

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0239

IN THE MATTER OF THE COMPANIES ACT 143 OF THE REVISED LAWS OF SAINT VINCENT AND
THE GRENADINES 2009

AND

IN THE MATTER OF PART 41 OF THE CIVIL PROCEDURE RULES 2000

IN THE MATTER of the Application of the Claimant MICHAEL ULLMAN for *Inter Alia* an Order
directing the Defendants LARS G. ABRAHAMSSON and LUMA LTD LIMITED to provide the Court
and to the Claimant financial statements and accounts respecting the financial position of LUMA
LTD LIMITED and the results of its operations since its incorporation

BETWEEN

MICHAEL PHILLIP ULLMANN

CLAIMANT

and

LARS G. ABRAHAMSSON

FIRST DEFENDANT

and

LUMA LTD LIMITED

A Company with offices at Port Elizabeth,
Bequia, St. Vincent and the Grenadines

SECOND DEFENDANT

Appearances:

Mr. Parnel R. Campbell Q.C. with him Mr. Mac Cauley Peters and Ms. Mandella Campbell for the
claimant.

Mr. Joseph Delves for the defendant, absent.

2018: May 24

Jul. 30

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This case is about an alleged business relationship that soured. Mr. Michael Phillip Ullman claimed that he made an agreement with Mr. Lars Abrahamsson to jointly embark on investment in the re-sale of properties. He alleged that they agreed to form a company to facilitate certain of those operations. He is aggrieved that he has not received an accounting of the business operations.
- [2] Mr. Ullman commenced this action by Fixed Date Claim Form ('FDCF') on 15th December 2014. He alleged that in 2007 he and Lars G Abrahamsson held discussions and agreed to establish a joint venture vehicle to purchase and develop lands in Bequia for re-sale. He claimed that they agreed to share the profits between them as joint venture partners and alleged that they reduced the agreement in writing.
- [3] Mr. Ullman contended that he and Mr. Abrahamsson contracted to establish a joint liability company (LUMA LTD) in which they would own 49 and 51 percent of the shares respectively. He averred that he (Mr. Ullman) committed to contribute USD\$2 million towards the initial equity in the company; and to discuss with Mr. Abrahamsson a further investment of USD\$3 million. He pleaded that Mr. Abrahamsson agreed to re-invest his portion of the commissions in LUMA LTD. Mr. Abrahamsson acknowledged this.
- [4] In their joint defence, Mr. Abrahamsson and LUMA LTD admitted that the agreement was for mutual investments by Mr. Ullman and Mr. Abrahamsson. They averred that Mr. Ullman undertook to invest USD\$5 million. They pleaded that Mr. Ullman failed to make the USD\$5 million investment.

- [5] Mr. Ullman outlined several other terms and conditions and produced a copy of an unsigned agreement ('MPU1') dated 29th August 2007, which he said contained the agreed terms. He averred that he and Mr. Abrahamsson agreed that the latter would proceed to incorporate the company LUMA LTD, which he did. LUMA LTD was incorporated on 29th August 2007 at the Commerce and Intellectual Property Office ('CIPO') in Saint Vincent and the Grenadines and was assigned company number 137 of 2007.
- [6] Mr. Ullman attested that based on his agreement with Mr. Abrahamsson, the latter's wife was named as a director. The other two directors were Mr. Ullman and Mr. Abrahamsson. The company Secretary Tord Lindstedt was appointed based on a suggestion made by Mr. Abrahamsson.
- [7] Mr. Ullman testified that the Board of Directors of LUMA LTD held its first meeting on 30th August 2007 in which he participated by telephone. He indicated that the company took a number of unanimous decisions including agreement of the first by-Laws, and issuance of 51 shares to Mr. Abrahamsson and 49 shares to Mr. Ullman, from a total of 100 shares. He alleged that he transferred USD570, 473.00 between September 7th 2007 and 19th December 2007 pursuant to his undertaking to provide working capital for LUMA LTD.
- [8] Mr. Ullman claimed that Mr. Abrahamsson has not kept him fully informed of the accounts pertaining to their joint venture. He averred that he was never ordinarily resident in Saint Vincent and the Grenadines and therefore fully expected to be apprised of all money transactions pertaining to the joint venture. He alleged that although LUMA LTD has undertaken a number of real estate transactions pursuant to the referenced agreement, neither Mr. Abrahamsson nor LUMA LTD has provided such accounting to him.
- [9] Mr. Ullman claimed that Mr. Abrahamsson has breached their agreement and that he and LUMA LTD have operated in breach of their contractual duty to account to him for the financial management of LUMA LTD. He complained that Mr. Abrahamsson and his wife have removed him from the Board of Directors without his approval and against his will and have been operating the company against his interests.

- [10] He claimed a declaration that LUMA LTD is a joint venture company owned by him and Mr. Abrahamsson; a declaration that its shareholding consists of 100 ordinary shares with a nominal value of \$10,000.00 each, beneficially owned by him and Mr. Abrahamsson in unequal proportions of 49% and 51% respectively; an order for the taking of accounts to determine whether and if so, what monies are contractually due to him pursuant to the joint venture activities undertaken by LUMA LTD and Mr. Abrahamsson; and an order for the payment to him of such amounts as may be deemed due on the taking of such accounts.
- [11] Mr. Ullman also prayed that the Court make an order restoring him to the Board of Directors; an order directing Mr. Abrahamsson to cause LUMA LTD's by-laws to be amended to require the signature of two directors, (one being Mr. Ullman's) to effect the execution of important documents by LUMA LTD, particularly those affecting property interests; and an injunction restraining LUMA LTD from alienating any unsold lots of land without Mr. Ullman's specific authorization; damages and costs.
- [12] Mr. Abrahamsson and LUMA LTD acknowledged¹ that Mr. Ullman and Mr. Abrahamsson engaged in certain discussions and negotiations and arrived at a consensus which they reduced in writing in the form of an agreement dated 29th August 2007. Mr. Abrahamsson and LUMA LTD admitted aspects of the alleged agreement arising from those discussions and denied other aspects as recited by Mr. Ullman.
- [13] They accepted that the principal framework of the written agreement was that Mr. Ullman and Mr. Abrahamsson would establish a jointly-owned limited liability company to be called LUMA LTD based in Bequia. They denied having seen any such signed written agreement. I have found that Mr. Abrahamsson and LUMA LTD are not liable for breach of contract. LUMA LTD is liable for breach of its statutory duty to provide Mr. Ullman with notices of shareholder meetings and accounts.

ISSUES

- [14] The issues are whether:

¹ At paragraphs 5, 20 and 22 of their Defence filed on 29th July 2015.

1. Mr. Abrahamsson or LUMA LTD has breached the purported agreement between him/it and Mr. Ullman?
2. Mr. Abrahamsson and/or LUMA LTD have operated in breach of a duty to account to Mr. Ullman for the financial management of LUMA LTD? and
3. To what relief is Mr. Ullman entitled?

