2022 JMSC Civ 94

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

[DIVISION]

CLAIM NO. SU 2021 CV 03895

BETWEEN	**THE ALL ISLAND BANANA GROWERS ASSOCIATION LIMITED**	**CLAIMANT**
AND	**BYRON HENRY**	**1ST DEFENDANT**
AND	**OSBERT JOHNSON**	**2ND DEFENDANT**
AND	**FREDERICK MORGAN**	**3RD DEFENDANT**
AND	**MARVEL CHAMBERS**	**4TH DEFENDANT**
AND	**SEYMOUR WEBSTER**	**5TH DEFENDANT**
AND	**WINSOME CROSDALE**	**6TH DEFENDANT**
AND	**HERMINE CAMPBELL**	**7TH DEFENDANT**
AND	**KENNETH LLOYD McLAUGHLIN**	**8TH DEFENDANT**
AND	**GLENDON CONROD ODEL HARRIS**	**9TH DEFENDANT**

IN CHAMBERS VIA ZOOM

Mrs Tana'ania Small Davis and Miss Cavelle Johnston instructed by the Law Office of Cavelle Johnstone for the claimant.

Mr Mark Paul Cowan instructed by Nunes Scholefield DeLeon and Co for the second, third, fourth, seventh and eight defendants/Applicants.

Miss Tedesha Cowell for the first, fifth and sixth defendants.

Miss Peta Gaye Manderson instructed by John Graham Attorneys at Law for the ninth defendant.

Heard: February 24, April 5, May 24 and June 28, 2022

Application to strike out Fixed Date Claim Form and Notice of Application for injunction - Whether company authorized the bringing of the claim - Whether resolution passed in accordance with provisions of the Articles and Memorandum of Association.

PETTIGREW COLLINS J

THE APPLICATION

[1] Before the Court is an application to strike out the Fixed Date Claim Form and the Amended Notice of Application for Court Orders filed on September 16, 2021. This application was filed January 4, 2022. The applicants are the second defendant Osbert Johnson, the third defendant Frederick Morgan, the fourth defendant Marvel Chambers, the seventh defendant Hermine Campbell and the eighth defendant Kenneth Lloyd McLaughlin. The orders sought in the Notice of Application for Court Orders are as follows:

> i) That the claimant's Amended Fixed Date Claim Form and Amended Notice of Application for Court Orders filed herein against the defendants be struck out as an abuse of process and disclosing no reasonable ground for bringing the claim.
>
> Alternatively
>
> ii) That the claimant's claim is dismissed, summarily at the first hearing of the AFDCF scheduled for January 10, 2021 or any adjourned hearing thereafter.
>
> iii) That the time for hearing this application be abridged in all the circumstances.

iv) That the costs of the claim and this application to the 2nd, 3rd, 4th, 7th and 8th defendants to be taxed, if not agreed.

[2] Among the grounds on which the application was brought are the provisions of rules 26.3(1)(b) and (c), 27.2(8) and 11.11 of the Civil Procedure rules.

BACKGROUND

[3] The Fixed Date Claim Form (FDCF) filed on September 16, 2021 was supported by the joint affidavit of Miss Annette Thompson, Messrs Lincoln Tobin, Louis Chambers, Michael Garrick and Adrian Burke who stated that they are directors of the named claimant, the All Island Banana Growers Association Limited (AIGBAL). Interim orders were granted pursuant to the Without Notice Application for Court Orders filed on September 16, 2021. Among the orders granted by Stamp J were an order restraining the defendants whether individually or collectively from convening any meeting of the Board of Directors of the claimant for a period of 22 days and orders preventing the defendants from holding themselves out as being authorized to act on behalf of, or do any business or engage in any dealings whether with banks, financial institutions or the government on behalf of AIGBAL. The effect of the orders sought and granted was to restrain the defendants from acting in the capacity as directors of the named claimant, An Amended Notice of Application for Court Orders was filed on September 27, 2021. An extension of the interim orders as well as a number of the orders sought in the FDCF were sought in that Amended Notice.

[4] Among the orders sought in the claim are orders seeking to nullify the purported appointment of the Board of directors of the AIBGAL. The members of that Board are named in a Notice of Appointment/Change of Directors (Form 23) dated July 26, 2021 which was filed in the office of the Registrar of Companies by the 7th Defendant. An order was also sought to have certain individuals said to be continuing members of the Board of Directors of the claimant, some of whom

were installed pursuant to an Area Council meeting held on June 24, 2021, treated as the interim Board of Directors as at June 16, 2021 until the court makes further orders. The remaining orders are consequential to the two orders referenced.

[5] The named claimant the AIBGAL is a company registered under the laws of Jamaica and is said to be a non-profit organization with its own Memorandum and Articles of Association (also referred to as the Articles or the Memorandum). It was garnered from the affidavit of Mrs Hermine Campbell filed December 30, 2021 that AIBGAL is a farmer's organization intended to promote and institute measures to foster the well - being of banana and plantain growers in Jamaica. More specifically, the Memorandum also speaks to registering and organizing farmers into strong groups and promoting and developing the interest of those farmers and to inform and educate them as to acceptable standards of export quality of the produce.

[6] In the joint affidavit of the individuals named at paragraph 1 (who will for the sake of convenience be referred to as the Pursuers as the applicants designated them), the affiants aver that the defendants have since the 16th of June 2021, and in breach of the Memorandum and Articles of the claimant, flouted the provisions for appointment of directors and have held themselves out to the public as the newly constituted Board of Directors purportedly appointed since that date.

[7] It is not disputed that the Form 23 Notice of Appointment – Change of Directors was filed at the Office of the Registrar of Companies on the 26th of July 2021 by the seventh defendant Mrs Hermine Campbell, naming Messrs Byron Henry, Osbert Johnson, Marvel Chambers, Seymour Webster, Misses Winsome Crosdale, Annette Thompson, Mrs Hermine Campbell, Messrs. Lincoln Tobin, Kenneth Lloyd McLaughlin Devon Plunkett and Glendon Harris as company directors.

[8] The applicants in this matter are the second, third, fourth, seventh and eighth defendants in the claim. In an affidavit deponed to by Mrs Campbell on their behalf, it was explained that an annual general meeting (AGM) of the claimant used to be called each year in a timely manner but that since 2018, none had been called. She said that in 2019, that was due to financial problems and since 2020, the onset of the covid 19 pandemic has resulted in no AGM being called. She states that notwithstanding that fact, the Board had continued to meet.

