

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV 2017-00185

IN THE MATTER OF THE COMPANIES ACT 1995

AND

IN THE MATTER OF VHK GENERAL CONTRACTORS COMPANY LIMITED

Between

HARRILAL RAGOOBAR

Claimant

AND

VHK GENERAL CONTRACTORS COMPANY LIMITED

RENNIE ROBERTS

RAJENDRA HOLLIS RAGBIRSINGH

TERRY RAGBIR

JAMES ROBERTS

Defendants

Before the Honourable Mme. Justice Jacqueline Wilson QC

Date of Delivery: 24 June 2022

Appearances:

Mr. Gerard Raphael Attorney at law for the Claimant

Ms. Natalie King Attorney at law for the First, Second, Fourth and Fifth Defendants

Ms. Ashley Badal Attorney at law for the Third Defendant

REASONS FOR DECISION

THE CLAIMANT'S CASE

1. By claim form filed on 16 January 2017 the claimant alleges that the second, third, fourth and fifth defendants have exercised their powers as directors of the first defendant in a

manner that is oppressive and/ or unfairly prejudicial to the interests of the claimant in the first defendant. The claimant seeks the following relief:

- a. A declaration that the second, third, fourth and fifth defendants provide a detailed statement and/ or account of all transactions conducted by them on behalf of the first defendant for the period May 2015 to the present;
 - b. An order that the defendants do pay to the claimant all sums due and owing to the claimant, as shareholder, under the court order dated 22 July 2016;
 - c. Costs;
 - d. Further and/ or other relief.
2. In his statement of case, the claimant states that he is a shareholder and former director of the first defendant. He was appointed as director upon its incorporation on 22 April 2005 and was removed on 8 June 2015. Messrs. Vijay Moonesar and Kenneth Ramlal were also appointed as directors upon the incorporation of the first defendant and were removed on 21 June 2010, when the third, fourth and fifth defendants were appointed to replace them. The second defendant was appointed as director on 28 May 2015.
3. The third, fourth and fifth defendants are shareholders of the first defendant. The claimant states that on 8 July 2013, at a meeting of directors, a special resolution was passed in which one thousand (1000) ordinary shares in the first defendant were allotted as follows:
- 325 to the claimant
 - 325 to the third defendant
 - 150 to the fourth defendant
 - 200 to the fifth defendant

4. The claimant alleges that as of 31 December 2013, the first defendant's fixed assets were valued at \$520,812.00; that he has lent the sum of \$614,802.00 to the first defendant to meet its expenses; and that the first defendant has failed to repay the full, which lead him to institute proceedings (CV2015-02340) to recover the outstanding sum. On 22 July 2016 he obtained a judgment in his favour under which the first defendant was ordered to pay the sum of \$466,000.80 to him together with prescribed costs in the sum of \$46,200.00.
5. Thereafter, the claimant issued proceedings to enforce the court order and, on 11 November 2016, an order was made requiring Trinidad Cement Limited (TCL), as garnishee, to pay the sum of \$134,000.36 to the claimant towards satisfaction of the judgment debt.
6. The claimant states that, as directors of the first defendant, the second, third, fourth and fifth defendants owe him a duty to act honestly, in good faith and in the best interests of the company and to exercise reasonable care, diligence and skill. He states that during the period August to December 2015, TCL paid the sum of \$1,055,335.22 to the first defendant and that in January, March and June 2016, further sums were paid in the respective amounts of \$333,789.30, \$964,368.40 and \$377,704.40. He states further that the said payments were not deposited to the account held by the first defendant at Republic Bank Limited and the first defendant has failed to provide financial statements for the years 2014, 2015 and 2016.
7. The claimant states that by letter dated 29 June 2016, his Attorneys wrote to the third defendant stating that the sum of \$950,000.00 had been paid into a new account held by the first defendant at the Bank of Baroda and instructing the third defendant to transfer the sum to the first defendant's Republic Bank account.

THE DEFENCE OF THE FIRST, SECOND, FOURTH AND FIFTH DEFENDANTS

8. In their defence filed on 19 April 2017, the first, second, fourth and fifth defendants (the defendants) state that the claimant and third defendant were the Managing Directors of the first defendant with full control of its operations. They state that the first defendant's financial statements were not disclosed to them nor were they given access to its financial records. They first became aware of the bank statements for the Republic Bank account in September 2015, when the second defendant discovered them in a filing cabinet in the first defendant's offices and were not aware of the debt due to the claimant under the court order made in the earlier proceedings.
9. The defendants state that the Republic Bank account was opened by the claimant upon the incorporation of the first defendant in 2005 and that on 6 August 2013, the third defendant was added as a signatory to the account. They state that they have not seen bank statements for the account for the period in question nor was the account balance disclosed to them. In June 2015, upon the claimant's removal as a director, they sought the removal of the claimant as a signatory to the Republic Bank account but were informed by the bank that the claimant's instructions were needed in order to do so. In the circumstances, they opened a new account in the name of the first defendant at the Bank of Baroda in which the deposits mentioned by the claimant were made.
10. The defendants deny that the sum of \$1,055,355.22 was deposited into the first defendant's Bank of Baroda account and assert that the sum of \$765,144.22 was in fact deposited. They admit that no financial statements were prepared for the period 2014 to 2016 and assert that the claimant, as Managing Director, was responsible for such preparation and has failed to provide the required documents and records.
11. The defendants state further that on 29 March 2019, the sum of \$964,368.37 was deposited to the first defendant's Bank of Baroda account as they have no access to the Republic Bank account for which the claimant remains a signatory. They state that no

dividends have been paid to shareholders and that the first defendant is unable to generate revenue for such payment as its office and equipment are located in premises owned by the third defendant, who has denied access to them.

12. The defendants have brought a counterclaim against the claimant in which they allege that the fourth and fifth defendants made investments in the first defendant based on promises made by the claimant and the third defendant to issue shares to them; that the claimant and the third defendant have reneged on the promises; and that the claimant has failed to manage the affairs of the first defendant in a prudent manner, causing it to suffer loss. Among other things, they seek orders for (i) the disclosure by the claimant of the first defendant's bank statements and financial records; (ii) the payment of sums owed by the claimant to the first defendant; and (iii) the removal of the claimant as a signatory to the Republic Bank account.
13. In his reply and defence to the counterclaim, the claimant denies that the defendants are entitled to the relief sought on the counterclaim. He states that the first defendant's accounts and records were at all times available to the defendants at the first defendant's offices; that no resolution has been passed by the first defendant for the payment of dividends; and that the first defendant has repaid the sums loaned by the fourth and fifth defendants.
14. On 19 May 2017, the first defendant filed an ancillary claim against the third defendant which makes similar allegations to those in the counterclaim and which seeks similar relief.
15. On 23 June 2017, the third defendant filed a defence to the ancillary claim in which he denies the material allegations made by the first defendant and states that the sums loaned to the first defendant by the fourth and fifth defendants have been repaid.

CASE MANAGEMENT CONFERENCES

16. Several case management conferences have been held in which directions were given. On 17 November 2017, Justice Kokaram, as he then was, made an order granting permission to the claimant to issue witness summonses to officers at the Bank of Baroda and Republic Bank requiring them to give evidence and produce documents relating to the accounts held by the first defendant.
17. Pursuant to directions of the court, the parties filed witness statements in May 2018, evidential objections in July 2018, and statements of agreed and unagreed facts and issues in December 2018.

THE STRIKE-OUT APPLICATION

18. Thereafter, the parties engaged in discussions with a view to resolving the matter without the need for a further hearing. However, the discussions were unsuccessful and, on 14 January 2019, the defendants filed an application to strike out the claim form and statement of case as an abuse of the process of the court.
19. In the grounds of the application the defendants state that (i) the first defendant is a separate legal entity from its directors; (ii) the claimant has failed to pierce the corporate veil so as to make the second, fourth and fifth defendants liable for the payment of the damages awarded in the earlier proceedings; (iii) the claimant is seeking to enforce the order of the court made in the earlier proceedings; (iv) no allegations of fraud, deceit, fraudulent misrepresentation or dishonesty are pleaded by the claimant against the defendants to ascribe liability to them; and (v) the claimant, as shareholder of the first defendant, is entitled to its annual financial statements and not the detailed information as to its day-to-day transactions sought on the claim.
20. In written submissions filed on 11 February 2019, Counsel for the defendants submits that under the order of 22 July 2016 made in the earlier proceedings, the first defendant was

required to pay damages in the sum of \$466,000.80 to the claimant and costs in the sum of \$46,200.00. The claimant has been paid the sum of \$144,066.88 towards the judgment debt and has the sole use and enjoyment of a vehicle owned by the first defendant - a Nissan Nirvana bearing registration number TCR 798.

21. Counsel for the defendants submits that the claimant is seeking to litigate a matter that was decided in previous proceedings and to enforce a debt that the court has found to be due to him. The claimant is required to enforce the judgment awarded to him using the appropriate procedures and not by way of the institution of fresh proceedings.
22. Counsel for the defendants submits that on 16 January 2017, the claimant filed these proceedings in which he seeks to enforce the judgment made in the earlier proceedings and that the first defendant's directors are not liable for the payment of the judgment debt as no grounds exist to pierce the corporate veil.
23. Counsel relies on the long-established principles stated in **Saloman v Saloman** [1897] AC 22 and the decision of Seepersad J in **Yunus Meighoo v Ahram Persad and Others** V2013-01963 which re-affirmed them as follows: (see pages 4-5):

“The Court will only pierce the veil of incorporation where there exist accepted circumstances that establish that the company is a mere façade that was created to conceal the true facts that are at play. In many of the cases where the corporate veil has been lifted, the circumstances were such that from inception, the corporate structure was a sham or was an afterthought to address a detrimental circumstance. Where however the company in question has been engaged in a business for a considerable period of time and is solvent and where no evidence of deceit has been adduced that directly relates to the conduct of its business affairs, the Court would be reluctant to pierce the veil of incorporation.

....

The decided cases in which employees and officers of companies have been found personally liable for actions ostensibly carried out under a corporate name are

fact-specific. In the absence of findings of fraud, deceit, dishonesty or want of authority on the part of employees or officers are also rare. Those cases in which the corporate veil has been pierced usually involve transactions where the use of corporate structure was a sham from the outset or was an afterthought to a deal which had gone sour. There is also a considerable body of case law wherein injured parties to actions for breach of contract have attempted to extend liability to the principals of the company by pleading that the principals were privy to the tort inducing breach contract between the company and the plaintiff: see Ontario Store Fixtures Inc. v Mmmuffins Inc. (1989), 70 O.R. (2d) 42 (H.C.J), and the cases referred to therein. Additionally there have been many attempts by injured parties to attach liability to the principals of failed businesses through insolvency litigation. In every case, however, the facts giving rise to personal liability were specifically pleaded. Absent categories which fit within categories described above, officers or employees of limited companies are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act or conduct complained of their own.”

24. Counsel for the defendants submits that the required elements of fraud, deceit, dishonesty or want of authority are not established on the pleadings, in the absence of which no cause of action exists against the defendants and that the claim should be struck out as against them.
25. As regards the relief sought by the claimant for information and records, Counsel submits that at no time prior to the filing of the claim did the claimant seek to review the first defendant’s books and records and that, in any event, such a request must be made to the first defendant and not to its directors.
26. Counsel for the claimant submits that the defendants have failed to comply with their obligation under section 151 (1) of the Companies Act to provide information relating to

the first defendant's accounts. Therefore, the claimant is entitled to bring proceedings to compel the defendant to do so and the issue of lifting the corporate veil does not arise.

27. Counsel for the claimant submits that no allegation of fraud, deceit or dishonesty has been made against the claimant, as the claimant is not in possession of the relevant information by virtue of the defendants' default in providing the first defendant's financial records. He submits that the claimant is not seeking to re-litigate a matter that was decided in the earlier proceedings, but to recover the sums that are due and owing to him by the first defendant, including the judgment debt, and to establish whether the first defendant's funds have dissipated by the defendants' actions.
28. In further submissions filed on 28 June 2019, the claimant submits that the first defendant's bank statements for the period July 2015 to January 2017 relating to the account held at the Bank of Baroda show that the sum of \$4,056,234.00 was deposited to the account from which \$1,760,159.04 was paid to the second, third, fourth and fifth defendants and the wife of the fourth defendant. The claimant states that a sum of \$2,300,000.00 remains unaccounted for, and that the defendants have failed to give an account of how the sums were expended or to provide supporting documents.

DECISION AND REASONS

29. On 3 July 2019, I gave an oral decision striking out the claimant's claim and statement of case and ordering the claimant to pay the defendants' prescribed costs of the claim and the costs of the application to be assessed by the court.
30. I reserved the decision on the counterclaim to 30 October 2019, the delivery of which has been deferred pending the outcome of the claimant's appeal against the order of dismissal.
31. The question whether the proceedings brought by the claimant are an abuse of the process of the court falls to be determined on the facts of the case. The question for

consideration is whether the claimant's claim raises a triable issue or seeks to enforce an order of the court made in earlier proceedings without recourse to the procedures that are available for such enforcement.

32. In his claim form the claimant seeks an account by the defendants of all transactions conducted on behalf of the first defendant for the period beginning May 2015 to the present and an order requiring the defendants to pay the sums that are due and owing to him including, but not limited to, the sums that are due under the judgment debt.
33. In addition to the judgment debt, the claimant alleges that sums are due and owing to him by the first defendant by way of dividends payable on his shares and for the repayment of sums loaned by him to the first defendant.
34. The claimant has given no particulars of the dividends to which he claims to be entitled. In fact, in his defence to the defendant's counterclaim, the claimant asserts that no resolution has been passed by the first defendant for the payment of dividends to shareholders.
35. Further, the claimant's pleadings provide no details of the sums that are otherwise owed to him by way of the loans advanced by him to the first defendant, separate and apart from the sums that are due under the judgment debt. While the pleadings establish that that substantial sums were paid into, and disbursed from, the first defendant's bank accounts, they do not identify the sums that are due and owing to the claimant or provide information from which the sums are identifiable. The only sums that are established on the pleadings as due and owing to the claimant are the sums that are due under the judgement debt, the payment of which has been recovered in part by the claimant.
36. In the circumstances, I concluded that no triable issue arises on the claim and that the proceedings brought by the claimant, seek the recovery of sums that are due and owing pursuant to an order made in earlier proceedings.

37. For that reason, I considered the proceedings to be an abuse of the process of the court and dismissed them as such.

Jacqueline Wilson QC

Judge