

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 325 OF 2014

BETWEEN:

KEVIN MILLIEN

Claimant

AND

**BT TRADING LIMITED
GEORGE POPESCU
ALPHA SERVICES LIMITED**

**1st Defendant
2nd Defendant
3rd Defendant**

In Court: **October 1 and 9, 2015.**

BEFORE: Hon. Chief Justice Kenneth Benjamin.

Appearances: Claimant in person.
Mr. Rodwell Williams SC, Ms. Lisette Staine with him, for the Defendants.

JUDGMENT

[1] The Claimant is a businessman and a financial services professional who resides in New York in the United States of America. By a Claim Form and Statement of Claim dated June 27, 2014, he brought proceedings against his business partner, George Popescu, the second Defendant, BT Trading Limited, the first Defendant and Alpha Services Ltd., the third Defendant, seeking the following relief:

“1. A Declaration that the increase of the 1st Defendant’s share capital from 25,000 shares to 150,000 shares is unlawful, null, void and of no effect;

2. A Declaration that the 2nd Defendant and/or the purported directors of the 1st Defendant acted contrary to the Articles of Association and in bad faith and for an improper purpose in holding meetings and/or passing resolutions:
 - (i) to dilute the Claimant's shareholding in the 1st Defendant;
 - (ii) to increase the 1st Defendant's capital from 25,000 to 150,000;
 - (iii) to change the class of the Claimant's shares to deprive him of his voting rights; and
 - (iv) to remove the Claimant as director of the 1st Defendant; thereby rendering those resolutions and/or meetings invalid.
3. A Declaration that the Claimant and the 2nd Defendant hold shares of the same class in the 1st Defendant in the proportion of 50% each;
4. An Order directing the 3rd Defendant to permit the Claimant to inspect the books and records of the 1st Defendant and to make copies or extracts therefrom;
5. An Order reversing or setting aside all resolutions passed by the 1st Defendant to dilute the Claimant's shares and alter the class of the Claimant's shares and in removing the Claimant as a director of the 1st Defendant;
6. A permanent injunction restraining the Defendants whether by themselves, their servants or agents or any of them or otherwise howsoever from in anyway taking, selling, pledging, transferring, charging, diluting or in any way disposing of or taking any steps to bring about or facilitate or register the transfer of the ownership of the Claimant's shares held in or the assets of the 1st Defendant of

the 1st Defendant or its subsidiaries, BT Prime Limited and Boston Prime Limited without the Claimant's consent.

7. Damages;
8. Interests (sic);
9. Costs;
10. Such further or other relief which this Honourable Court deems just."

[2] Prior to trial, the Claimant sought and obtained an interim injunction made on July 2, 2014 restraining the Defendants from "taking, selling, pledging, transferring, charging, diluting or in any way disposing of or taking any steps to bring about or facilitate or register the transfer of the ownership of the Claimant's shares held in or the assets of the 1st Defendant or its subsidiaries, BT Prime Limited and Boston Prime Limited". The said order also restrained the 3rd Defendant from "registering any further resolutions, minutes or such other documents in respect of the 1st Defendant which has the effect of altering ownership of and/or transferring ownership and control of the 1st Defendant or the subsidiaries to any third party". The Order was subsequently discharged and simultaneously re-imposed by the Court and remains in effect until the final disposal of the Claim.

[3] The Claim came on for trial. The Claimant represented himself. The 2nd Defendant did not appear. The Defendants were represented by Counsel although before the trial commenced, an order was made for Barrow & Williams LLP to cease to act as the legal practitioners for the 1st and 2nd Defendants subject to service of such order in accordance with Rule 62.6(4) of the Supreme Court (Civil Procedure) Rules, 2005.

[4] The Claimant relied on his three affidavits filed in the proceedings and sworn on July 1, 2014, July 28, 2014 and January 19, 2015. He was not cross-examined. No witnesses appeared on behalf of the Defendants for cross-examination hence no evidence was led in defence against the Claim.

BACKGROUND

[5] The facts were gleaned from the affidavits of the Claimant. He deposed that he met the second Defendant, George Popescu in 2008 and in 2009 they together caused the 1st Defendant, BT Trading Limited, to be incorporated as an international business company in Belize on November 3, 2009. The Claimant and the 2nd Defendant became directors of the 1st Defendant and the holders of 25,000 shares each of the 50,000 shares of \$1.00 each comprising the authorized share capital. The shares were issued by Intershore (Belize) Ltd. which was the registered agent and subscriber to the Memorandum of Association of the 1st Defendant. Further by resolution dated November 3, 2009, the subscriber appointed the Claimant and 2nd Defendant as directors of the 1st Defendant.