[9] Both Mr Donald Elvey and Mrs Campbell said in their respective affidavit that as at 2018, the directors of the claimant were as follows:

St. Mary Area Council – Byron Henry
Hermine Campbell

St James Area Council – Osbert Johnson
Frederick Morgan

Portland Area Council - Annette Thompson
Richard Campbell

General Directors - Egbert Miller St Mary nominee
Winsome Crosdale -- Portland nominee

Co-opted Directors - Gary Watson
Lincoln Tobin
Marvel Chambers

[10] According to Mr Donald Elvey, on December 11, 2018, Messrs Louis Chambers and Seymour Webster were appointed as co-opted directors. He also said that Messrs Marvel Chambers, Seymour Webster and Miss Winsome Crosdale were removed on October 20, 2020 for non - attendance at meetings and Mr Gary Watson resigned in January of 2021.

[11] Mrs Campbell explained that there developed a strained relationship between Mr Elvey and some of the Board members. It is to be observed that the applicants say Mr. Elvey is the General Manager who assumed that position in 2016, while the Pursuers say that he is the Company Secretary. The view was taken that the

business of AIBGAL was not being conducted as it should be and therefore a group of four members of the Board decided to call a board meeting on June 16, 2021.

[12] Other relevant evidence will be referred to as it becomes necessary in resolving the issues raised. Suffice it to say at this stage, that Mrs Campbell explained the events leading up to the convening of the meeting of June 16, 2021. According to her, by that time, Miss Annette Thompson, Mr Louis Chambers and Mr Lincoln Tobin by their actions, were deemed to have vacated their positions as directors.

[13] 0She said that the remaining members of the Board decided to utilize the provisions of Article 61 in order to convene the meeting and elect new members to the Board. It was at that meeting according to her, that Mr Glendon Harris and Mr Devon Plunket were appointed to the Board and Ms Veronica Lyons elected as the new Secretary. It was in those circumstances she said, the Form 23 Notice of Appointment/Change of Directors dated July 26, 2021 was filed at the office of the Registrar of Companies.

[14] Based on that notice of Change of Directors, the Board of Directors consists of the following persons: Osbert Johnson, Frederick Morgan, Marvel Chambers, Seymour Webster, Winsome Crosdale, Annette Thompson, Hermine Campbell, Lincoln Tobin, Kenneth Lloyd Mc Laughlin Devon Plunkett and Glendon Conrad Odel Harris. Miss Veronica Lyons is named as the Company Secretary.

[15] As far as the Pursuers are concerned, as at the date of filing of the document with the Registrar of Companies, the Board consisted of Messrs Oshane Jackson, Michael Garrick, Adrian Burke, Louis Chambers, Osbert Johnson Lincoln Tobin Frederick Morgan and Miss Annette Thompson. Mr Elvey is said to have been and remains as the company secretary.

THE ISSUES

[16] The main issue arising in this application, is whether the filing of the Fixed Date Claim Form was authorized by the AIBGAL. In the interest of convenience, I will discuss the matter under the following sub issues:

1. Whether the individuals who signed the resolution were directors of AIBGAL at the time of the signing.

2. Assuming they were properly elected/nominated at the June 24, Area Council meeting, whether Messrs Jackson, Garrick and Burke were directors who could properly have been included in the quorum of directors in order to confirm their own appointment as directors.

3. Was the resolution the product of a Board Meeting. If not, was it nevertheless a valid resolution.

4. The court must also consider whether the applicants have established a basis for striking out. And

5. Whether there is an alternative to striking out if it finds that the resolution was not properly passed.

DECISION

[17] The application succeeds for reasons that are set out below, suffice it to say at this point that the resolution passed which purported to permit the bringing of this claim was not in all the circumstances a resolution passed by the Board of AIBGAL There was no valid meeting of the board of directors at which the resolution was passed. Neither was the resolution passed in accordance with the provisions of Article 65(2).

Whether the individuals who signed the resolution were directors of AIBGAL at the time of the signing.

[18] The applicants' first salvo is that the AFDCF and the Notice of Application for Court Orders (NACA) were filed without the authority of the claimant. It is the applicants' position that the resolution which purportedly authorized the bringing of proceedings was not valid. The resolution was not valid it is said, because at least two of the individuals purporting to be directors who authorized the resolution for the bringing of the claim and consequently the notice of application for court orders, were not properly appointed directors, since their election at the St Mary Area Council meeting of the 24th of June 2021 did not properly constitute them directors of the Board. The applicant pointed the court to the evidence which they say support their position.

[19] The evidence reveals that the FDCF and subsequently the AFDCF and NACA were brought pursuant to a Special Resolution said to have been passed by the Board of AIBGAL authorizing the retaining of an attorney at law to commence the proceedings. It is not disputed that the persons who signed that resolution are: Messrs Oshane Jackson, Michael Garrick, Adrian Burke, Lincoln Tobin and Louis Chambers. The applicants argue that only Mr Lincoln Tobin and arguably Mr Louis Chambers were properly directors at the time of the signing of the resolution. While they do not accept that Mr Burke was properly installed as a director, the arguments focused mainly on the position of Messrs Garrick and Jackson.

[20] I now look at the status of each. In order to understand whether the three disputed individuals were members of the Board, it is important to understand the process by which directors are appointed. Much of this information came from the affidavit of Mrs Campbell. Mrs Campbell outlined that the business of AIBGAL is conducted by its Board of Directors. At paragraph 25 she sets out the provisions of Article 42. That Article provides that:

42(1) Until otherwise determined by the association in a general meeting the board of Directors shall consist of:

(i)Two General Directors who shall be elected by the delegates at the annual general meeting of the Association

Area Council Directors; two from each Council

Three additional Directors who may be c-opted at the discretion of the Board

The two General Directors and three co-opted directors shall retire from the Board at the beginning of the Annual General Meeting of the Association

47 (1) At each Annual General Meeting one third of the Area Council directors for the time being, or, if their numbers is not three, or a multiple of three, then the number nearest one third shall retire from office.