Preliminary Observations

- [15] Mr. Abrahamsson and LUMA LTD filed a defence on 29th July 2015. Mr. Abrahamsson admitted in it, that he and Mr. Ullman held discussions about embarking on a joint venture investment project. He and LUMA LTD denied that they are liable to Mr. Ullman for breach of contract or a duty to account to him. In respect of the reliefs sought, Mr. Abrahamsson pleaded that he had no interest in having a joint venture with Mr. Ullman. He contended that he was in agreement with the shareholding proposal outlined in the FDCF. He acknowledged that an injunction is important to make sure that the shareholders are protected.
- [16] Mr. Ullman filed a Reply to Defence in which he joined issue with several assertions made by Mr. Abrahamsson and LUMA LTD in their defence. Mr. Abrahamsson and LUMA LTD filed no affidavits, witness statements or witness summaries. On 5th and 27th April 2017, learned counsel Mr. Joseph Delves, legal practitioner on record for Mr. Abrahamsson and LUMA LTD, represented to the Court that he had not been in touch with either of them since November or December 2016.
- [17] He filed a Notice of Application on 20th April 2017 in which he sought to be removed as their legal practitioner. He subsequently withdrew the application on 7th June 2017. Neither he nor Mr. Abrahamsson or LUMA LTD attended or participated in the trial. The trial was scheduled for April 27th 2017 and was vacated due to their absence. On the adjourned date (24th May 2018) Bailiff Mr. Rolton Bobb testified that on 19th March 2018, he served Notice of the 24th May 2018 trial date on the chambers of learned counsel Mr. Joseph Delves.
- [18] The Civil Procedure Rules 2000 ('CPR'), rule 6.4(1) (d) provides that if a party provides no address for service in its pleadings, a document may be served by leaving it at the business address of any

legal practitioner who purports to act for that party. On being satisfied that Bailiff Bobb had provided adequate proof of service of notice of the trial date on Mr. Abrahamsson and LUMA LTD through their lawyer, the Court proceeded with the trial in their absence pursuant to CPR 39.4(b).

ANALYSIS

Issue 1 – Did Mr. Abrahamsson or LUMA LTD breach the purported written agreement between him or it and Mr. Ullman?

[19] Mr. Ullman attended the trial via video link and gave evidence by Skype. He testified that he was in Tel Aviv, Israel. He relied on his affidavits² and his witness statement which was filed on 22nd January 2016. They were admitted as his evidence along with the exhibits attached to them. He did not produce an original or copy of the referenced written agreement that he alleged was executed by him and Mr. Abrahamsson. The copy that he exhibited was not signed.

[20] Mr. Ullman claimed that he had a written agreement with Mr. Abrahamsson even before LUMA LTD was incorporated. His claim for breach of contract against Mr. Abrahamsson and LUMA LTD related to that alleged contract. In determining their respective liabilities for breach of contract the Court must apply applicable principles of contract law. One such fundamental principle is that a contract cannot impose rights or obligations on persons who are not party to it.³ It is also established that a contract does not need to comply with any strict form or formalities. Therefore, it may be made informally, may be oral, in writing, or partly orally and partly in writing.⁴

[21] In the case at bar, Mr. Ullman averred that the central contract was made between him and Mr. Abrahamsson. He did not identify LUMA LTD as a party to it. He pointed to no agreement involving LUMA LTD or other exceptional circumstances whereby LUMA LTD would be obligated to perform any duties or actions under a contract to which it was not a party. In those circumstances, I find

² Filed on 9th December 2014 and 15th December 2014 respectively.

³ Halsbury's Laws of England, (2012), Contract, Vol. 22, at para. 206.

⁴ Halsbury's Laws of England, (2012) Vol. 12, para. 220.

that LUMA LTD is not liable for breach of the referenced contract as alleged. I turn now to examine whether Mr. Ullman has established any such breach by Mr. Abrahamsson.

[22] In their pleaded defence, Mr. Abrahamsson and LUMA LTD accepted that both men arrived at a consensus which was reduced in writing and dated 29th August 2007. They acknowledged further that the principal agreement provided that the men would establish a jointly owned company to be called LUMA LTD and based in Bequia. They made no admissions that the unsigned agreement ('MPU1') was signed by Mr. Abrahamsson and/or Mr. Ullman, otherwise confirmed or ratified by them or even that it contained all of the terms and conditions relied on by Mr. Ullman.

[23] Mr. Ullman submitted that his evidence was unchallenged. He argued that where a defendant has failed to appear at trial and the claimant has given evidence of his claim he is entitled to such relief claimed to the extent that it is proved. He cited in support the cases of **Stone v Smith**⁵ and the Nigerian case of **MTN Nigerian Communications Limited v. Mundra Ventures Nigeria Limited**⁶.

[24] In those matters, the Courts held that a party who absents himself from proceedings without justification is not in a position to complain if the matter proceeds in his absence. It was further held that the Court is entitled to accept the evidence as proof of what it seeks to establish and the 'onus of proof is naturally discharged on a minimum proof'⁷.

[25] Mr. Ullman borrowed further from the judgment in **MTN Nigerian Communications Limited v. Mundra Ventures Nigeria Limited** and quoted Georgewill J.C.A. as follows:

'... he who asserts a fact must prove it with credible evidence that is relevant to the facts and matters in controversy and not evidence that is irrelevant and inconsequential to the success of the claim. Evidence in law, I dare say, is not mere story telling or tales by

⁵ [1887] 35 Ch. D. 188 at pg. 189, per Kelewich J.

⁶ (2016) LPELR – 40343 (C.A.).

⁷ MTN Nigerian Communications Limited v. Mundra Ventures Nigeria Limited, per Georgewill J.C.A. at p. 32-33.

moon light having no bearing to the facts pleaded in support of the claim or defence as the case may be.

... the mere fact that evidence is unchallenged is not tantamount to proof as such an unchallenged evidence must be also credible and relevant in relation to the facts it seeks to establish.⁸ (Underlining added)

[26] Mr. Ullman commended another passage from the learned judge's judgment, that adds a significant and indispensable counterbalance. In this regard the learned judge noted that the Court will only act on relevant, true and worthwhile evidence and reject any which is not. He stated:

'When ... a Plaintiff fails to make out at least a prima facie case of his claims against a Defendant, the mere absence of the case of defence alone would not result into a verdict in favour of the Plaintiff. This is so because in law if no prima facie case is made out by a Plaintiff against a Defendant such a defendant need not prove anything in his defence.'⁹

[27] I accept that the above-referenced extracts summarize the correct principles of law which are applicable in a case that is not defended. In essence, Mr. Ullman must establish each of his allegations on a balance of probabilities by providing relevant, truthful and cogent evidence. If he is to obtain any relief, he has the onus of proving his case to the court's satisfaction. In his written submissions, he identified the relevant portions of his affidavit and witness statement which he posited supplied such material. He made no other legal submissions.

[28] Mr. Ullman testified that Mr. Abrahamsson is a businessman who is a citizen of St. Vincent and the Grenadines. He indicated that he held several discussions with the Mr. Abrahamsson around 2007 in respect of the proposed joint venture investment project involving mainly (but not exclusively) with real estate. According to him, it involved participating in a land development programme organized by the Government of St. Vincent and the Grenadines, acting through two State agencies.

⁸ MTN Nigerian Communications Limited v. Mundra Ventures Nigeria Limited, at paras. 8 and 9.

⁹ At para.10.

- [29] He explained that Mr. Abrahamsson and he purposed to establish a joint venture vehicle which would purchase lands in Bequia from private individuals and from the state-owned National Properties Limited, the duly authorized agent for the state-owned International Airport Development Company Limited. He said that they agreed to develop and re-sell for profit the lands so acquired, and to apportion the profits between themselves as joint venture partners.
- [30] Mr. Ullman testified that they reduced the agreement into writing in the form of an Agreement dated the 29th day of August 2007. He averred that although the written agreement was not signed by the parties, he has accurately outlined its terms and conditions. He made no submissions regarding the admissibility or the probative value of the draft agreement.
- [31] Mr. Ullman's case is that the agreement between him and Mr. Abrahamsson was in writing. In the absence of a signed contract or written memorandum signed by Mr. Abrahamsson, the unsigned agreement cannot be accepted as a written agreement that is binding on Mr. Abrahamsson or on LUMA LTD. It will have limited evidentiary weight, unless there is other evidence which collectively establish a *prima facie* case. In this regard, any reliance by Mr. Ullman on its contents to establish any fact would be of limited benefit to him unless he has presented independent, material and related evidence which establishes those facts on a balance of probabilities, or unless LUMA LTD and/or Mr. Abrahamsson admit them in their pleadings. I will return to the issue of admissibility later.
- [32] Mr. Ullman explained that the principal framework of the written Agreement was that he and Mr. Abrahamsson would both establish a jointly-owned limited liability company to be called LUMA LTD, to be based in Bequia in the State of Saint Vincent and the Grenadines. He indicated that the intention was that LUMA LTD would operate on certain terms and conditions. He said that they agreed that LUMA LTD would have a capital of 100 ordinary shares of which Mr. Abrahamsson would own 51% and he would own the remaining 49%.
- [33] He stated that they also agreed that a company called CASA LTD, trading as TERRA CARIBBEAN would act as the real estate agent in all real estate transactions involving LUMA LTD. He explained that CASA LTD was owned mainly between Mr. Abrahamsson and Tord Lindstedt. He and Mr. Abrahamsson agreed that CASA LTD would be paid a 5% commission on sales (unless otherwise

