in a conflict of interest and should be replaced.

[44] Meridian Trust Company Limited was appointed as independent trustee on an interim basis, until the final determination of the matter. Before me, Mrs. Rousseva has submitted that perhaps the application by Martin Trott to be recognized as liquidator should be adjourned to afford the new trustee to intervene and be heard. This suggestion is not without merit.

[45] The Court will grant a stay where it considers that it is fit to do so, if there are compelling reasons for making such an order. The usual reasons include - affording an opportunity for the parties to comply with orders and to allow resolution of concurrent or related claims by settlement or trial.[9]

[9] Blackstone's Civil Practice 2013, paras. 54.1 – 54.5.

The Court must seek to give effect to the overriding objective to do justice between the parties when it exercises any discretion vested in it by the CPR or when it interprets any of those rules.[10]

[46] Having regard to the circumstances of this case, it seems to me that the interests of justice require a full ventilation of the parties' respective cases to enable the Court to obtain a proper appreciation of the facts. This will afford all parties the opportunity to outline their evidence in a detailed fashion and allow for cross-examination. In this regard, the Court observes that the Registrar has an interest in ascertaining who the identity of the legal shareholder(s) for statutory purposes. In the premises, a stay is not desirable. I make no order granting such a stay.

Issue 2 – Should the claim against Mrs. Diliana Rousseva be struck out?

[47] Mrs. Rousseva submitted that she made this application before she became aware of the appointment of a liquidator. She contended that if the relief sought by the Bennetts in the Fixed Date Claim is granted, the annual returns filed by the Bennetts would be stamped as filed and they would be shown to be the directors of Digital Wings while GBS would be deemed to be the sole shareholder.

[48] She submitted that the amended Fixed Date claim seeks one relief against her which is a declaration that the 'utterance, reference to, reliance on and submission of [the resolution of February 2014] was a fraudulent misrepresentation…'. . She contended that the Court exercises a discretion when considering applications for such relief and in doing so it must have regard to the justice to the parties and whether the grant would serve a useful purpose. She relied on FSA v Rourke[11] for this proposition.

[49] Mrs. Rousseva submitted further that the Court should seek to avoid declarations which serve no useful purpose as where they are 'the legal equivalent of shouting in an empty room' as stated in

[10] CPR 1.1 and 1.2.

[11] [2002] C.P. Rep. 14, per Neuberger J.

Nokia Corp v Interdigital Technology Corp[12]. Citing Malone v Metropolitan Police Commissioner[13] she rehearsed the following statement of principle:

> '… the power to make declarations is confined to making declarations on matters that are justiciable in the courts. This is emphasised by the contrast in drafting in the rule… if the proceedings are brought in respect of moral, social or political matters in which no legal or equitable rights arise, the objection to the court deciding such matters remains.'

[50] Mrs. Rousseva argued further that a rule of practice exists which although not absolute, provides that the Court would generally not make declarations that a party acted fraudulently. She pointed to dicta by Millet J. in Patten v Burke Publishing Ltd. Where he said:

> 'Even after a trial it is not the normal practice of the court to make a declaration that the defendant had been guilty of fraud or negligence. Justice can be done to the plaintiff by awarding him damages. If he wishes to parade the basis on which damages have been awarded to him, he has a judgment which he can produce. The judgment will contain the findings of fraud or negligence on the basis of which the damages have been awarded, and that should be sufficient for the plaintiff's benefit.'[14]

[51] Mrs. Rousseva submitted that the Court is not being asked to adjudicate on any legal or equitable right, that the declaration is of no legal consequence and is hopelessly vague; that it is more a moral statement than a legal one; that there is no basis for such a declaration being granted; that no further relief is sought if the declaration is granted and it should not be granted.

[52] Mrs. Rousseva submitted further that:

1. As a matter of general principle a declaration ought to have a legal consequence beyond a mere statement of fact;
2. It is oppressive to force a party to go to the trouble and expense of defending legal proceedings whose sole consequence is potential reputational damage to that party and

[12] [2007] EWHC 3077 (Pat).

[13] [1979] 1 Ch 344 at 353B, per Sir Robert Megarry VC.

[14] [1991] 1 WLR 541 at paras. 543 and 544.

particularly so when as in the present case there is no benefit to the claimant in obtaining such a declaration.

3. It is an abuse of the court's process to seek a declaration whose only real effect is a morally condemnatory statement.
4. The court should be reluctant to make findings of fraud in circumstances where they have no purpose.
5. The declaration is unnecessary and irrelevant.

[53] She concluded that the Court should exercise its discretion to exclude from determination the claim for a declaration. She argued that consequently it should strike out the claim against her pursuant to CPR 26.1(2) (j) and 26.3(1) (b) or under its inherent jurisdiction.