The Board of the Association shall keep a record of the date of the election of each Area Council director and shall, not less than 30 days before the date fixed for the annual meeting of each Area Council, advise each Area Council of the names of the directors due to retire.

48 The directors to retire in every year shall be those who have been longest in office since the last election.

50. No one shall be eligible to be elected as a General Director at an annual general meeting unless his name is included in a panel of nominees for election submitted by the area Councils pursuant to the provisions in article 26(2)(vi).

[21] Pursuant to Article 60, the necessary quorum of directors to transact business is five. At paragraph 27 of her affidavit, Mrs Campbell pointed out that vacancies of co-opted directors may be filled by ordinary resolution of the Board and vacancies of General Directors and Area Council Directors may be filled by the procedure set out in Article 52. Article 52 provides that departure from office by reason of death, resignation, or inability of an Area Council Director, the managing committee of the Area Council can appoint a member of the Area Council to act in his stead.

[22] It is the evidence of the Pursuers that by virtue of the St Mary Area Council meeting of June 24, 2021, Messrs Oshane Jackson and Michael Garrick were

elected as representatives of the Board of AIBGAL and Mr Adrian Burke was nominated to stand for election as a General Director at the AGM. Mr Elvey evidence is to this effect. (See paragraph 11 of his supplemental affidavit filed February 23, 2022). The applicants say that that meeting was not properly convened in accordance with the articles because it was not called by the Chairman as required by Article 27.

[23] According to the applicants, the Chairman was Mrs Campbell. This assertion is disputed. The Pursuers contend that Mrs Campbell was one of two outgoing Area Council directors for St Mary who had served since 2018 and by virtue of provisions in the Articles, she was up for mandatory retirement, having served in excess of two years. Further, that she was the Chairman of a particular meeting and she thereafter

[24] The fact that Mrs Campbell was an outgoing director would not obviate the need to serve her notice of the June 24 Meeting. It is noted that there is dispute as to whether she was notified of and was in fact present at that meeting. The court is not in a position to decide the point and it is not necessary to do so. Mr Cowan indicated that the applicants were prepared to proceed on the assumption that the June 24, 2021 St Mary Area Council meeting was properly convened. The applicants are not particularly clear in their stance regarding Mr Louis Chambers. It is curious to say the least, that the two other individuals who along with Mr Louis Chambers, were said to be deemed to have vacated their position as directors based on non- attendance at Board meetings, were nevertheless listed in the Form 23/Notice of Appointment/Change of Directors dated July 26, 2021 filed at the office of the Registrar of Companies. Yet Mr Louis Chambers' position as director is disputed.

[25] It will be assumed that he remained a member of the Board. This court will also assume that the June 24, 2021 meeting was properly convened and consequently, ignore any challenge to the validity of the appointment of Messrs Garrick, Jackson and Burke as directors, since there are issues of fact to be

resolved. The applicants can only make out their case for the striking out of the claim and application for an injunction on undisputed evidence or on evidence consistent with the case as put forward by the pursuers in the circumstances.

Assuming that Messrs Garrick, Jackson and Burke were properly elected/nominated at the June 24, Area Council meeting, whether they were directors who could properly have been included in the quorum of directors in order to convene the Board meeting of July 29 2021 at which the appointments as directors were confirmed

[26] The evidence of the pursuers is that a Board meeting of the claimant was held on July 29, 2021. It is the claimant's position that the only business conducted at the July 29, 2021 Board meeting was the appointment of Mr Adrian Burke as General Director to fill one of the vacancies created by the removal of Winsome Crosdale and Marvel Chambers in October 2020. But then the submission continued *"Except for the ratification of Messrs Garrick, Jackson, and Burke functioning as Directors, no other business was able to be conducted because of the disruption caused by Osbert Johnson who was opposed to planning for the AGM."*

[27] It is the case of the Pursuers that the Board of the claimant ratified all three individuals as voting directors pursuant to Articles 61, 29 and 52(2) in the Board Meeting of the 29th of July 2021. See paragraph 32 of the affidavit of Mr Lincoln Tobin filed January 10, 2022 and 17 of the affidavit of Michael Garrick of same date). In paragraph 35, of the affidavits of Louis Chambers and Lincoln Tobin, they also sought to explain that "the claimant has a demonstrated history of interpreting [section 42 (1)(ii) of the Articles] where co-opted directors, those filling vacancies and Area Council Directors act on their voting rights before their next annual general meeting". They contend therefore that the three individuals, Mr Oshane Jackson, Mr Michael Garrick and Mr Adrian Burke, were voting members of the Board at the time they signed the resolution authorizing the

bringing of the claim. See paragraph 35 of Mr Louis Chambers as well Mr Tobin's affidavits.

[28] Applicants' position is that the persons elected at Area Council meetings as Area Council directors are not constituted directors of the Board of AIBGAL by such election and can only become directors:

(a) if he or she is appointed by the management committee of the Area Council to fill a vacancy by the relevant Area Council due to death, resignation or inability to act pursuant clause 52(1) until the next annual general meeting of the Area Council or

(b) If he or she is elected as the Area Council Director at an annual general meeting of the Area Council pursuant to clause 26(2) (v) and subsequently confirmed at the annual general meeting of AIBGAL.

[29] The question must firstly be addressed whether the directors or any of them was appointed pursuant to (a) above, that is, to fill a vacancy due to death, resignation or an inability to act. If this is so, it appears that there would be no need for confirmation at the Board meeting.

[30] It is the evidence of Mr Tobin that Mr Adrian Burke was appointed a General Director of the claimant to fill a vacancy and has immediate voting rights that have been exercised by him since his appointment. It is also his evidence that Messrs Michael Garrick and Oshane Jackson as elected Area Council Directors acquired immediate voting rights See paragraph 29 of his affidavit filed January 10, 2022.

[31] It is the evidence of Mr Elvey (para 7 supplemental affidavit) that Messrs Michael Garrick and Oshane Jackson were elected representatives pursuant to Articles 26 (2)(v) and 42(1)(ii). The latter Article speaks to the election of two General Directors at the Annual General Meeting from the panel of members nominated under Article 26(2) (vi). Article 26 (2) (v) and deals with the election when

necessary of two directors (Area Council directors) as representatives of the Board of AIBGAL and (vi) to the nomination of members who shall be eligible for election as General Directors at the next annual general meeting of the Association (AIGBAL) in place of the directors due to retire at that meeting.