agreed); that the commission would remain in LUMA LTD as equity and would be released when projects were finalized, subject to alternative arrangements. Mr. Abrahamsson and he agreed to have a clear plan and agreement for every contemplated land acquisition in advance of such acquisition.

[34] They agreed that Mr. Abrahamsson would contribute his local knowledge and ability to purchase real estate freely as a citizen of St. Vincent and the Grenadines. Each land acquisition was to be agreed upon both of them. Responsibility for making the final decision in respect of each land acquisition rested with Mr. Ullman. He also agreed to deposit an initial capital investment of \$USD2 million in LUMA LTD into an interest bearing bank account controlled by him. Mr. Abrahamsson was to be given access to at least 5 percent of the capital (or \$USD100, 000.00) as working capital for deposits on potential deals.

[35] It was understood and expected that the funds would bear interest at the prevailing interest rate in the bank where the deposit was made. Mr. Ullman provided no details about where the funds were deposited or when. He said that the investment funds were to be readily available for disbursement as the opportunities arose. He and Mr. Abrahamsson made certain other aspirational commitments including that deposits would be paid into the client account of the lawyer acting on LUMA LTD's behalf and paid out on execution of deeds of conveyance in respect of lands bought by LUMA LTD.

[36] It was also expected that when finalized the Deeds of Conveyance would be held by LUMA LTD's lawyer in escrow. Mr. Ullman testified that the agreement provided that Mr. Abrahamsson would pay him accrued interest of 8 percent per annum when each acquired parcel of land was finally disposed of and all money would have been collected in respect of that transaction or project.

[37] He explained that they also agreed that CASA LTD (TERRA CARIBBEAN) would be entitled to its commissions at the end of each transaction or project, including the right to 8 percent accrued interest on the investment of its commissions in LUMA LTD. He averred that the operations of LUMA LTD were to be managed by GRECO LTD, a limited liability company incorporated in Saint Vincent and the Grenadines, for a fee. It was further agreed that GRECO LTD was to use the fee

to defray administrative expenses such as office rent, communications charges, services, transportation and the like. No agreement between LUMA LTD and CASA LTD or GRECO LTD was produced in Court.

[38] CASA LTD and GRECO LTD are not parties to the instant claim. Therefore the parallel contracts which were allegedly concluded with them have limited relevance to a resolution of the issues in this matter. The background details have been included for context only and to capture the main points in Mr. Ullman's claim.

[39] Mr. Ullman asserted that he and Mr. Abrahamsson agreed further that when Mr. Abrahamsson, CASA LTD, GRECO LTD and he would have been paid the respective equity, accrued interest, administration fees and commissions in accordance with the terms of the referenced agreement, and all other operating costs and expenses would have been fully discharged, that the net profits would be apportioned between Mr. Abrahamsson and him on a fifty-fifty basis. He said that they also agreed to draw up a separate written agreement to regulate the dealings between the Mr. Abrahamsson, CASA LTD and GRECO LTD.

[40] He testified that in the days leading up to the formal Agreement, he agreed:

1. that Mr. Abrahamsson should proceed to have the company incorporated;
2. with Mr. Abrahamsson's suggestions that:
 - a) Mr. Abrahamsson and his wife Margit Abrahamsson would serve as directors of LUMA LTD; and
 - b) Mr. Abrahamsson's business partner Tord Lindstedt would be the Secretary.

[41] Mr. Ullman averred that Mr. Abrahamsson signed the incorporation documents as the Incorporator on 27th August 2007. LUMA LTD was duly registered. By-Law No.1 of LUMA LTD was registered at C.I.P.O. on 25th September 2007. Mr. Ullman provided the funds to cover the legal and registration costs for the incorporation.

[42] Mr. Ullman pointed out that LUMA LTD and Mr. Abrahamsson have disclosed documents in which

they claim that the sum of US\$562 was paid as legal fees for the LUMA LTD's registration. He noted that they have provided no evidence that the said sum was actually paid. Mr. Ullman produced a copy of the Certificate of Incorporation. He relied on it to support his assertion of LUMA LTD's existence. I infer that the requisite fees were paid for its incorporation. This can be easily ascertained by Mr. Ullman by personally conducting a search at the CIPO or through his lawyer.

[43] LUMA LTD's Board of Directors held its first meeting of on 30th August 2007. Mr. Ullman participated by telephone. He indicated that a number of decisions were unanimously taken, including that:

1. the first Directors of the Company would be Mr. Abrahamsson, Margit Abrahamsson and him;
2. Mr. Abrahamsson would be the chairman;
3. the first By-Laws would be adopted and filed at the offices of C.I.P.O.;
4. Share Certificates would be issued to Mr. Abrahamsson and him for 51 and 49 shares respectively; and
5. Mr. R. Akin S. John, Barrister-at-Law and Solicitor, of Elizabeth Law Chambers, Kingstown, St. Vincent and the Grenadines would be appointed as LUMA LTD's solicitor.

[44] Mr. Ullman stated that when he and Mr. Abrahamsson had discussed LUMA LTD's administrative structure they had agreed that two directors would have been required to execute important documents on behalf its behalf. He recalled that the copy of the By-laws which was sent to him had a provision for the signatures of two Directors on important documents, especially documents relating to title to property.

[45] He said that he subsequently discovered by examining the registered copy of the By-laws that the provision as to signatures had been materially altered to confer powers on a single director to sign important documents. He said that this was done without his prior knowledge or concurrence. Mr. Ullman did not say when he made this discovery, when the amendment was made, what steps he took at that time or what provision was made in the company's by-laws regarding who was authorized to amend them.

[46] He asserted that in keeping with his undertaking to provide working capital for LUMA LTD he

transferred a total of \$USD570, 473.00 (the equivalent of EC\$1,533,545:51) towards the joint venture, between 7th September 2007 and 19th December 2007 in five installments. He indicated that he sent:

- (a) \$USD 22,000 on 7.09.07;
- (b) \$USD 25,000 on 15.09.07;
- (c) \$USD 223,473 on 16.10.07;
- (d) \$USD 110,000 on 12.12.07; and
- (e) \$USD 190,000 on 19.12.07.

Mr. Abrahamsson and LUMA LTD admitted that Mr. Ullman invested monies in LUMA LTD. They did not admit or deny in their defence whether the total figure is correct.

[47] Mr. Ullman indicated that he had particularized the referenced transfers, together with disbursements in respect of architect's fees, engineer's fees, project manager's fees and legal fees. He explained that those expenditures relate principally to preparatory work on a condominium development which had reached a fairly advanced stage of planning. He said that Mr. Abrahamsson emailed him on 27th September 2012 and confirmed receipt of funds totaling US\$380,473.00.