[54] On behalf of Digital Wings, learned Queen's counsel Mr. Smith submitted that Mrs. Rousseva's reference to CPR 26.4 is not understood, because that provision deals with striking out statements of case for non-compliance. He argued that any reliance on that provision is plainly misconceived.

[55] CPR 26.4 provides for a party to apply for an 'unless order' where an opposing party fails to comply with an order or rule. Mrs. Rousseva has made no such application. Her reliance on this rule is therefore misconceived and without merit.

[56] Digital Wings contended that CPR 26.3(1)(j) empowers the Court to exclude an issue from determination if it determines that it can do substantive justice between the parties on other issues or where consideration of such matters would serve no worthwhile purpose. Digital Wings pointed out that the Company alleged that Mrs. Rousseva's reference to, reliance on, and submission of the 'Rousseva Resolution' were fraudulent misrepresentations; and that in particular she relied on the Rousseva Resolution to instruct a purported representative of the Company in this State to admit a purported debt of US$3m; to deceive the Registrar as to the state of the Company's register in the BVI; cause the Registrar to record her as sole director and shareholder of the Company; and to prevent the Company from maintaining and/or accessing the Property.

[57] It submitted that in support of the fraudulent misrepresentation or allegation that it relies on the fact that in May 2014, Mrs. Rousseva had independently confirmed that Mr. O'Connor, not she, was the

sole director of the Company. Digital Wings argued that for the purposes of the Strike Out Application the Company's allegations must be assumed to be true.

[58] Digital Wings contended that in any event, it cannot be disputed that the 'Rousseva Resolution' was filed with the Registrar in October 2016 since it bears the Registrar's stamp. It submitted that to have asserted in annual returns in 2016 that she was a director of the Company, Mrs. Rousseva could only have relied on the 'Rousseva Resolution' because there is nothing else pointing to her having been appointed at all, prior to the first shareholder's Resolution.

[59] Digital Wings asked rhetorically, why is Mrs. Rousseva so coy about relying on the 'Rousseva Resolution' at this stage since she has done so in the past and in particular why, if it is a genuine document, it is not referred to as such or put in evidence. It reasoned that immediate suspicion is that, as regular visitors to this State, Mr. and Mrs. Roussev do not want to be found to have committed perjury. This is a bold assertion on which I make no finding. There is no factual basis for doing so.

[60] Digital Wings suggested further that the Strike Out Application appears to be an attempt by Mrs. Rousseva to avoid having to answer for the consequences of having deployed a false document in Saint Vincent and the Grenadines. I make the observation that the Court is not at liberty to speculate and I therefore draw no such inferences from the posture adopted by Mrs. Rousseva.

[61] Digital Wings contended that where there is such a cloud of suspicion hanging over the genuineness of what is potentially a very important document, it is plainly desirable that the Court determines whether it is genuine or what it purports to be. It argued that such finding may well colour the Court's view as to the credibility of other evidence tendered by Mr. or Mrs. Roussev.

[62] It contended that in any event, it may well be pertinent to the question of whether the Registrar should cancel the filing of the annual returns filed in 2016, if she was induced to accept the filing in the first place as a result of a fraudulent misrepresentation. Digital Wings submitted that in this regard, it is worth noting that the Court has already concluded that it has demonstrated a

reasonable ground for prosecuting its claim against the Registrar based on an earlier decision in this claim.

[63] Digital Wings submitted that more generally, even if the 'Rousseva Resolution' is not deployed in the present action, Mrs. Rousseva may well wish to deploy it in other actions in this State or elsewhere. It argued that the need for certainly in this area mandates that the Court should address the issue. It reasoned that in the circumstances the Court cannot conclude that the determination of the issue as to whether Mrs. Rousseva has deployed the 'Rousseva Resolution' and thereby made fraudulent misrepresentations would serve no worthwhile purpose.

[64] Digital Wings submitted that there is a more fundamental threshold issue which Mrs. Rousseva has failed to address. It contended that CPR 26.3(1)(j) gives the Court the power to exclude an issue from determination only if it can do substantive justice between the parties on other issues. It submitted that the amended statement of case reveals that there are no other issues between it and Mrs. Rousseva by reference to which the Court can do substantive justice. It concluded that CPR 26.3(1)(j) is simply not engaged. Digital Wings argued that the Court should dismiss the strike out application and order that Mrs. Rousseva pays its costs.