[32] It is not entirely clear whether an appointment pursuant to Article 52 is a direct route to becoming a general director of the Board without the need for confirmation. It does not appear that Mr Adrian Burke was appointed pursuant to the provisions of Article 52. The evidence is that he was nominated a general director. This nomination appears to be pursuant to Article 26 (2) vi. This nomination in fact made him eligible for election as a general director at the next annual general meeting of the association in place of the directors that should retire. Since there is lack of certainty regarding the section pursuant to which he was appointed/nominated, it will be assumed that there was no need for Mr Burke to be confirmed as a director and could properly form part of the quorum.

[33] Even though the evidence from the Pursuers is that Messrs Jackson and Garrick were elected pursuant to 26(2) (v) as distinct from 26(2)(vi), it cannot properly be argued that there was no need for ratification.

[34] The claimants do not seem to be seriously contesting the need for the ratification of the Board membership of the elected Area Council Directors, having said that the three individuals were ratified as voting directors at the July 29, 2021 meeting. Indeed, at paragraph 14 (f) of the joint affidavit in support of the FDCF, the affiants state as follows: “The procedure mandated by Article 28(4) is that all directors elected pursuant to Article 28 and all Area Council directors shall assume office immediately at the end of the Annual General Meeting of the Association”. A perusal of Article 28 confirms that that is indeed the position as Mr Cowan contends; that is there was need for ratification.

[35] The applicants say that the July 29, 2021 meeting itself was null and void due to the exclusion of two sitting members of the Board. In this instance, while there

is dispute as to Mrs Campbell's status, there is really none regarding Mr Frederick Morgan. It is of course noted that Mr Elvey's evidence in paragraph 27 e of his January 17 2022 affidavit, he said that Mr Morgan served the St James Area Council as director in excess of 7 years and would be mandatorily retired at the commencement of the general meeting and could only serve thereafter if re - elected. This clearly could not mean that he was not entitled to notice of the meeting. Again, this court will proceed on the assumption that the meeting was properly convened. The real area of concern is the question of who were the directors present at the meeting in order that the matter of ratifying the Area Council directors as Board directors could properly have been dealt with.

[36] The minutes of that meeting were exhibited (see page 257 of the applicant's bundle). The minutes reflect that the persons present were Messrs Lincoln Tobin, Oshane Jackson Michael Garrick, Louis Chambers, Adrian Burke and Osbert Johnson as directors. The other persons present were Messrs Glendon Harris and Devon Plunkett who were listed as "others present" and Messrs Donald Elvey and Saheed Imoru.

[37] It is Mr Tobin's evidence that the Board of the claimant ratified all three persons as voting directors pursuant to Articles 61, 29, and 52(2) of the Articles in the July 29 2021 Board meeting. He stated that they voted alongside the other members of the Board as shown by exhibit LT 3, copy of the minutes of the July 29 2021 meeting. See paragraph 32 of his affidavit filed January 10, 2022. The minutes exhibited show that Mr Chambers moved a motion that the newly elected Area Council directors increase the numbers on the Board to assist in preparations for the annual general meeting. It also went on to say that a motion was seconded by Mr Tobin that Messrs Garrick and Jackson sit as directors and assist the Board in preparation for the general meeting. It was also said in the minutes that Mr Louis Chambers cited article 52(2) then moved a motion to confirm Mr Adrian Burke as General Director to fill the vacancy for General Director, St Mary and that the motion was seconded by Mr Tobin.

[38] The minutes of the meeting also indicate that the motion to confirm Mr Adrian Burke as General Director to fill the St Mary vacancy, was carried by a majority of four of the six persons present. In respect to the ratification of Mr Burke, in the circumstances, given the composition of the July 29 meeting, at least one of Messrs Garrrick or Jackson, must have voted as director since a resolution must be carried by a majority.

[39] In the case of **Morris v Kannsen**, [1946] AC 459 it was decided that a director could not defend an allotment of shares to himself where he was a participant in the meeting which made the allotment and his appointment as a director was also not in order because none of the directors appointing him was validly in office. The principle is that where an individualist himself part of the internal machinery of a company, he cannot be allowed to take advantage of the irregularity.

[40] The applicants have not really disputed the assertion that there was a history of directors acting on their voting rights before the annual general meeting. It does not seem to me that there is enough material before the court for the court to be able to determine whether there existed a practice whereby directors elected at the Area Council Meetings would assume voting rights prior to their ratification at the annual general meeting. It is a matter of evidence whether such practice existed. This is an application to strike out. It is not an application for summary judgment whereby the Pursuers would be required to put forward evidence of this practice at this stage to establish that that is indeed so.

[41] If this assertion is correct and such course of action is permissible in law, then it means that strictly speaking, the process of ratification of the three directors namely Messrs Oshane Jackson, Michael Garrick and Adrian Burke, at the July 29 2021 meeting would not have been necessary in order to validly constitute them directors.

[42] There is still the question, assuming that there existed such a practice, whether as a matter of law the Pursuers are able to rely on such practice which is plainly contrary to the provisions of the Articles. A company who permits an individual to conduct the company's business with third parties will be bound by the acts of that individual who holds himself out as acting on behalf of the company even where he does so without the company's consent or knowledge. That individual will be held to have ostensible authority. See **Freeman & Lockyer (A firm) v Buckhurst Park Property (Mangal) Ltd and another** [1963] 2 QB 480. This principle is for the benefit of third parties dealing with the company.

[43] In **Randhawa and another v Turpin and another (as former Joint Administrators of BW Estates Ltd**) [2017] All ER (D) 40, D a company director, acting upon a decision taken at a meeting attended by himself, an administrator and the company's solicitor, appointed joint administrators. This was in circumstances where the Articles required that two directors formed the quorum at board meetings. One director R, a beneficial owner of 75% of the shares, had previously been disqualified. The appellants, creditors of the company, challenged the validity of the administrators' appointment. The Judge dismissed their application and found inter alia, that the acquiescence or consent of D as the registered shareholder or R as the beneficial owner of the 75% shares was sufficient to trigger the principle set out at paragraph 373 by Buckley J in *Re Duomatic Ltd* [1969] 2 Ch 365 that

> ***"where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be",***

as the other shareholder B company was dissolved and there was no one to vote on its behalf. Further, that the joint administrators were validly appointed as there was a consistent course of conduct where by R and D informally sanctioned the exercise of all of the directors' powers by one director alone, which operates as an informal variation of the articles. The appellants appealed.