[6] Prior to the incorporation of the 1st Defendant, in August 2009, the Claimant and 2nd Defendant became equal shareholders in Boston Technologies Inc., a software company incorporated in the State of Delaware. Subsequently, the shareholding was altered to the 2nd Defendant having 51% and the Claimant 49% by virtue of an order of Court.

[7] On April 27, 2010, BT Prime Ltd. was incorporated in the British Virgin Islands and became a wholly owned subsidiary of the 2nd Defendant, which held its entire authorized share capital of 5000 shares of \$1.00 each. The Claimant and 2nd Defendant were appointed as the first directors of BT Prime Ltd.

[8] On November 10, 2009, the Claim and the 2nd Defendant together founded BT Prime Limited a company registered in England. They were both appointed as directors and the 1st Defendant became the holding company and sole shareholder of the single issued share. In due course, the 1st Defendant applied for additional shares to be issued. Also, to distinguish it from the BVI Company, the name of the UK Company was changed to Boston Prime Ltd. in December 2011.

[9] BT Prime Limited and Boston Prime Ltd. became wholly owned subsidiaries of the 1st Defendant with the Claimant and the 2nd Defendant as directors of BT Prime Ltd. and the 1st Defendant. The subsidiaries conducted foreign exchange business thereby

generating revenue for the holding company, the 1st Defendant. Boston Technologies Ltd. acted as the vendor for the subsidiaries and operated independent of the subsidiaries in the capacity of a service provider.

[10] On November 18, 2009, the Claimant and the 2nd Defendant, as directors of the 1st Defendant, passed a resolution reducing the authorized share capital to 25,000 shares of \$1.00 each. On December 18, 2009, the registered agent issued a Certificate of Incumbency attesting that the authorized share capital of the 1st Defendant was 25,000 shares, that the sole directors were the Claimant and the 1st Defendant and that the said directors were equal shareholders of the registered shares.

[11] In May and June 2014, the Claimant became aware from articles published in Forex Magnates, an industry publication, that the 2nd Defendant had entered into a Letter of Intent to sell the 1st Defendant and its subsidiaries to a named business which is engaged in foreign exchange services globally. In addition to these articles which were exhibited to the Court, the Claimant also disclosed an email in which the 2nd Defendant stated that the Claimant held less than equal shareholding in BT Prime Ltd. The Claimant also disclosed from a meeting with a representative of the proposed purchaser of Boston Technologies Inc., the 2nd Defendant and its subsidiaries, information he was given confirming the intended sale and purchase of these entities.

[12] The Claimant visited Belize in June 2014 and inquired into the status of the 1st Defendant. It was discovered that the 3rd Defendant, Alpha Services Limited, was then the registered agent of the 1st Defendant. On June 24, 2014 he spoke to Mr. Rodwell Williams, who was acting on behalf of the 3rd Defendant. He was informed that he was no longer a director of the 1st Defendant having been removed by a board resolution and that the 2nd Defendant was the sole signatory for the 1st Defendant. No other information was forthcoming and the 3rd Defendant refused to permit the Claimant to inspect the books and records of the 1st Defendant.

[13] The Claimant has categorically deposed that he has never been given notice of any meeting of the Board of Directors of the 1st Defendant nor has he ever consented to

or authorised his removal as a director. He asserted that his rights as a shareholder have been infringed. He puts his position thus in his first affidavit.

- “27. I honestly and verily believe that my 50% shareholding in BT Trading has not only been diluted, but have been altered in such a way to completely strip me of all my voting rights as a member of BT Trading.
28. BT Trading, acting by Mr Popescu have acted, unlawfully, improperly and in bad faith in diluting my 50% shareholding in BT Trading, in removing me as a Director of BT Trading, in presumably changing the class of shares to which I am entitled so as to deny me my voting rights as a member owning 50% of the shares of BT Trading.
29. I honestly and verily believe that the purpose of these actions by Mr Popescu are self-serving and amount to self-dealing and are designed solely to deprive me of my equal ownership interest in BT Trading and my right to make decisions in respect of BT Trading and the subsidiaries including any decisions relating to the sale, if any, of the business or assets of those companies.
30. By virtue of the foregoing actions of the Defendants, I have been deprived of my rights as 50% shareholder and director of BT Trading and have suffered and will continue to suffer loss and damages as a consequence of the Defendants clandestine actions.”