[65] Mrs. Rousseva relied on CPR 26.1 (2) (j) and 26.3(1)(b) in her application to strike out the claim. They provide respectively:

> '(2) Except where these rules provide otherwise, the court may –
>
> (j) exclude an issue from determination if the court can do substantive justice between the parties on the other issues and determines it would therefore serve no worthwhile purpose;
>
> 26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
>
> (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;'

[66] Those provisions respectively authorizes the Court to:

1. remove an issue from consideration where it is satisfied that it can do justice between the parties without making a determination on that issue; and
2. strike out a statement of case that discloses no reasonable grounds for initiating a claim.

[67] The Eastern Caribbean Supreme Court and the Privy Council have repeatedly outlined the legal principles which govern the striking out of claims. The decisions in Attorney General of St. Lucia v Allen Chastenet et al[15], Didier et al v Royal Caribbean Cruises Ltd.[16], and Real Time Systems v Renraw Ltd.[17] are instructive.

[68] A striking out order is used sparingly as it is considered to be nuclear in its effect. It is deployed only if the court is satisfied that 'the statement of case is just plain bad in law'[18] or cannot be sustained on the allegations[19]. Where a statement of case raises an issue which the judge must decide, the court will generally err on the side of permitting the case to proceed to trial, even if it is weak. In conducting its evaluation, the Court will examine the respective pleaded cases. The facts relied on by the parties are assumed to be true. I now turn to consider the assertions by the respective parties.

[69] Mrs. Rousseva's insistence that she is Digital Wings' sole shareholder and the only person authorized to conduct its affairs runs contrary to Ms. Bennett's assertions. Determination of this central issue holds the key to resolving the dispute between the company and the Registrar. While the Court may arrive at a conclusion in the absence of a defence or testimony from Mrs. Rousseva, it is critical that she be afforded an opportunity to present her position to the Court in the instant claim. Doing so has the effect of recognizing, preserving and potentially giving effect to any rights or interest she might have in the property which is the subject of this claim.

[70] In earlier interlocutory proceedings, Digital Wings contended that if its claim were to be struck out, it would be left without a critical remedy. It argued that Mrs. Rousseva would in such event be deemed to be true owner of Ocean Breeze, valued at US$14,000,000.00 which she could alienate

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[15] SLUHCVAP2015/007 (unreported).

[16] SLUHCVAP2014/0024 (unreported).

[17] [2014] UKPC 6.

[18] Didier case at para. 24 per Pereira CJ.

[19] Michael Wilson and Partners Limited v Temujin International Limited et al BVIHCV2006/0037.

for US$1.00 as Jocelyn Bennett[20] asserted she had done. Ms. Bennett alleged further that Mrs. Rousseva signed a lease[21], purportedly as director for Digital Wings, in which the Ocean Breeze property was leased for 999 years to her son Evgeni Spasov Roussev at an annual rent of $1.00. Those assertions have not been explored or rebutted by Mrs. Rousseva.

[71] Furthermore, while it is true that Digital Wings seeks only a declaration against Mrs. Rousseva, it seeks against the Registrar an order directing her to cancel the filings signed by Mrs. Rousseva; and stamp as filed the documents it presented in September 2016. If Mrs. Rousseva is removed as a party, the Court would be deprived of critical input from her regarding the rationale and legal basis surrounding her involvement.

[72] In such an eventuality, the Court's decision would likely be based on incomplete assertions and submissions and subject to complaint and further litigation by Mrs. Rousseva. This would be contrary to the interest of justice. This scenario demonstrates that it would be extremely difficult and probably unlikely that that Court can do substantial justice between the parties in respect of the other issues, without Mrs. Rousseva's involvement in the case. I am satisfied that it would not be able to do so.

[73] The Court has been invited by Digital Wings to determine whether Mrs. Rousseva is entitled to remain on the company's register as sole director and shareholder or whether some other person should replace her in those capacities. This is a very real and live issue, which is hotly contested by both sides. The contentions regarding ownership of the company's assets flow from and are inextricably entwined in that issue.

[74] Striking out the claim against Mrs. Rousseva would have the effect of removing an integral party from the case. It would leave the Court without critical representation by a central figure in the dispute. It would be unwise to proceed on such a basis. I am satisfied that the statement of claim discloses a reasonable basis for bringing a claim against Mrs. Rousseva. Having regard to the far-

[20] In her fifth affidavit filed on 22nd May 2017, at paras. 5 – 7.

[21] Dated 9th February 2017.

reaching legal consequences of the outcome of this case, it is just that Mrs. Rousseva remains a party. I make no order striking out the claim against her.

Issue 3 – Should Mrs. Diliana Rousseva be granted an extension of time to file her defence?