[44] The issue before the court of appeal was whether a sole director of a company whose articles required two directors for its board meeting to be quorate could validly appoint administrators. Geoffrey Vos QC, found that the quorum required for board meetings remained at two. Accordingly, the judge was wrong to have held that the sole director of the company had the right to appoint the joint administrators. Further, in the circumstances of this case, the *Duomatic* principle was inapplicable as B company was neither notified of the proposal to appoint an administrator nor assented to their appointment. Moreover, the *Duomatic* principle cannot apply in a situation where one of the shareholders which is a corporation does not exist. Additionally, it was held that, a variation of the articles in this manner could only take effect by the application of the *Duomatic* principle and B company never consented actually or putatively to the appointment of the administrators so as to result in a variation of the articles.

[45] In **Young-Torres (as administrator of the estate of Karl Augustus Young) v Ervin Moo-young, Debbian Dewar (as executor of the estate of Chad Young and ZIP (103) Ltd** [2019] JMCA Civ 23, the appellant sought a declaration that the allotment of 490,000 shares to Chad Young was a breach of pre-emption rights attached to Karl Young's shares and as such the allotment was unlawful and a nullity. The trial judge refused the declaration and the appellant appealed. Counsel for the appellant and counsel for Ervin Moo-Young who filed a counter notice of appeal argued that the allotment of shares to Chad Young was done in breach of the articles and was unlawful.

[46] Article 47 of the company's Articles of Association required that all unissued shares first be offered to members unless the company by special resolution directed otherwise. Karl, Ervin and Chad were directors of the company. Karl and Ervin were the only shareholders each issued with one of the company's 500,000 shares. Following Karl's death, a meeting of directors took place on July 8, 2010 at which Chad was issued with 490,000 shares. No special resolution was passed. After the meeting, Ervin signed a return of allotment. Ervin contended

that he was not present at the July 8, 2010 meeting and when he signed the return of allotment of shares he did so without thinking anything of it.

[47] The Court of Appeal held that by failing to first offer the shares to Ervin who was the sole remaining member of the company and by failing to comply with the procedure set out in article 47 for the offer of shares to non-members resulted in a breach of article 47. Therefore, the shares issued to Chad were unlawful.

[48] The court rejected the submissions of counsel for Chad's representative that when Ervin signed the return of allotment his signature amounted to a ratification of the directors' actions in allotting shares to Chad. The learned judge held that ratification takes place at a general meeting. There being no such meeting, there was no ratification. Further, full and frank disclosure must be made to members and they must demonstrate that they are fully aware of the facts before giving their assent. Ervin did not have a full and frank understanding of what he was assenting to as he averred that he did not know what the return of allotment was all about. Additionally, a claim for ratification is subject to the provisions of the articles and the company's articles prescribed that ratification of an action which requires resolution at a general meeting takes place when a written resolution is signed by all members entitled to vote at a general meeting. Edwards JA at paragraph 94 of the judgment observed that ... "*even if Ervin Moo-Young waived his own pre-emption rights, he had no power to waive the procedure under the articles, which called for a special resolution before shares can be offered first to a non-member. That waiver would simply have become the basis for the special resolution*."

[49] **Randhawa** as well as **Young-Torres** demonstrate that directors of a company cannot act contrary to the clear provisions of the articles of the company. If they do, the action will be invalid. It follows that they cannot act contrary to the Articles and then rely on a history of doing things in contravention of the clear provision. What seems plain also is that the Pursuers (all of whom were present at the July 29 2021 meeting), recognized the need for the confirmation of the

three new directors. It would therefore be difficult to argue that those new directors could properly form part of the quorum for the very meeting at which their confirmation was to take place. Thus in the very unlikely event they were able to exercise voting rights prior to their confirmation as directors, the voting rights could not be exercised for the purpose of ratification of themselves as directors.

Was the resolution the product of a Board Meeting. What was required if it was not.

[50] The special resolution passed on the 16th of September 2021 was signed by Oshane Jackson, Michael Garrick, Adrian Burke, Louis Chambers and Lincoln Tobin. The applicants' contention which on the face of it seems to be correct, is that not all five persons were properly directors.

[51] The applicants further contend that the resolution was not valid because it was not the product of a Board meeting but was a written resolution circulated to purported Board members but not to Messrs Frederick Morgan and Osbert Johnson in relation to whom there had never been any questions as to whether they remained Board members. It may be noted that the two last mentioned individuals are among the persons the claimants accept as being Board members. See paragraph 18 of the joint affidavit of the Pursuers filed in support of the FDCF.

[52] It may be assumed for these purposes and indeed seems to be correct even on the evidence of the applicants, that directors Annette Thompson, Louis Chambers, and Lincoln Tobin were not properly removed by virtue of non - attendance at meetings and so properly remained directors. In any event, it is assumed that Messrs Tobin and Louis Chambers were directors who could properly have formed part of the quorum at the July 29 meeting and were also empowered to sign the resolution of the 15th of September 2021.

[53] The applicants contend that directors Messrs Frederick Morgan and Osbert Johnson were not served notice of the meeting if indeed there was a meeting. Mr Cowan accepts that as long as a meeting of the Board is quorate, then the business of the association can be properly conducted based on the provisions of Article 45 (1) and 57. Article 45 (1) states in part that ***"the business of the association shall be managed by the directors… subject to the provisions of the act or these Articles…"***

[54] The Pursuers insist that the 'meeting' at which the special resolution authorizing the bringing of the claim was passed, was in compliance with Article 57(2) of the Articles. Article 57 (2) provides that ***"the directors may meet together for the dispatch of business, adjourn and otherwise regulate meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes."***

[55] There was in fact never any issue as to whether Frederick Morgan and Osbert Johnson remained directors. The Pursuers say that they were served with notice of the meeting. They present as proof of service, the email exhibited to Mr Elvey's supplemental affidavit as LT 4. The email advised of a meeting on the 16th of September 2021. The resolution reflects that it was passed on the 15th of September 2021. There is evidence that Ms Lyons who holds herself out as the Company Secretary, by way of Notice of Change of Directors dated the 26th of July 2021 directed to the Office of the Registrar of Companies and an undated letter to the Permanent Secretary of the Ministry of Industry Commerce Agriculture and Fisheries objected to the holding of the meeting at the intended venue. Even if it was in fact the intent initially that a meeting was to be held on the 16th, the fact is that it was not. Assuming that there was a good reason for bringing forward the date of the meeting, and that there was in fact a meeting, the reality is that Messrs Frederick Morgan and Osbert Johnson were never given notice of any meeting held on the 15th of September 2021.