[14] The second affidavit of the Claimant dated July 28, 2014 was relied upon at trial. It was originally filed in response to a sworn assertion by the 2nd Defendant that the Claimant and himself had arrived at a settlement between themselves wherein the 2nd Defendant was awarded 50% plus one share. The Claimant denied ever having such a discussion as to settlement with the 2nd Defendant. He further went on to deny that

there was ever any discussion, far less any agreement to increase the share capital of the 1st Defendant.

[15] The Claimant admitted in the said second affidavit that a dispute arose in June 2013 over Boston Technologies Inc. The dispute led to the Claimant filing suit and the order of the court granting 51% ownership of the shareholding to the 2nd Defendant. It was further said by the Claimant that he was never aware of any “capital call” and therefore there was no opportunity to participate in any such event.

[16] The 1st and 2nd Defendants filed a Defence dated December 12, 2014. However, no evidence was led to support the averments made therein or to respond to the evidence led by the Claimant.

[17] The 3rd Defendant entered a Defence on December 10, 2014 but no evidence was led on its behalf. Consistent with the Defence, learned Senior Counsel stated at trial that the 3rd Defendant was prepared to accede to the order specifically sought against it in the Statement of Claim and to disclose to the Claimant all such records in its possession received from the previous registered agent. It was said that such records, to which the Court was not privy, did not reflect that the Claimant was a director of the 1st Defendant. It was emphasized that whatever events were complained of by the Claimant, occurred prior to the 3rd Defendant being on record as the registered agent of the 1st Defendant.

FINDINGS

[18] There is no demur to the sworn assertions of the Claimant on the evidence before the Court. There is ample documentary proof of the Claimant being an equal shareholder and a co-director with the 2nd Defendant of the 1st Defendant. The Claimant has testified that he was never involved in any process by which he could have been removed as a director or his shareholding diluted. Accordingly, the Claimant is entitled to the declarations sought in the Statement of Claim. He is further entitled to an order rendering and setting aside any and all resolutions passed by the 1st Defendant altering his shareholding in and removing him as a director of the 1st

Defendant. In order to give continued efficacy to the Claimant's rights, a permanent injunction is ordered in the terms sought in the Statement of Claim.

[19] The 3rd Defendant has consented to the order being made for the inspection of the books and records of the 1st Defendant. This prayer shall be an order of the Court.

DAMAGES

[20] The Claimant has prayed for damages in the Statement of Claim. To this end, certain statements were made in his address at the close of the case. Having perused the affidavits upon which the Claimant relies there is not an iota of evidence upon which the Court can embark on an assessment of damages. However, the Claimant has undoubtedly suffered loss and is entitled to some damages. I therefore award the sum of \$5,000.00 as nominal damages to be paid by the 1st and 2nd Defendants.

COSTS

[21] This matter has been the subject of multiple interlocutory applications in advance of the trial. It would be impossible in the absence of an agreement for the Court to fix costs without the benefit of an itemised bill. In the premises, costs shall be the Claimant's to be taxed by the Registrar.

ORDERS

- [22] 1. It is declared that:-
- (a) The increase of the 1st Defendant's share capital from 25,000 shares to 150,000 shares is unlawful, null, void and of no effect.
 - (b) The 2nd Defendant and/or the purported directors of the 1st Defendant acted contrary to the Articles of Association and in bad faith and for an improper purpose in holding meetings and or/passing resolutions:
 - (i) to dilute the Claimant's shareholding in the 1st Defendant;
 - (ii) to increase the 1st Defendant's capital from 25,000 to 150,000;

- (iii) to change the class of the Claimant's shares to deprive him of his voting rights; and
 - (iv) to remove the Claimant as director of the 1st Defendant.
2. It is ordered that:
- (a) All resolutions passed by the 1st Defendant to dilute the Claimant's shares and alter the class of the Claimant's shares and in removing the Claimant as a director of the 1st Defendant be reversed and set aside.
 - (b) The Defendants whether by themselves, their servants or agents or any of them or otherwise howsoever be restrained by permanent injunction from in anyway taking, selling, pledging, transferring, charging, diluting or in any way disposing of or taking any steps to bring about or facilitate or register the transfer of the ownership of the Claimant's shares held in or the assets of the 1st Defendant or its subsidiaries, BT Prime Limited and Boston Prime Limited without the Claimant's consent.
3. It is further ordered by consent that the 3rd Defendant permit the Claimant to inspect the books and records of the 1st Defendant and to make copies or extract therefrom.
4. Judgment is entered for the Claimant against the 1st and 2nd Defendants in the sum of \$5,000.00 as damages.
5. The costs of the Claim shall be the Claimant's to be taxed by the Registrar and paid by the 1st and 2nd Defendants.

KENNETH A. BENJAMIN
Chief Justice