[48] Mr. Ullman averred¹⁰ that he can provide details of the money transfers in the event that Mr. Abrahamsson or anyone else is minded to dispute his figures. He provided no documentary or other tangible proof of the transfers and no explanation why he failed to make them available. Mr. Abrahamsson and LUMA LTD have admitted that payments were made but they stopped short of saying how much.

[49] I am unable to find merely on his say so that Mr. Ullman transferred the amounts alleged. That is not how the Court operates. It would be remarkable if it did. The Court requires cogent testimony of such payments. In their absence, I make no finding that Mr. Ullman made those money transfers to LUMA LTD or to Mr. Abrahamsson.

¹⁰ At paragraph 12 of his Statement of Claim filed on 15th December 2014.

[50] Mr. Ullman claimed that according to the terms of his agreement with Mr. Abrahamsson, it was obviously LUMA LTD's and Mr. Abrahamsson's contractual obligation to keep him fully informed of the accounts pertaining to the joint venture, in that the bottom line of the agreement 'contemplated the making of mutual profit in terms of dollars and cents.' He pointed out that since he is not and was never ordinarily resident in Saint Vincent and the Grenadines, he fully expected to have been apprised of all money transactions pertaining to the joint venture, as a matter of securing his lawful rights under the contract.

[51] He did not make any submissions regarding how LUMA LTD became contractually bound under a contract to which it was not a party. Apart from producing the unsigned agreement he did not indicate what was the nature of the contractual agreement between Mr. Abrahamsson and him. It is not clear if he is relying on a partly written and partly oral agreement or otherwise. He has relied throughout on a written agreement between him and Mr. Abrahamsson but he has not made a certified copy of that written agreement available for the Court's review and evaluation.

[52] It appears that Mr. Ullman is relying on the unsigned contract as containing the terms and conditions of the agreement between him and Mr. Abrahamsson. Mr. Abrahamsson and LUMA LTD have protested in their Defence that they have not seen a signed written contract. They have refuted elements of it. It is appropriate to set out the unsigned contract.

[53] It states:

'Agreement between Michael Ullman and Lars Abrahamsson

This contract is set out between Lars Abrahamsson (LA) and Michael Ullman (MU) regarding land acquisition, development and sales of real estate properties in the company registers as LUMA LTD in Bequia, St. Vincent and the Grenadines.

1. LA has 51% of all common shares in LUMA LTD while MU has 49% (this regulates with printed shares). The purpose of LUMA LTD is to buy, develop and sell real estate in Bequia, St. Vincent and the Grenadines.
2. TERRA CARIBBEAN (The Grenadines, incorporated as CASA LTD) will act as the real estate agent at all times when LUMA LTD buys and sells real estate. TERRA

CARIBBEAN will be paid the agreed commissions (5% unless other is agreed) by potential sellers and LUMA LTD. TERRA CARIBBEAN is owned 51% by LA and 30% by Tord Linstedt (TL). The commission received from potential sellers will stay in LUMA LTD as equity to be released when projects are sold out or other agreement has been made between MU and LA. **MU and LA hereby agrees to have a clear plan and agreement for every single land acquisition and project prior entering the same.** TERRA CARIBBEAN will, if appropriate, work with co brokers within TERRA CARIBBEAN's network.

3. The initial equity in LUMA LTD is based on mutual investments; MU invests a minimum of 2 million US\$ of his own funds and will discuss an additional sum of 3 million US form his UK based bank to be available for land acquisitions in LUMA LTD. LA invests his commissions through TERRA CARIBBEAN which are due as consequence of land acquisitions made within LUMA LTD, local knowledge and his ability to act as a local buyer due to his citizenship in St. Vincent and the Grenadines. **The land acquisitions are to be agreed on by MU and LA. Final decision is to be made by MU. The initial capital of 2 MUSD shall be earmarked and deposited into an interest-bearing bank account controlled by MU.** LUMA LTD shall have access to at least 5% of capital, 100,000 USD, as working capital for deposits on emerging deals; the capital will bear interest as of local banks' interest rate. The intention of this is to be able to act fast when opportunity emerges. Deposits will always be paid into account of LUMA LTD:s lawyer as proof to seller. The deposit will be released together with final payment when the deed is searched, clear title exists and the seller signs over the deed to LUMA LTD. Any debt services and axes on seller's behalf will be deducted by LUMA LTD:s lawyer and paid to banks, government and other debtors. LUMA LTD:s layer finalizes the transaction with the seller's lawyer and when transaction is completed, the deed will be deposited into escrow with LUMA LTD's lawyer.
4. Future split of profits: LA agrees to pay MU an accrued interest of 8% per annum to be paid out to MU when each project is sold and all money is collected.

5. LA owns 51% of the shares in TERRA CARIBBEAN and has agreed to invest as equity, all commissions that are due to TERRA CARIBBEAN from sellers in each transaction made within LUMA LTD. The same commissions will be released to TERRA CARIBBEAN when each project is completed, sold out and all money is collected. TERRA CARIBBEAN has the right to 8% accrued interest on the commission invested in LUMA LTD.
6. GRECO LTD (which is owned by LA to 51% and TL to 30%) shall administrate the operation of LUMA LTD and will be paid a sum which equals 2% on the working invested capital. GRECO LTD uses this income to pay for rent of office, telephone, fax, internet services and other related expenses such as transportation and administration.
7. When MU, LA with GRECO LTD and TERRA CARIBBEAN have been paid their respective equity, accrued interests, administration fee and commissions stated above in this agreement, and all expenses have been paid such as costs for marketing, sales materials, taxes, legal issues, audit, travel, and costs related to architects, surveyors, subdivisions, planning permissions, infrastructure, construction, LA will split 50/50 of the profit with MU.
8. 51% of the shares in TERRA CARIBBEAN and GRECO LTD are owned by LA. Any profits, commissions and fees from the operation of LUMA LTD to LA will be regulated in a separate agreement between LA and TERRA CARIBBEAN/GRECO LTD .

Michael Ullman

Lars Abrahamsson

2007-08-29

2007-08-29' (bold added)

[54] Clause 6 of this unsigned agreement purports to empower GRECO LTD to administer LUMA LTD's operations. It therefore signifies that GRECO LTD is constituted as LUMA LTD's agent to represent it and act on its behalf in the State. Such an agreement must be registered pursuant to section 3 of

the Registration of Documents Act¹¹. This agreement appears not to have been registered. That failure renders it incapable of being admitted into evidence¹². In the circumstances, I set aside the order admitting this document into evidence¹³.

[55] Even if it were viable for the purpose of being admitted into evidence, the agreement is legally problematic in a number of respects. Mr. Ullman agreed that the agreement was never signed. He did not indicate who prepared it, when and why it was not signed. Even if the Court were to act on the provisions of the unsigned agreement, it introduced inconsistencies in Mr. Ullman's testimony which he has not addressed. In this regard, clause 3 expressly provided that Mr. Ullman would have control of the interest bearing account into which his portion of the investment was to be deposited. In addition, clause 3 stipulated that final decision regarding any purchase was to be made by him. He did not say when those positions changed if they did.

[56] Mr. Ullman has not indicated under what circumstances he divested himself of the funds in such an interest bearing account. In fact, he made no further mention of such an account. These omissions create lacunae in his testimony which cannot be supplied through inference. Moreover, the very conspicuous omission of banking information and documentation regarding the financial transactions including money transfers to which he referred, places the Court in the embarrassing position of deciding on the one hand, whether to ignore rules of evidence and the many laws and regulations aimed at eradicating laxity in the financial arena, particularly in relation to large money transactions¹⁴, or finding on the other hand that Mr. Ullman's oral testimony is insufficient to establish the fact of the transfers and the amounts.

[57] The Court must always remain alive to such matters and be careful not to make positive determinations regarding money transactions in the absence of cogent evidence, or without good

¹¹ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹² By section 22 of the Registration of Documents Act.