[56] What turns on the failure to give notice? Mr Cowan relies on the case of **In re Portuguese Consolidated Copper Mines Limited** 1889 Ch 160, to say that if notice of the meeting was not given to all the directors, the meeting is invalid. In that case, it was decided that an allotment of shares done at an adjourned meeting, in circumstances where notice of the earlier meeting had not been given to all the directors was invalid. It was said that since the earlier meeting was not a valid meeting, it could not adjourn itself to the subsequent date on which the shares were issued.

[57] I consider the case of **Mitchell & Hobbs (UK) Ltd v Mill** [1996]2 BCLC to be of particular relevance. I capture a summary of the facts from the headnotes. In that case, R was the managing director of the plaintiff company. R initiated an action in the name of the plaintiff company against M (the company secretary) to recover) monies which M had withdrawn from the company's account. R obtained an order to enter summary judgment against M. M appealed and sought to strike out the action on the ground that R had no authority to instruct solicitors to institute the proceedings. There was no evidence that a board meeting had been held to authorize the commencement of the action or that R as the managing director had been authorized to do so. R contended that any one director of a company without reference to other directors or shareholders could bring proceedings in the name of the company by virtue of Regulation 70 Table A [which stated that subject to the provisions of the Act, the Memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company].

[58] It was held that the action would be struck out as Regulation 70 was intended to vest power to manage the affairs of the company in the board of directors as a whole and accordingly the power to institute proceedings on behalf of the company could not be exercised by one director alone. At page 31, paragraph(i) of the judgment, the court opined that the power to manage the company

included the institution of proceedings in its name and that a single director could not act as the board of directors.

[59] The Pursuers' answer to the applicant's observation that the resolution of September 16, 2021 was passed without the involvement of two undisputed directors, Frederick Morgan and Osbert Johnson, is that section 31 of the Articles stipulates that the non receipt of notice does not invalidate the actions taken at the meeting affected.

[60] The relevant provision says that "the accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting". I am not of the view that the section means what it is being taken to mean. The fact that reference is made to accidental omission or non - receipt gives the distinct impression that non receipt is used in a context where there was at least an attempt to give notice, but for one reason or another, that notice was not in fact communicated to the intended recipient. Further, there is no evidence that the failure to give notice to the two directors was accidental. In fact, the evidence indicates otherwise.

[61] In the preamble to the resolution, it is indicated that it was a special resolution. Indeed, it is so headed. Article 39 states that "***a resolution in writing signed by all the members …being entitled to receive notice of and to attend and vote at meetings…shall be valid and effective as if same had been passed at a general meeting of the association duly convened and held".*** It is the contention of the applicants that this provision does not apply to Board activities. I agree. Mr Cowan says that in any event, even if the round robin procedure is permissible, the outcome should be a unanimous written resolution.

[62] The Pursuers argue that in any event, there was no need for a meeting to be held since Article 65(2) provides that ***"a resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the***

board, shall be as valid and effective as if it had been passed at a Board meeting duly convened and held." The respondents have really not answered this complaint except to say that the resolution does not purport to be a round robin or a special resolution pursuant to Article 65(2) as it states that it was passed by a quorum of directors.

[63] The individuals who participated in the meeting considered it a round robin. The Pursuers have exhibited a plethora of documents in this claim, in the application for the injunction and in responding to the application to strike out. Several detailed affidavits were filed. Nowhere in any of those documents is it reflected that a Board meeting was held. There is no basis to come to some other conclusion other than that the resolution was circulated among the signatories and that they attached their signatures. The label placed on the procedure adopted is not particularly important. The process resulting in the signing of the resolution could not be regarded as a meeting duly convened and held for reasons already explained (lack of notice). Neither was the resolution signed by all the directors **"***for the time being entitled to receive notice of a meeting*" as required by Article 65(2). It seems clear enough from the Articles of the company that a resolution must either be the product of a Board meeting or it must be signed by **all** the directors entitled to receive notice of the meeting. It is indisputable that Messrs Frederick Morgan and Osbert Johnson undisputed directors, did not sign the resolution. Since there was no properly convened meeting, and it could not be said that the resolution was passed pursuant to the provisions of Article 65(2), there was no valid resolution.

[64] Even if I am incorrect in my interpretation regarding the reliance on accidental omission to give notice and non - receipt of notice, it appears to me that the pursuers cannot overcome the submission that the meeting at which the two St Mary Area Council directors (Oshane Jackson and Michael Garrick) were confirmed did not have a quorum (without including either of them in circumstances where they had not yet, by virtue of the relevant provision i.e., Article 28, assumed directorship). Article 28 provides that the directors assume

office at the end of the AGM. Contrary to the Pursuers' submission, upon a careful reading of the relevant Articles, by virtue of the textual material it is clear enough that Article 28 (4) is applicable to directors elected at Area Council meetings. In fact it is said to be applicable to all directors and all Area Council directors. Also there is no real conflict between Articles 28 and 25, certainly not as it relates to Area Council directors. Article 25 deals with the continuance in office of General Directors as distinct from Area Council Directors.

[65] Without a quorum, no decision could have been taken. It has in my view been amply demonstrated that the actions of the applicants were ultra vires the Memorandum and Articles of Association.

Whether the applicants have established a basis for striking out. and whether there is an alternative to striking out since the resolution was not properly passed.

[66] Mrs Small Davis QC has asked the court to have regard to the relevant principles and the case law relating to an application to strike out a claim. She contends that this is not a case in relation to which it can be said that there was no reasonable ground for bringing it. Further, she set out examples of situations in which it may be said that there are no reasonable grounds for bringing the claim. She accepted that the categories are not closed but urged the court to say that this case clearly could not fall in those category of cases. Mrs. Small Davis QC submitted that in order to strike out the claim, the court will have to find that as a matter of fact and of law:

(a) The Board of Directors did not pass a resolution for the institution of the claim

(b) There was no valid meeting of the board of directors.