[75] The court is empowered to enlarge time for a party to comply with any provision of the CPR even where the application is made after the deadline for compliance[22]. The CPR mandates that the application must as a general rule, be made before the deadline specified for compliance.[23] A tardy application must be accompanied by an application for relief from any applicable sanctions.[24]

[76] The court must act judicially[25] in the exercise of its discretion. It must take into account the reasons for the non-compliance, the length of delay and the degree of prejudice to the respective parties if the application is denied or granted.[26]

[77] The period for filing a defence is 28 days if the claim form is served in the same jurisdiction as where it is issued. If served in a different jurisdiction of the Court the period for filing the defence is extended to 42 days from the date of service. No sanctions apply for the late filing and service of a defence.[27] The defendant may also file a defence after that time without the court's permission. Digital Wings has voiced no objections to the application. It is not clear from the acknowledgement of service[28] whether the fixed date claim form was served on Mrs. Rousseva in this jurisdiction or elsewhere.

[78] Mrs. Rousseva contended that the issues of stay and striking of the claim needed to be resolved

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[22] Rule 26.1 (2) (k) of the CPR.

[23] CPR 27.8(3).

[24] CPR 27.8 (4).

[25] Fok Hei Yu and John Howard Batchelor v Basab Inc. et al BVIHCMAP2014/0010; See also Carleen Pemberton v Mark Brantley SKBHCVAP2011/009 (unreported).

[26] C.O. Williams Construction (St. Lucia) Co. Ltd. v. Inter-Island Dredging Co. Ltd. SLUHCVAP 2011/017 (unreported).

[27] Attorney General v Keron Matthews [2011] UKPC 38, at para. 14 per Lord Dyson.

[28] Filed on 11th January 2018.

before she filed her defence. This is reasonably clear and I accept those contentions. Leave is therefore granted to Mrs. Rousseva to file her defence within 28 days of today's date (i.e. on or before 25th September 2018.

Costs

[79] Digital Wings is the successful party in these proceedings. It is entitled to receive its costs from Mrs. Rousseva. It is ordered therefore that Mrs. Diliana Rousseva shall pay costs to Digital Wings to be assessed on application to be filed on or before 30th July 2018.

Miscellaneous

[80] Mrs. Rousseva submitted that as a matter of Saint Vincent and the Grenadines law, the resolution purportedly passed by GBS is therefore invalid and of no effect. She submitted further that in general the power to assist a foreign liquidation does not extend to a voluntary liquidation. She cited the case of Singularis in which Lord Sumption JSC is quoted as having said:

> '… there is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information in oral or documentary form which is necessary for the administration of a foreign winding up. In recognizing the existence of such a power, the Board would not wish to encourage the promiscuous creation of other common law powers to compel the production of information. The limits of this power are implicit in the reasons for recognizing its existence. In the first place, it is available only to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers. It would not, for example, be available to assist a voluntary winding up, which is essentially a private arrangement and although subject to the directions of the court is not conducted by or on behalf of an officer of the court.'[29]

[81] Mrs. Rousseva argued that the Court recognized in that case that it should not be open to the shareholders to enlarge their powers by commencing a liquidation of a company to enable them to achieve ends which they would otherwise by unable to achieve. For the reasons outlined earlier, it is not necessary for me to consider such matters at this stage.

[29] Singularis Holdings Limited v PricewaterhouseCoopers [2014] UKPC 36, at para. 25.

[82] It should be noted that this matter involves complex commercial issues. Notwithstanding it was assigned a civil claim number instead of a commercial one. The claim falls to be determined in the Court's commercial jurisdiction. In accordance with the relevant practice directions, the headings should reflect this. I propose to make an order changing the suit number accordingly. It is therefore ordered that the suit number of this claim be changed from SVGHCV2016/0214 to SVGHCM2016/0214. The parties and the court office are directed to utilize that claim number in all future filings.

ORDER

[83] It is accordingly ordered:

1. Mrs. Diliana Rousseva's application for a stay of the proceedings in this matter is dismissed

2. Mrs. Diliana Rousseva's application to strike out Digital Wings' fixed date claim form and statement of claim against her is dismissed.

3. Leave is therefore granted to Mrs. Rousseva to file her defence within 28 days of today's date, (i.e. on or before 25th September 2018).

4. Mrs. Diliana Rousseva shall pay costs to Digital Wings to be assessed on application to be filed and served on or before 30th July 2018.

[84] Counsel on both sides provided very substantive, comprehensive and helpful submissions. I am indebted to them for their assistance. Learned Queen's Counsel Mr. Smith and learned counsel Mr. Charles also kindly supplied electronic copies of their submissions which assisted greatly in completing the decision in a timely manner. I single them out for special recognition in this regard for their full compliance with the directions on electronic submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar