

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2021/COM/com/00058

IN THE MATTER OF THE COMPANIES ACT, 1992 as amended, Chapter 308
Statute Laws of The Bahamas

AND

IN THE MATTER OF PEARLINE INVESTMENTS LIMITED

AND

IN THE MATTER OF THE ESTATE OF ALFRED WESLEY RAMSEY, LATE OF NO.19
LANCASTER AVENUE, STAPLEDON GARDENS IN THE WESTERN DISTRICT OF
THE ISLAND OF NEW PROVIDENCE ONE OF THE ISLANDS OF THE
COMMONWEALTH OF THE BAHAMAS, DECEASED

AND

IN THE MATTER OF A GRANT OF PROBATE IN THE ESTATE OF ALFRED WESLEY
RAMSEY No.00380 OF 2020

BETWEEN

NATHALEE WHILMENA DORSETT

As the Personal Representative of the Estate of Alfred Wesley Ramsey and the majority
shareholder of Pearline Investments Limited

Plaintiff

AND

BERNADETTE TURNQUEST

Defendant

Before Hon. Chief Justice Ian R. Winder

Appearances: Roshar Brown for the Plaintiff

Dwana Davis for the Defendant

11 and 21 April 2022

DECISION

WINDER, CJ

This is my decision with respect to disputes arising between the plaintiff (Nathalee) and the defendant (Bernadette) over the management, assets and shares of Pearline Investments Limited (Pearline).

Background

[1.] Pearline was established by Alfred Ramsey (Alfred). Alfred is the brother of Nathalee and the father of Bernadette. The main assets of Pearline are two apartment complexes, one located in Stapledon Gardens and the other in Colony Village.

[2.] On 14 June 1996 Pearline was incorporated by Alfred who was its President and sole Director. In that year Bernadette was appointed a Director by Alfred. On 17 June 1996 Bernadette was issued 500 of the 5000 ordinary shares of Pearline.

[3.] On 18 July 2019 Alfred executed his Last Will and Testament. On 26 April 2020 Alfred died.

[4.] On 3 November 2020, Pearline was struck from the Register by the Registrar of Companies for non-payment of annual fees. The last recorded payment having apparently covered the annual fees for 2010.

[5.] On 11 December 2020, Nathalee was issued a Grant of Probate in Alfred's estate. However, it was not until 7 June 2021 that payments were made (11 in all) to the Registrar General Department for Pearline's outstanding annual fees for 2011-2021.

[6.] The parties have been unable to come to an agreement as to how Pearline and its assets are to be managed following Alfred's death. Nathalee seeks, among other things, the court ordered removal of Bernadette from the company and that she be replaced by herself as Director and President. This removal is to include Bernadette being prohibited from conducting business by or on behalf of Pearline.

[7.] Bernadette says that she has been mis-joined to these proceedings, having been named in her personal capacity instead of as a Director of Pearline. In all, she calls for the dismissal of the action began by Nathalee. Alternatively, she seeks to have her sister Aliah Ramsey joined to the action as she asserts, that Aliah is conducting business without the necessary authority on behalf of the company.

[8.] Notwithstanding the current position of Pearline, remaining off of the Register, the parties remain locked in disputes as to the distribution of its shares and who should be allowed to carry out the task of collecting the rental income from the apartment buildings that the company was holding.

[9.] Nathalee commenced the action by Writ of Summons on 5 November 2021. The Statement of Claim endorsed on the Writ provides:

1. That the Plaintiff was at all material times the Personal Representative of the Estate of Alfred Wesley Ramsey as granted by a Certificate as to Grant of Probate No.00380 of 2020, dated the 11th day of December, A.D., 2020.
2. The Defendant was at all material times a Director and Officer, as well as a minority shareholder of Pearline Investments Limited ("the Company") a Limited Liability Company incorporated under the laws of the Commonwealth of The Bahamas on the 14th day of June, A.D., 1996, with its Registered Office situate in the Chambers of Messrs. Edward Turner and Co. on the Island of New Providence in the said Commonwealth and carrying on its business in The Bahamas.
3. That the deceased, Alfred Wesley Ramsey, was a Director, Officer, majority Shareholder and the ultimate beneficial owner of the Company, holding Four thousand Five hundred (4,500) shares of the Company, prior to his death on the 26th day of April, A.D., 2020.
4. That on the 30th day of August, A.D., 2017, Mr. Ramsey executed a directors resolution reducing the total amount of shares in the name of the Defendant, Bernandette Turnquest, from ten percent (10%) to five percent (5%) of the company's shares.
5. That the said deceased executed his Last Will and Testament on the 18th day of July, A.D., 2019, where among his devises he divided the Four Thousand Five hundred (4,500) shares which he held in the Company as follows:

"(i) the shares of Mr. Alfred Ramsey in Pearline Investments Limited are to be divided between Aliah Ramsey (80%); Dominique Shepard (5%); Paul Kirwood Adderley (5%); Tara Bodie (5%); and Nathalee Dorsett (5%)."
6. That the Company is the owner of two (2) apartment complexes, in Colony Village Subdivision ("Colony Units") and Stapledon Gardens ("Stapledon Units") hereinafter collectively referred to as ("the properties").
7. That the properties have outstanding real property taxes due collectively in the amount of Sixty-six thousand Six Hundred and Eighty-two dollars and fifteen cents (\$66,682.15).
8. That the Company, was struck off the Register of Companies for non-payment of its Annual Government fees due to the Registrar General's Department, since 2011. These fees totaled Four Thousand Four Hundred and Fifty Dollars (\$4,450.00), represented as follows: Three thousand Eight Hundred and Fifty

dollars (\$3,850.00) being annual government fees of Three Hundred and Fifty dollars (\$350.00) due from 2011 to 2021 (\$350 x 11 years) and Restoration fees of Six Hundred Dollars (\$600.00).

9. That the annual filing of the company's documents (i.e. annual general meeting, annual return, declaration of beneficial ownership), as required by the Companies Act with the Registrar General's Department, were also not filed since 2011.
10. That all efforts by the Plaintiff requesting the Defendant to recognize the Plaintiff as the Legal Personal Representative of the deceased's estate, and the person recognized in law as having any title to his interest in the shares, have been resisted by the Defendant.
11. That the Defendant has continuously refused to fulfill her fiduciary duty as a director, to fill the vacancy of the director with the Plaintiff, and instead acted ultra vires, for her own benefit.
12. That the Defendant has now placed herself in a position of conflict, where her personal interests, have conflicted with her duties to the company, without the clear, unequivocal consent of the majority of the shareholders, now represented by the Plaintiff, by operation of the law, and is attempting to appoint a director without the consent of the said majority of the shareholders.

AND THE PLAINTIFF SEEKS:

- (i) A Declaration that:-
 - a. the Defendant be removed as a Director and Secretary of the company effective the 11th day of December, A.D., 2020;
 - b. the Plaintiff be and is hereby appointed as a Director and President of the company effective the 11th day of December, A.D., 2020;
 - c. that Aliah Ramsey be and is hereby appointed as a Director and Secretary of the company effective the 11th day of December, A.D., 2020;
 - d. that any resolutions passed or decisions taken by the Company in a general meeting or otherwise, premised on the Defendant being a director are null and void, from the 11th day of December, A.D., 2020;
 - e. that the Company is to file amended Annual Returns to reflect the changes in the Directors and Officers effective the 11th day of December, A.D., 2020;
- (ii) Interest pursuant to the Civil Procedure (Award of Interest) Act, 1992;
- (iii) Costs as against the Defendant; and
- (iv) Such further and other relief as the Court deems just.

[10.] Upon filing the Writ, Nathalee took out an Ex Parte Summons and Notice of Motion seeking the following relief:

TAKE NOTICE that this Court will be moved before Mr. Justice Ian Winder Justice of the Supreme Court sitting at the Supreme Court Building, Bank Lane, Nassau, The Bahamas on Monday the 7th day of March, A.D., 2022 at 2:00 in the afternoon or so soon thereafter as Counsel can be heard on the hearing of an Ex-Parte Summons by the Plaintiff for an Order that:-

1. the Defendant be restrained whether by herself, her servants, agents, affiliates or otherwise on her behalf from conducting business, executing documents or otherwise collecting and/or disposing of any and all of the assets on behalf of Pearline Investments Limited, pending the determination of this matter herein or further Order of this Court.
2. Provisions be made for the costs of this application as against the Defendant.
3. Such further or other Order as this Honourable Court deems just and proper

FURTHER TAKE NOTICE that on the Ex-Parte Summons herein, the Plaintiff intends to read and use in support of this Ex-Parte Summons the Supplemental Affidavit and Affidavit filed in this matter herein.

[11.] The matter was ordered to be heard inter partes and on 15 March 2022 Bernadette issued a Summons in the following terms:

LET ALL PARTIES CONCERNED attend before the Honourable Mister Justice Winder, a Justice of the Supreme Court at the Supreme Court Building, Bank Lane, Nassau, New Providence, The Bahamas on Tuesday the 29th day of March A.D., 2022 at 10 o'clock in the fore-noon or so soon thereafter as Counsel can be heard on an application on the part of the Defendant herein for the following Orders:

- [1.] That, pursuant to Order 33 Rule 3 and Order 31A Rule 18(2)(e) of the Rules of the Supreme Court, the following questions or issues be tried as preliminary questions or issues before any other questions or issues in this action, namely,
- a. Whether in all the circumstances, including the effect of Articles 36 and 72 of the Articles of Association of Pearline Investments Limited (the "Company") and the relevant facts of this case, the claim made by the Plaintiff in the Writ of Summons (which was filed on 5 November 2021) are premature?
 - b. Whether, in all the circumstances, including (i) the effect of Article 72 of the Company's Articles of Association and (ii) the existence of the documents which are exhibited to the Affidavit of the Plaintiff (which was filed herein on 5 November 2021) as Exhibit NWD12, the Plaintiff's action is misconceived?
 - c. Whether the relief claimed by the Plaintiff in the said Writ of Summons is premature and misconceived on the grounds that in the circumstances, the steps taken by the Defendant in her capacity as Director of the Company did not reasonably warrant the filing of the said Writ of Summons and the relief sought therein.

- d. Whether, in the foregoing circumstances, the Plaintiff's claims shall be dismissed.

Alternatively, the following Orders:

- [2.] A Declaration that the Defendant is not a proper party to these proceedings on the basis that the claims which are made in the said Writ of Summons are pleaded as against the Defendant in her capacity as the sole Director of the Company and not in her personal capacity.
- [3.] An Order that the Defendant is therefore removed as a party to these proceedings in her personal capacity pursuant to Order 15 Rule 6(2)(a) of the Rules of the Supreme Court and that as a result, the action shall be dismissed. *(Should the court refuse to make an Order to dismiss the action on the grounds of misjoinder of parties pursuant to Order 15 of the Rules of the Supreme Court) the (sic) alternatively the following Orders:*
- [4.] That the Statement of Claim be struck out pursuant to Order 18 Rule 19(1)(a), (c) and (d) respectively, on the grounds that it (i) discloses no reasonable cause of action as the claims made against the Defendant have not been specified (ii) embarrasses the fair trial of the action because the Plaintiff has failed to (a) provide the particulars of the purported claims as contained in paragraphs 9, 10, 11 and 12 and (b) plead the cause of action as against the Defendant and (iii) is an abuse of the process of the court because the relief sought by the Plaintiff is premature and (sic) misconceived.
- [5.] Alternatively, that Aliah Ramsey be added as a second-named Plaintiff to this action on the grounds that the said Ms. Ramsey has, along with the Plaintiff herein (and by their own admission) (i) collected (and has in their possession) monies owed to the Company, (ii) withheld the same from the Company, and (iii) applied the same for their own use, in their sole directions, and in accordance with their sole objective and instructions.
- [6.] That the Defendant be at liberty to file a Defence and Counterclaim to any *amended* Writ of Summons.
- [7.] That in any event, the Ex-parte Summons which was filed herein on 5 November 2021 by the Plaintiff, be dismissed on any one or more of the following grounds:
- a. That no proper ground has been provided (or exists) for the claims as sought in the said Summons, or at all.
 - b. The bases of the application are unmeritorious, embarrassing to the Defendant and are frivolous, and, as a result, the Plaintiff's application is an abuse of the process of the court.
 - c. That the effect of the injunction would be to reward the Plaintiff for (i) her failure or refusal to respect and/or observe the scope of the duties and responsibilities of an Executrix in the circumstances (ii) her conduct as a trustee de son tort/ constructive trustee by virtue of her failure or refusal to account to the Company for her (i) collection of (ii) withholding from the Company of, and (iii) failure to account to the Company for, the monies which are the property of the Company.

- d. The relief sought therein are both premature and misconceived, for the reasons explained in the Affidavit(s) which is (are) filed in support of this Summons.
 - e. In all, the application made by the Plaintiff fails to meet the standard of the application which is required in the circumstances.
- [8.] That the costs of this application be costs be paid by the Plaintiff to the Defendant in any event.

[12.] Bernadette's evidence provided that sometime in 1996 Alfred asked her to be a Director of Pearline. In addition to being a Director and Secretary of Pearline on 17 June 1996 she became a shareholder, holding 500 of the 5000 shares of Pearline. Pearline's income is derived from the rental income of the properties in Stapleton Gardens and Colony Village. Rent for the properties range from \$650 to \$900 per month per unit. Her sister Aliah Ramsey, the youngest of Alfred's 12 children lived in one of the Lancaster Road units rent free. Nathalee and Aliah are collecting the rental income from the properties, notwithstanding the fact that she was the sole Director upon the death of Alfred. The rent is being paid into Aliah's personal savings account.

[13.] According to Bernadette, Nathalee treats the rental income from the property as an asset of Alfred's estate. During the course of the disagreements between the parties she received a Financial Report from Nathalee and Aliah that purportedly showed the rental income and expenses for the properties from May 2020 to December 2020. Alfred's Will provided for a share transfer to various beneficiaries which has not taken place. On 5 October 2021 she appointed her sister, Dominique as a Director after passing a company resolution for the same.

[14.] In response to Bernadette's evidence Nathalee swore an affidavit which stated:

- (1) Pearline's bank account which was held at Scotiabank was closed since 2018.
- (2) Alfred asked Aliah and his son Alrae during his cancer treatment in 2018 to collect the rent from the properties, which they did, as well as paid the expenses from the properties.
- (3) Aliah opened an account at Commonwealth Bank to deposit the rental income from the properties into and to conduct business transactions.
- (4) Pearline has been struck from the Register of Companies and needs to be reinstated.

[15.] There are numerous allegations and claims on both sides of this action, however, as I understand it, the driving issue is whether the law allows for any determination to be made with respect to the shares, assets and/or directors of a company that has been struck from the Register.

[16.] When a company is struck from the Register, the company, its directors and shareholders are restricted from:

- i) Commencing or defending legal actions;
- ii) Conducting business and/or dealing with the assets of the company;
- iii) Selling any of the assets or property held by the company;
- iv) Claiming any right for or in the name of the company;
- v) Acting in any manner with respect of the company.

The relevant provisions of the Companies Act, Sections 271 through 274, set out when a company may be removed and how it may be reinstated to the Register:

271. (1) The Registrar may remove from the register of companies —

- (a) a company that fails to submit any return, notice, document or prescribed fee to the Registrar as required by this Act;
- (b) a company that is dissolved;
- (c) a company that has amalgamated or merged with one or more companies;
- (d) a company that refuses to comply with any request or direction given by the Registrar pursuant to this Act;
- (e) a company whose registration is revoked or cancelled in accordance with this Act;
- (f) a company that has ceased to carry on business.