¹³ Made on the date of trial.

¹⁴ Due to the threats posed by the evils of money laundering and terrorist financing.

reason. A failure to act with caution would in the instant case amount to a disregard of the evidential rules which require proof on a balance of probabilities and to lose sight of the relative ease with which such documentation can be obtained and brought to the Court's attention.

[58] I am mindful that the time limits for which banking institutions are required to keep records would have expired in respect of the alleged dates of transfer. I note however that the claim was initiated within 7 years of the first alleged transfer and close enough to the referenced time limits that Mr. Ullman would reasonably have been expected to recover records from the bank(s) if he attempted to do so. In the premises, where Mr. Abrahamsson and LUMA LTD have acknowledged monetary contributions by Mr. Ullman towards the joint venture project, the Court is prepared to act on those, but not otherwise.

[59] Where no such admissions have been forthcoming the Court must look elsewhere to arrive at the truth. Taking all of the evidence into account I am not satisfied that Mr. Ullman has established that he transferred a total of \$1,533,545.51 to Mr. Abrahamsson. The agreement in draft imposed no obligation on him to do so. There is no adequate proof that he did. I accept that he made monies available for capital investment in LUMA LTD. I cannot be sure of the amount or to whom the monies were transferred. I am satisfied and do find that he made investments by providing an unknown sum of money towards the joint venture project with Mr. Abrahamsson.

[60] In order to find that a contract has been concluded between two or more persons, the law requires the existence of three principal elements.¹⁵ The parties 'must intend to enter into legal relations'¹⁶; there must be an offer by one side which is unequivocally accepted by the other side; and the agreement must be made under seal or 'be supported by consideration'.¹⁶

[61] It appears that there was valid offer and acceptance in this case, but it is not clear what was actually offered and accepted, apart from the consensus to engage in a joint venture investment project for the purchase and re-sale of land through LUMA LTD. The consideration is unclear as is whether Mr. Abrahamsson intended to enter legal relations. The arrangement was seemingly so

¹⁵ Chitty on Contracts, 24th Ed. Para. 2.

informal and unstructured as to appear to have been based on a changing paradigm. That would not meet the requirements of a valid and legally binding agreement.

[62] Mr. Ullman relies on averments outlined in his pleadings and evidence to outline the terms and conditions of the agreement independently of the unsigned agreement. He appears thereby to be relying on the existence of a verbal contract although none was expressly pleaded. There is inadequate evidence of a signed written or oral contract which created such obligations between Mr. Abrahamsson and Mr. Ullman. I am unable to find that a written contract exists between them. I make no such finding. I also make no finding that an oral contract existed between him and Mr. Abrahamsson. There is no assertion that there was.

[63] There is no allegation that the contract was in any other form. I am unable to understand exactly what is being alleged in terms of the form of the contract. I am not at liberty to supply those details. I refrain from doing so. I find therefore that no valid contract existed between Mr. Ullman and Mr. Abrahamsson. Mr. Lars Abrahamsson has not breached the purported agreement between him and Mr. Michael Ullman. The earlier finding in respect of LUMA LTD is supported by the applicable law and further reasons provided immediately above. For completeness, I repeat that I find that LUMA LTD has not breached the purported agreement between it and Mr. Ullman.

Issue 2 - Have Mr. Abrahamsson and/or LUMA LTD operated in breach of a duty to account to Mr. Ullman for the financial management of LUMA LTD?

[64] Mr. Ullman testified that it was and is the responsibility of LUMA LTD and Mr. Abrahamsson to submit the accounting to him so that the actual figures could be verified. He maintained that their duty to account to him was and is therefore a fundamental aspect of their relationship. He stressed that he had every expectation that they would have honoured their obligation to account to him for the financial management pertaining to LUMA LTD and the enterprises embarked upon by it in the discharge of its mandate as a joint venture. Mr. Ullman failed to indicate how this duty arose. I presume that he was referring to a contractual duty as pleaded¹⁶ or perhaps a statutory duty.

¹⁶ At paragraph 18 of the FDCF.

[65] He stated that Mr. Abrahamsson has produced no accounts as to commissions received and/or alleged to have been re-invested in LUMA LTD. He averred that no accounts had ever been submitted to him, either by Mr. Abrahamsson or Mr. Tord Lindstedt. He claimed that in spite of several requests for LUMA LTD's accounts, Mr. Abrahamsson has neglected and/or refused and/or failed to submit them to him.

[66] Mr. Ullman testified that Mr. Abrahamsson was the majority and controlling shareholder of CASA LTD, and had the overall responsibility for that company since he held 51% of the shares in it. He averred further that Mr. Abrahamsson used the company GRECO LTD to conduct the land transactions pursuant to the joint venture agreement.

[67] Mr. Ullman described several real estate transactions by LUMA LTD. He said that the first one was the purchase of a parcel of land for EC\$329,701.32 from National Properties Limited as effected by Deed of Conveyance¹⁷ dated 27th November 2007. He indicated that the subject parcel of land is situated at Friendship, Bequia in Saint Vincent and the Grenadines and comprises 23,482.9 square feet on Survey Plan Number GR907.

[68] Mr. Ullman claimed that the purchase price and other expenses of sale were met from the monies he invested in LUMA LTD. He testified that LUMA LTD sold the parcel of land to Walter Charles Davidson for US\$200,000.00¹⁸, on 30th April 2008, as evidenced by Deed of Conveyance Number 1891 of 2008. He estimated the profit from the transactions to be about EC\$131,690.00.

[69] He explained that he arrived at that figure by making calculations as follows:

(1) Selling Price of Lot Number 3/Gr. 907.....	EC\$ 537,640:00
(2) Less 5% Vendor's Stamp Duty	
and 5% Estate Agent Commission.....	<u>EC\$ 53,764:00</u>
Net Proceeds of Sale of Lot Number 3.....	EC\$ 483,876:00
(3) Purchase Price of said Lot 3.....	EC\$ 329,701:32

¹⁷ Number 59 of 2008.

¹⁸ Equivalent to EC\$537,640.00.

(4) Plus 5% Purchaser's Stamp Duty..... EC\$ 16,485:00
 (5) Plus legal fees of, say,..... EC\$ 6,000:00
 Gross expenditure on purchase of Lot Number 3.... EC\$ 352,186:32
 Gross Profit..... EC\$ 131,690:00.

- [70] He indicated that this figure constitutes his best estimate of the profit made on the transactions in relation to Lot Number 3. He stated that having not been provided with the accounts by Mr. Abrahamsson, He is not in a position to submit an exact figure. Mr. Ullman testified that in the absence of figures from Mr. Abrahamsson and LUMA LTD he assumed that stamp duty of EC\$16,485.00 and estimated legal fees of EC\$ 6,000.00 had been paid.
- [71] He stressed that Mr. Abrahamsson and LUMA LTD have not provided any information that such payments were made and in what amounts; and that they have provided no evidence that the payment for Lot Number 3 was made in the amount of EC\$ 329,701.32. Mr. Ullman testified that in recently disclosed documents, Mr. Abrahamsson and LUMA LTD have indicated that the net proceeds of the sale of Lot Number 3 amounted to US\$178,500.00. He said they have not supplied any supporting evidence or documentation.
- [72] Mr. Ullman said that he firmly believed that the selling price of Lot Number 3 was EC\$537,640.00. He explained that using the same rate (of EC\$2.688=\$US1.00) used by Mr. Abrahamsson and LUMA LTD, the purchase price equates to US\$200,014.00. He averred that if that figure is accurate, Mr. Abrahamsson and LUMA LTD are claiming that US\$21,514.00 was paid in taxes, commission and legal fees. He pointed out that Mr. Abrahamsson and LUMA LTD have produced no evidence or information to support those expenditures.
- [73] Mr. Ullman reiterated that he is confident that that Mr. Abrahamsson and LUMA LTD were contractually obliged to account to him for those first two transactions, and to share the profit with him in keeping with the terms of their contract. He claimed that neither Mr. Abrahamsson nor LUMA LTD has done so. He said that he considered such conduct in respect of that transaction and the others, to be a flagrant breach of contract.

- [74] Mr. Ullman stated further that he has not received any monies from those transactions. He averred that neither Mr. Abrahamsson and LUMA LTD nor anyone else has ever accounted to him for the monies expended for the purchase of Lot Number 3, or monies realized from the sale of the said Lot Number 3. He stated that although he was made aware of the purchase and sale prices for those two property transactions, he is still unaware as to what use the proceeds of the sale was put, due to the fact that Mr. Abrahamsson and LUMA LTD have not presented any accounting or any bank statements in relation to any of the transactions.
- [75] He testified further that he never withdrew his interest before the capital was invested and before the development project of the LUMA Lofts had started. He claimed that LUMA LTD never tried to resolve the issue by contacting him for a settlement. He alleged that he provided the funds for the purchase of four parcels of land, two of which have been sold. Mr. Ullman has supplied no documentary or other verifiable proof that he delivered the funds to Mr. Abrahamsson or an officer of LUMA LTD as alleged. He filed no written submissions on that issue. It is not clear from his evidence how the funds were transferred and became part of LUMA LTD's capital. I accept that he invested considerable amounts in that company as working capital.
- [76] Regarding another transaction, Mr. Ullman said that LUMA LTD and Mr. Abrahamsson have disclosed a copy of LUMA LTD's Condominium Reservation Agreement which gave Mr. and Mrs. Stephen Black the right to buy Unit A1. He stated that he believed it was to be the penthouse unit for the price of US\$820,000. He said that at that point in time planning permission had not been granted and construction costs were not established. He stated that LUMA LTD and Mr. Abrahamsson have indicated that a deposit of \$10,000.00 was paid by Mr. Black, but he has not seen any evidence of this and no evidence that the sum was repaid, if indeed it was paid in the first place.
- [77] Mr. Ullman rehearsed a series of transactions which he alleged that LUMA LTD undertook in respect of its agreed mandate and purposes, specifically to serve as the agency through which the joint venture between him and Mr. Abrahamsson would be operationalized and centered. In this regard he referred to:

1. the parties' agreement to place the LUMA Lofts project on hold because of the economic situation at the time and the inability to obtain a quote for the construction;
2. a sum of US\$130,000.00 being paid to an architect Aubrey Dawkins in relation to the LUMA Lofts and in respect of which he claimed that Mr. Abrahamsson and LUMA LTD have failed to produce any evidence to substantiate such payment;
3. his belief that the correct figure paid to Aubrey Dawkins was US\$ 83,663.12;
4. a) Mr. Abrahamsson's and LUMA LTD's alleged failure to produce evidence to support the claim of payment of US\$15,000.00 to Mr. Roger Edgehill of Barbados, in relation to financial analysis for the LUMA Lofts project; and b) that he was never made aware of that purported expenditure;
5. Mr. Abrahamsson's and LUMA LTD's claim that a) US\$5,059.00 was paid to cover various small expenses; b) the sum of US\$7,500.00 was spent in marketing in Guernsey in relation to the LUMA LTD Lofts; c) the lack of evidence to support such payments; and d) his disapproval of expenditure of that nature on marketing trips.

[78] Mr. Ullman referred to a number of other transactions allegedly undertaken by Mr. Abrahamsson and LUMA LTD pursuant to the joint venture enterprise including the:

1. purchase and resale of another parcel of land from National Properties Limited and registered by a Deed of Conveyance Number 2257 of 2008, for EC\$271,911.27; from monies he invested in LUMA LTD .
2. sale of the referenced parcel to Bengt Erik Hjelmstrom for the sum of US\$160,000.00 (equivalent to EC\$430,112.00), by Deed registered as Deed Number 4489 of 2008;
3. realization of profits amounting to EC\$96,750.00 from that re-sale, based on his calculations, and his assumptions that stamp duty amounted to EC\$13,550.00 and legal fees estimated at EC\$4,900.00 had been paid; and
4. purchase of two other parcels of land using monies invested by him for that purpose.

[79] Mr. Ullman averred that the two other lots have not been re-sold and are still vested in LUMA LTD as part of its investment portfolio. He indicated that they were purchased respectively from Carlyle Harry and Sezzie Harry, and the National Properties Limited and are registered by Deeds of

Conveyance Deed Numbered 4374 of 2007 and 1952 of 2008. He estimated the total expenditure in respect of those purchases at EC\$718,610.00 and EC\$258,353.00 respectively. Mr. Abrahamsson and LUMA LTD admitted that the funds to purchase those properties were provided by Mr. Ullman and that his calculations are likely to be close to the actual amounts. I therefore find that they are.

[80] Mr. Ullman alleged further that Mr. Abrahamsson and LUMA LTD have failed to provide him with any evidence regarding the payment of:

1. US\$20,172.00 allegedly made to Mr. Glenford Stewart for engineering drawings in relation to the Park/Industry parcel;
2. EC\$32,896.00 allegedly made to Mr. Glenford Stewart for site surveys, soil investigation, site layout, civil and structural engineering, printing, photocopying and travel in respect of a residential development at Crown Point;
3. EC\$9,000.00 allegedly made to Mr. Glenford Stewart for work done without his knowledge or approval; and
4. various expenses between 2006-2009 amounting to US\$7,500.00; and the expenditure of US\$1,700.00 to build a work shack on the Park/Industry parcel; valued¹⁹ at US\$150,000.00 (in respect of which they have not provided him any details as to how that valuation was calculated).

[81] Mr. Ullman testified that as it relates to the cost of development of the LUMA Lofts and the Park/Industry parcel, Mr. Abrahamsson has claimed two per cent (2%) per annum for three years on what he claims to be the total costs incurred by LUMA LTD. Mr. Ullman averred that in his calculation, that would amount to 6% of the total costs claimed and total US\$53,097.00. He pointed out that this is incorrect because the agreement refers to 1% or 2% to be applied to the working invested capital of LUMA LTD. He contended further that the 2% fee was supposed to be used to defray administration expenses.

[82] He averred that it is his belief that in accordance with Clause 3 of the Agreement the referenced

¹⁹ By them.

Title Deeds (Deed No 4374 of 2007 and Deed No 1952 of 2008), are being held in escrow by Mr. R. Akin John. He testified that as far as he is aware the land purchase expenses for the four referenced parcels amount to an estimated gross acquisition expenditure of EC\$1,619,510.32. Mr. Abrahamsson and LUMA LTD accepted that Mr. Ullman's calculations are probably close to the actual figure. I accept that it is a reasonable estimate.

[83] Mr. Ullman testified that based on his rough calculations the financial picture appears to reflect the gross expenditure minus his investment of \$1,533,545.51 to which should be added the net receipt of EC\$870,977.00. He indicated that this should leave a difference of EC\$785,012.19. From that figure, he arrived at a reduced balance of EC\$595,012.19 having subtracted an estimated EC\$190,000.00 in disbursements.

[84] He averred that interest at the accrued bank rate for the past six or seven years must be factored into the equation. He testified that he was willing to give credit for any other authorized or justified and duly certified expenditure. He asserted that as a result of Mr. Abrahamsson's and LUMA LTD's breaches of their agreement, he has suffered serious financial loss and is entitled to damages as well as general damages. He deposed that they were contractually obliged to account to him for the first two transactions, and to share the profits with him in keeping with the terms of that contract. He maintained that neither has done so, and he considers that to be a flagrant breach of contract.