(c) The persons who met and approved the institution of a claim to challenge the accuracy and validity of the Form 23 filed at the Companies Office are not directors.

(d) The Fixed Date Claim form and the affidavits in support do not disclose any reasonable cause of action or that the claim is bound to fail.

(e) That the initiation of these proceedings are an abuse of process.

(f) The best way to deal with the case justly is that it be struck out.

[67] Mr Cowan posited that the cases cited by Mrs Small Davis QC regarding the court's powers to strike out are not relevant in the present scenario. He pointed out that the simple basis for saying that this case is to be struck out is grounded in the lack of authority to initiate the claim.

[68] Rule 26.3 (1) of the Civil Procedure Rules sets out the circumstances when striking out of a party's statement of case may be appropriate. It states:

> ***In addition to any other powers under these rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –***
>
> ***(a) …***
>
> ***(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings***
>
> ***(c) that the statement of case or the part to be stuck out discloses no reasonable grounds for bringing or defending the claim.***

Rule 27.2 (8) States:

> ***The court may, however, treat the first hearing as the trial of the claim if it is not defended or the court considers that the claim can be dealt with summarily.***

[69] In **S&T Distributors Ltd v CIBC Jamaica Ltd et al** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 112/2004, judgment delivered

31 July 2007, Harris JA highlighted that the striking out of a claim is a severe measure and the power to do so is to be exercised with extreme caution. She also said that such action should only be taken in plain and obvious cases.

[70] The principles regarding striking out have been recited time and time again and will not be rehearsed here. Suffice it to say that this court accepts the principles established in seminal cases such as **Swain v Hillman, Three Rivers District Council v Governor and Company of the Bank of England** No. [2001] UKHL 16 as well as **Johnson v Gore Wood & Co (a firm)** [2002] 2 AC 1. There is no question that this claim gives rise to issues which require further investigations. Therefore, I agree that this is not a case in relation to which it could be said that there was no reasonable basis for instituting it. The question is who has the authority to institute it. There is sufficient undisputed factual evidence for this court to decide whether the claim was properly instituted. The case law in the arena of the law of associations is clear. The provisions of the Articles and Memorandum of Association of the AIBGAL are plain in this regard. The claim has not been instituted by the company. Neither was it instituted on the company's behalf pursuant to the provisions of section 212 of the Companies Act. It appears to me that the leave of the Court was required to bring a derivative action in the name of and on behalf of the company.

Is there another option open to the court

[71] Mrs. Small Davis QC submitted that the court is being called upon to resolve disputes of fact which are issues to be determined in the substantive claim. She stated that the court would have to find that on the face of the material before it, there is no reasonable cause of action disclosed, i.e. the action is bound to fail. She pointed the court's attention to the fact that in addition to the disputes of fact, the court is faced with sworn evidence on behalf of the applicants which is

internally contradictory or have proven to be false or unreliable when one refers to documentary evidence.

[72] Queens Counsel commended to the court the decision of **John Shaw & Sons (Salford) Ltd v Shaw** [1935] 2 KB 113. I adopt the summary of the case as given by her. The case involved a claim against two of the company's directors to recover a debt owed to the company. The claim was initiated by the majority vote of the three permanent (independent) directors. No notice of the meeting was given to any of the five ordinary directors. The defendants objected on the ground that the action was brought without proper authority. The trial judge rejected the contention on the basis that where the defendants as directors were excluded from the right to vote on such a matter, it was not necessary to summon them to a meeting at which it was decided to bring the action and gave judgment for the plaintiff company. The defendants appealed. It was held that when the want of capacity or authority to sue appears clear, the court may order the action to be struck out but on the facts of the case, the court did not have the information necessary to decide whether effect should be given to the objection as to competency. If the question of authority is in doubt, that is, not patently clear on the evidence before the court, the right course is to permit the action to proceed to trial and give judgment according to the evidence, tested by cross examination.

[73] It is patently clear from the last mentioned case especially having regard to the highlighted portions in the previous paragraph that the court may strike out the action when the want of capacity or authority is established by undisputed evidence. This is not a case where the court feels that it does not have the information necessary to decide whether the claim was properly initiated. There is no dearth of evidence in this matter. There is sufficient uncontested evidence on which this court can safely arrive at the position that there was no valid resolution passed by the Board of Directors in order to facilitate the institution of the claim. It is not necessary that all of the factors listed at paragraph 65 above

be established in order for the claim to be struck out. It would be fair to say that the factors listed at (d) and (e) have not been established.

[74] The observation that the court is faced with sworn evidence on behalf of the applicants which is internally contradictory or have proven to be false or unreliable when one refers to documentary evidence is undoubtedly true but in the court's estimation, does not affect the core of what is to be decided on the application presently before it. On the matter of the disputed evidence, the court has been careful to assume the facts favourable to the Pursuers' case on material aspects of the evidence where it is contradicted.

[75] The case of **John Shaw & Sons (Salford) Ltd v Shaw** is clearly distinguishable from the present case in that this is not a case where the court does not have the information necessary to decide whether effect should be given to the objection as to competency of all the persons who claimed to be directors. As indicated earlier, there was never any question as to whether Messrs Frederick Morgan and Osbert Johnson were directors and never any questions about them being excluded from the right to vote on such a matter. The situation seems clear enough without this court having to decide any question of fact which is in dispute.

[76] **In Airways Ltd. V Bowen and another** [1985] BCLC 355, the Court of Appeal had the following to say:

> ***"The important point made in that citation which the judge must have overlooked is that a contention that an action is not properly constituted, due to lack of authority from the named plaintiffs to bring it, is one which cannot be raised by way of defence. It must be raised at the outset and it must therefore be dealt with at the outset. The only qualification is that, even if it is not raised at the outset but it then comes to the notice of the court or of the defendants in the course of the proceedings, then it can still be raised as an issue at that stage, but not by way of defence… Once the issue has been raised, it is with respect, plainly wrong to decline to decide the issue on the ground that the rights and wrongs as to the control of the company and the propriety of the proceedings may be in doubt, and then to allow the action to go on by dismissing the application without having decided it on the merit."***

[77] I reference the quotation above from **Airways Ltd. V Bowen and another** to make the point that since this is not a case where there is uncertainty as to whether the action is properly constituted, there is therefore no need for this court to direct that any issue of authority to proceed with the claim be tried as a preliminary issue.