(2) Where the Registrar is of the opinion that a company is in default with respect to any requirement as to a return, notice, document or prescribed fee, he shall send a notice to that company advising it as to the default and stating that, unless the default is remedied within twenty-one days after the receipt of the notice, the company shall be removed from the register of companies.

(3) After the expiration of the time specified in the notice, the Registrar may remove the company from the register and publish a notice of that fact in the Gazette.

(4) Where a company is removed from the register of companies, the Registrar may, upon receipt of an application, before the expiration of twenty years from the publication in the Gazette of the notice aforesaid, in the approved form and upon payment of the prescribed fee, restore the company to the register and issue a certificate in the approved form.

272. Where a company is removed from the register of companies pursuant to section 271, the liability of the company and of every director, officer or member of the company shall continue and may be enforced as if the company had not been removed from the register.

273. Where a company is removed from the register of companies pursuant to section 271 the company shall thereupon be dissolved and any property vested in or belonging to any such company shall thereupon vest in the Treasurer for the benefit of The Bahamas and shall not be disposed of without the prior approval of both Houses of Parliament signified by resolution thereof.

274. (1) Notwithstanding anything to the contrary in this or any other Act, the Minister of Finance may in his discretion on application made to him by or on behalf of any company which has been restored to the register or by or on behalf of any person interested in the property of a company which has been removed from the register, direct the Treasurer, subject to such terms and conditions as the Minister of Finance sees fit, that any property of the company which had vested in the Treasurer and which has not been disposed of be re-vested in such company or in such interested person.

(2) In the case of a company, such restoration and re-vesting of property shall be as if the company had never been removed from the register.

(3) The provisions of this section shall apply to property which had vested in the Treasurer at the time of the coming into force of this section as well as to property vesting in the Treasurer after the coming into force of this section.

[Emphasis added]

[17.] In line with the CA, the learned authors of *Gower and Davies Principles of Modern Company Law, 11th edition*, describes the position of a defunct company, at paragraph 33-025 as follows:

33-025 A company ceases to exist only when it is no longer on the register... It follows that all mechanisms for dissolution (or death) of a company are mechanisms for removing the company from the register. But before we consider what those are, consider the ramifications of removal of the company from the register: this ends the company's separate legal personality; it dissolves the relationship between the company and its members and directors; the company ceases to be a party to any legal relationships – even those that might not have been terminated properly before dissolution; and, finally, any property that the company is still

holding at the time of dissolution is deemed bona vacantia and passes to the Crown.

[18.] The first course of action necessarily is that Pearline be restored to the Register before any further action is taken by its Directors, Shareholders and beneficiaries or any party that may have an interest in the company and/or its assets. At present none of the parties and/or beneficiaries have the authority to act with respect to Pearline or over any of its former assets, more particularly the rental properties. The assets of Pearline are according to law, currently vested with the Treasurer. As of 3 November 2020, when the company was struck from the Register, its assets became for all intents and purposes, bona vacantia.

[19.] The parties have provided extensive arguments on their positions and the relief being sought from the court. However, the purported issues between the parties all relate to Pearline either directly or indirectly. Issues as to Directors duties and whether Nathalee is now the majority shareholder as the personal representative cannot be determined in a vacuum. Pearline, under the law, does not currently exist and needs to be restored. If the application for its restoration is acceded to, it will be as if the company has never been struck off.

[20.] In the circumstances the actions of the parties herein are premature. The nature of the restraints sought by Nathalee would belong to the Company had it been in existence and cannot be laid by her. Such relief would offend the separate legal personality doctrine, had the company been in existence. Nathalee's Summons cannot succeed.

[21.] Notwithstanding the status of Pearline there is clearly activity by all of the parties with respect the defunct company. I will order a stay of the proceedings to allow the application for restoration to be made to return Pearline to the Register. In the circumstances I make no order as to costs.

Dated this 13th day of September 2022



Ian R. Winder

Chief Justice