[85] In their joint Defence, Mr. Abrahamsson and LUMA LTD admitted that the agreement between Mr. Ullman and Mr. Abrahamsson provided for a 50/50 apportionment of the net profits. They acknowledged that this figure would arise from their joint enterprise in respect of each transaction; after payment of equity, accrued interest, administration fees and commissions to them and to CASA LTD and GRECO LTD respectively, pursuant to the contract.

[86] I accept Mr. Ullman's testimony that Mr. Abrahamsson has failed to account to him for how those funds were disbursed. I make no finding that Mr. Abrahamsson has thereby breached a contract with Mr. Ullman by not accounting to him for those monies. There is no sufficient evidence of such

a contract. LUMA LTD was under no such contractual obligation to Mr. Ullman. I therefore make no finding of breach of contract by it.

[87] The Court considers it appropriate to assess the implied claim of breach of statutory duty. The issue calls for a consideration of principles of company law which recognize and give effect to the separation of powers between a company and its shareholders and directors²⁰. The Companies Act²¹ makes provision for a company's directors to control its mind and management through employees or agents of the company.

[88] Gordon JA explained this concept in **John Paul De Joria et al v Gigi Osco-Bingeman et al**²². He observed that an 'underlying principle of company law is that a company is a separate and distinct legal entity from its incorporators.:' He continued:

'As it is put in Halsbury's Laws of England²³:

"Effect of incorporation. From the date of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name contained in the memorandum, separate and distinct from individual members of the company.'"

[89] The Companies Act²⁴ imposes certain statutory duties on directors. Accordingly a director will be liable to the company, to restore to it any amounts distributed paid and not recovered by the company in respect of purchases, redemptions and other acquisitions of shares contrary to sections 39, 40 or 41 and payment of dividends contrary to sections 51 and 52. Directors also owe a fiduciary duty of care to the company when exercising their powers and discharging their duties. There is no such corresponding duty of care to the shareholders.

²⁰ Salomon v A. Salomon & Co Ltd ([1897] AC 22.

²¹ Cap. 143 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 58.

²² Civil Appeal No. 4 of 2005 (unreported) judgment delivered on 24th April, 2006, at para. 18.

²³ 4th Ed. 1996 Reissue Vol 7 (1) paragraph 92.

²⁴ See for example sections 86 and 97.

[90] The law gives to a minority shareholder, rights similar to a majority shareholder. However, at times it may prove difficult and even impossible for him to exercise those rights because of his less influential position. In the case at bar, Mr. Ullman is the minority shareholder. The law seeks to recognize and give effect to the business imperatives of maintaining the smooth progression of a company's business devoid of unnecessary and ill-advised interventions by each shareholder. In doing so it gives effect to the recognition that to do otherwise for the sole purpose or protecting the personal interest of minority shareholders, would be detrimental to good governance within the company.

[91] The law has sought to protect the minority shareholder's rights by making provision for the company to take action. The well-known rule in **Foss v Harbottle**²⁵ stipulates that the company is generally the appropriate party to initiate court action. It upholds the underlying principle that the Court will not intervene in a company's internal management where it is acting within its powers. It has been held that the Court 'has no jurisdiction to do so'²⁶. In striking a balance the Court endeavours to be pragmatic in its approach.

[92] From a practical viewpoint a minority shareholder is likely to encounter difficulties in bringing an action in the company's name since it would invariably be under the control of the directors.²⁷ The minority shareholder is entitled to enforce contractual rights conferred by the company's by-laws. Mr. Ullman has not alleged breach of any. The Court may grant relief to an individual minority shareholder to protect certain rights, such as a right to vote²⁸.

[93] It has been held that a shareholder had neither a personal nor a derivative action where he alleged that the company's accounts suppressed information about a contingent liability, contrary to established rules²⁹. The Court will however seek to give effect to an investor's right to have critical information from the company where such information is critical to the investor's protection. In such

²⁵ (1843) 2 Hare 461.

²⁶ Per Lord Davey in *Burland v Earle* [1902] AC 83.

²⁷ *Breckland Group Holdings Ltd v London & Suffolk Properties Ltd* (1988) 4 BCC 542.

²⁸ *Pender v Lushington* (1877) 6 ChD 70.

²⁹ *Devlin v Slough Estates Ltd* [1983] BCLC 497.

a case, the test is whether the interference is likely to do any good. Similarly, if the minority shareholder can demonstrate that the majority have attempted to change the by-laws to the minority's detriment he may succeed if he can prove that such alteration is not bona fide for the company's benefit as a whole³⁰.

[94] A minority shareholder may also obtain relief if he can establish that he has suffered a personal wrong at the hands of the majority or if the company is threatening to take *ultra vires* action. If he succeeds the minority shareholder will normally obtain declarative or injunctive relief but no monetary award. He may also pursue a derivative action.

[95] In the case at bar, Mr. Ullman claimed that LUMA LTD failed to account to him for hundreds of thousands of Eastern Caribbean Dollars. He complained that he has never received as much as one dollar as a return on his investment of over half a million United States Dollars. He explained that his only comfort is that LUMA LTD is still possessed of two parcels of land to which it has clear title.

[96] He averred that by removing him from the Board of Directors without his approval and against his will, Mr. Abrahamsson and his wife have thereby operated LUMA LTD without regard to his interests. He said he has not been given notice of shareholders' or directors' meetings. Mr. Abrahamsson and LUMA LTD denied this in their defence but advanced no alternative assertion. They offered to return Mr. Ullman to the Board of Directors. I accept Mr. Ullman's averments that he has not been given notices of meetings. He is entitled to be notified of all meetings of shareholders unless he waived such right³¹.

[97] He indicated that he has been very patient with LUMA LTD, and gave Mr. Abrahamsson more than ample time to get on with the joint project. He said that he sent and caused several emails to be sent to Mr. Abrahamsson in which he raised a number of concerns relating to management accounts or indeed any accounts or audited statements; the position of LUMA LTD in respect of the filing of tax returns; bank statements for LUMA LTD; and Mr. Abrahamsson's alleged efforts to

³⁰ Brown v British Abrasive Wheel Co [1919] 1 Ch 290; Clemens v Clemens Bros [1976] 2 All ER 268.

³¹ Sections 111 and 113 of the Companies Act.

market the properties. He averred that Mr. Abrahamsson had the overall responsibility for LUMA LTD's management and had failed to submit the accounts when asked.

- [98] Mr. Ullman noted that Mr. Abrahamsson recently disclosed a document purporting to detail the expenses and income of LUMA LTD for the period 2007-2008. However, he said that the document, which appears to have been recently prepared, does not reflect contemporary accounting. He remarked too that Mr. Abrahamsson has not produced any evidence to prove that the alleged expenses were in fact paid. He pointed out that Mr. Abrahamsson has not produced any bank statements, cancelled cheques or any confirmation of money transfers by the Company's bank.
- [99] Mr. Ullman testified that Mr. Abrahamsson and LUMA LTD have disclosed a copy of an email dated 8/21/07 from Lars Abrahamsson to him, to which was attached a general proposal on how to proceed. He remarked that it is noteworthy that paragraph 4 of that proposal stated that he would receive accrued interest of eight per cent (8%) per annum when each project is sold.
- [100] Mr. Ullman averred that his financial interests have been abused by Mr. Abrahamsson and LUMA LTD in respect of his investments in Saint Vincent and the Grenadines, not limited to the parcels of land, but also including money paid into LUMA LTD, and the profits on the sale of two of the parcels of land. He maintained that Mr. Abrahamsson and LUMA LTD have consistently failed to provide accounting, bank statements or to submit any returns as required by law. He did not indicate to which law he referred.
- [101] Mr. Ullman insisted that he did not withdraw from his commitment to invest the initial funds. He averred that he is a well-educated person, particularly in the field of business, both from an academic and practical standpoint. He testified that he holds an M.A. degree from St. Catherine's College, Oxford, England, and a P.P.E. degree (Politics, Philosophy and Economics) from the same college and an M.B.A. degree from INSEAD (European Institute for Business Administration).

- [102] Mr. Ullman stated that it has become quite clear to him that Mr. Abrahamsson does not intend to fully honour both the commitments he made to him, as well as the principles which ought normally to guide mature men and women of affairs. He indicated that he became significantly disappointed in what he regards as the cavalier attitude which Mr. Abrahamsson has chosen to adopt in his dealings with him, and in particular his surreptitious removal from the Board of Directors of LUMA LTD; and Mr. Abrahamsson's refusal to render any accounts to him pertaining to their joint enterprise.
- [103] He complained that Mr. Abrahamsson and LUMA LTD have not given an undertaking that they will not sell any of the unsold lots of land. He asserted that an injunction restraining LUMA LTD from alienating any of the unsold lots without his specific authorization, would be necessary in order to safeguard his interests in them.
- [104] Having regard to the company law principles outlined earlier, there is no evidence that a contract existed between Mr. Ullman and LUMA LTD from which the alleged obligations flowed. LUMA LTD is not liable to Mr. Ullman for breach of contract in respect of the alleged failure to account to him for the two referenced transactions. Neither is Mr. Abrahamsson.
- [105] Applying the same principles, it seems clear that Mr. Ullman and all shareholders in the company LUMA LTD have an interest in obtaining notices regarding shareholder meetings and accounting information which would usually be presented at such meetings. I am satisfied that Mr. Ullman has been denied such information. LUMA LTD has a statutory duty to provide such information. It has failed to honour that obligation.
- [106] To the extent that Mr. Abrahamsson had a managerial or supervisory responsibility to issue such notices on behalf of LUMA LTD, he has failed to discharge that responsibility. I note however that as a director he is liable to be indemnified by LUMA LTD for any such liability, in accordance with clause 10 of By-Law 1 of the company. Similarly, he is absolved from responsibility for any acts done by LUMA LTD. I find therefore that Mr. Abrahamsson is not liable for LUMA LTD's breach of duty in this regard. I hasten to add that no breach of statutory duty was pleaded.

ISSUE 3 - To what relief is Mr. Ullman entitled?

- [107] In light of the findings on liability the Court must consider what relief to grant to Mr. Ullman. Damages are not appropriate because his investment appeared to be by way of payment for shares and also through contribution to the company's capital. In both instances, the funds become company property and must be dealt with in accordance with directives and decisions of its management team, including the directors.
- [108] Mr. Ullman loses all proprietary interest in the monies once they are converted to and become part of LUMA LTD's property. His claim relates only to such monies. What he retained is an interest in the company represented by his shares. He thereby became entitled to an accounting at shareholder's meetings; on winding up of the company or by order of Court. Having been removed as director and been deprived of notices of shareholders' meetings, I am satisfied that Mr. Ullman has demonstrated that this is an appropriate case in which declaratory and injunctive relief should be granted.
- [109] I therefore order that LUMA LTD shall on or before 31st October 2018 retain a qualified accountant to prepare audited financial accounts for the period 1st January 2014 through 31st October 2018. The accountant shall endeavour to finalize and submit an original set of audited accounts to each party, on or before 28th December, 2018. LUMA LTD shall bear the expenses associated with the preparation of those accounts. LUMA LTD is restrained from selling, disposing of or otherwise alienating any of the unsold lots, registered in its name by Deeds of Conveyance 4374 of 2007 and 1952 of 2008, without leave of the Court or further order.
- [110] It is declared that the shareholding in LUMA LTD consists of 100 ordinary shares having the nominal value of \$10,000.00 each of which Mr. Michael Ullman beneficially owns 49 shares and Mr. Lars Abrahamsson owns 51 shares.
- [111] I make no order returning Mr. Ullman to the Board of Directors of LUMA LTD or directing Mr. Abrahamsson to amend the by-laws to require the signature of two directors, one being Mr. Ullman to effect execution of important documents on behalf of LUMA LTD, as I consider such action to be

an unnecessary over-reaching by the Court in the company's internal management.

[112] I make no declaration that LUMA LTD is a joint venture real estate company with the main purpose of buying, selling, developing and selling real estate in Bequia, Saint Vincent and the Grenadines. Such matters would be adequately addressed in the incorporation and other company records maintained at CIPO. It is therefore unnecessary to make an order to state the obvious.

[113] I make no order for the taking of accounts specifically to determine whether and if so what monies are contractually due to Mr. Ullman pursuant to joint venture activities by Mr. Abrahamsson and LUMA LTD. Mr. Ullman has not proven that Mr. Abrahamsson or LUMA LTD is contractually indebted to him in respect of such activities. I therefore make no order for payment to him of sums deemed due to him on the taking of such accounts. Those are matters which fall outside the scope of company law. He might have obtained such an order under the Partnership Act³² if the parties were involved as partners in a firm, but not in the instant case.

[114] Mr. Ullman's claim for damages is misconstrued. Such a remedy is not available to him based on the findings. His claim for damages is accordingly dismissed.

Costs

[115] Mr. Ullman has succeeded on part of his claim against LUMA LTD. He is entitled to his costs on the prescribed costs scale. LUMA LTD is directed to pay Michael Ullman prescribed costs of \$7,500.00 pursuant to CPR 65.5(2) (b). Lars Abrahamsson did not take an active role in this case. I find that he is not entitled to recover costs.

ORDER

[116] It is accordingly declared and ordered:

1. The shareholding in LUMA LTD consists of 100 ordinary shares each with a nominal value of \$10,000.00 which is beneficially owned by Mr. Lars Abrahamsson and Mr. Michael Ullman in unequal proportions. It is further declared that Mr. Abrahamsson owns a beneficial interest in

³² Cap. 155 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

51 of the shares with a total nominal value of \$510,000.00; while Mr. Ullman beneficially owns 49 shares with a total nominal value of \$490,000.00.

2. LUMA LTD shall on or before 31st October 2018 retain a qualified accountant to prepare audited financial accounts for the period 1st January 2014 through 31st October 2018. The accountant shall endeavour to finalize and submit an original set of accounts to each party, on or before 28th December, 2018. LUMA LTD shall bear the expenses associated with the preparation of those accounts.
3. LUMA LTD is restrained from selling, disposing of or otherwise alienating any of the unsold lots, registered in its name by Deeds of Conveyance 4374 of 2007 and 1952 of 2008, without leave of the Court or further order.
4. Mr. Ullman's claims against Lars Abrahamsson and LUMA LTD for an order:
 - (a) restoring him to the Board of Directors;
 - (b) declaring that LUMA LTD is a joint venture real estate company with the main purpose of buying, selling, developing and selling real estate in Bequia, Saint Vincent and the Grenadines;
 - (c) directing Mr. Abrahamsson to cause LUMA LTD's by-laws to be amended to require the signature of two directors, (one being Mr. Ullman) to effect the execution of important documents by LUMA LTD particularly those affecting property interests;
 - (d) for the taking of accounts specifically to determine whether and if so what monies are contractually due to Mr. Ullman pursuant to joint venture activities by Mr. Abrahamsson and LUMA LTD; or for payment to him of sums deemed due to him on the taking of such accounts; and
 - (e) damages;are dismissed.
5. LUMA LTD shall pay to Mr. Michael Ullman prescribed costs of \$7,500.00 pursuant to CPR 65.5(2) (b).

Postscript

[117] I am grateful to learned counsel for the written submissions and electronic copies of the witness summary and affidavit filed on behalf of Mr. Ullman.

**Esco L. Henry
HIGH COURT JUDGE**

By the Court

Registrar