[78] The court makes the observation that the circumstances here are that certain individuals have by improper procedure been installed as members of the Board of Directors of AIBGAL. The Board as it stands has no authority to carry on the business of the company. It seems to me that at this point, the affairs of the company are in a state of disarray and the purpose of the company cannot be achieved. The question then, is what is the appropriate course of action when the claim brought before the court to remedy the situation is not properly instituted. The respondents have made certain pertinent observations which include the fact that the evidence from the applicants is riddled with inconsistences. Further, that the interests of the farmers are not being attended to. The court is quite mindful of these observations but it does not change the fact that the claimants have employed an improper procedure to institute the present claim.

[79] The resolution seems to lie in bringing a claim under the relevant provisions of the Companies Act**. In Re Premier Electronics** which was cited by the applicants, Pumfrey J. concluded that the petitioner commenced an oppression claim against directors in circumstances where a derivative action in the name of the company should have been commenced. There was no proper claim as no leave was sought to commence a derivative action. At page 638 of the judgment, the learned judge said:

> ***"I am of the view that at this stage there is no subsisting cause of action between these petitioners and the first and second respondents, the individuals. In those circumstances, I do not believe that it is possible on orthodox principle to support the grant of a Mareva injunction. I am very conscious that, in taking this view, I am taking a view which might well be viewed as inconvenient, but where jurisdiction is in issue, arguments of convenience do not count."***

[80] The last sentence represents precisely my sentiments in the instant case. Regrettably, this claim must be struck out. I am unable to disagree with Mr Cowan's contention that the basis striking out is grounded in the lack of authority to bring the claim.

How should the question of costs be dealt with

[81] The applicants filed a NACA on the 24th of February 2022 seeking certain costs orders against seven individuals, to include the five persons I referred to as the Pursuers as well as Messrs Donald Elvey and Oshane Jackson. He also sought to have those individuals indemnify AIBGAL. Arguments were not presented in relation to this application. However, is questionable whether Nunes Scholefield DeLeon and Co is AIBGAL's representative in these proceedings, especially having regard to my findings that certain of the directors were improperly installed as such.

[82] There are four individuals who were joined as defendants in this claim who are not applicants to the striking out application. The first defendant Mr **Byron Henry** filed an affidavit on the 5th of January 2022. He explained therein that he had not filed an affidavit in response to the Fixed Date Claim Form because he was of the impression that having resigned from his post as a director of AIBGAL on the 3rd of April 2019, he should not have been added as a defendant to the present proceedings.

[83] He also deponed that a letter was sent by his attorney at law to the claimant's attorney at law indicating the fact of his resignation. He however said, and the court observed, that the letter was dated December 15 2021, which is subsequent to the filing of the claim. Based on the contents of the letter which was received by the attorney at law representing the claimant/Pursuers on December 17, 2021, a copy of Mr Henry's resignation letter was enclosed. It is questionable whether the claim should have been continued against him.

Whether hearing the Pursuers' reason for not discontinuing the claim against him upon receipt of that information, it may not be prudent to comment further.

[84] The 5th defendant **Mr Seymour Webster** explained his position as follows in paragraph 18 of his affidavit filed January 5, 2022.

> *I will say that my name listed as a director at the Companies office in my opinion, is merely coincidental and a temporal aberration of the process of enlisting and delisting directors especially in the context that there had been no annual general meeting held since April 20 2016.*

[85] He went on to say that because of his unauthorized absence from meetings since May 2019 the company was empowered to take action to disqualify his directorship pursuant to Article 46(1) (e) and (f). He also said that a motion was moved at a meeting held October 20, 2020 to remove his name from the register of directors.

[86] Except for the date when her absence from meetings commenced, Miss Winsome Crosdale explained her position in identical terms as Mr Webster. She stated at paragraph 17 of her affidavit also filed on the 5th of January 2022 that she stopped attending meetings since 2018.

[87] Mr Glendon Conrad Odel Harris the 9th defendant in his affidavit filed December 17, 2021 indicates that he was elected to replace Mr Marvel Chambers at the St James area Council meeting on the 18th of February 2020 and that there has been no Annual General Meeting of the claimant since. He of course holds the position that by virtue of Article 28(4) all directors elected pursuant to Article 28 and all Area Council directors assume office at the end of the Annual General meeting. He therefore by his evidence is saying that he is not a director of AIBGAL.

[88] I raise the status of these individuals because the question arose during the course of the hearing as to who should be responsible for their costs. The view is

taken that some of the defendants were improperly joined as defendants to the claim. The point was not really fulsomely discussed. The Pursuers' position is that the persons who were named as directors in the Notice of Appointment/Change of Directors document dated July 26, 2021 which was filed in the office of the Registrar of Companies were named as defendant in the suit. It might have been prudent to discontinue the claim against a number of these persons once their affidavits were filed and their respective position explained.

[89] Without hearing full submissions on costs, it may not be prudent to make any orders at this point. All parties are to file written submissions on costs on or before July 29, 2022.

CONCLUSION

[90] It remains highly questionable whether all of the individuals who signed the resolution were directors of the claimant at the time of the signing. Assuming they were properly elected at the June 24, Area Council meeting, Messrs Jackson and Garrick were not directors who could properly have been included in the quorum of directors due to the absence of confirmation, so that it could be said that the Board meeting of the 26th of July 2021 was properly convened in accordance with section 60 of the Memorandum and Articles of Association of AIBGAL. This is so especially where one of the main purpose of the meeting was to confirm them as directors.

[91] The resolution of the 15th of September 2021 was not the product of a Board Meeting. Neither was it a valid resolution in accordance with section 65(2) of the Memorandum and Articles of Association. The st authorize the filing of legal proceedings in its own name unless otherwise permitted pursuant to a statutory provision. It cannot be said that the filing of the claim was authorized by the company and no permission was granted by the court for the bringing of the claim. The court is not here faced with any uncertainty as to whether the claim

was authorized so as to necessitate this court directing that the issue of authority to proceed with the claim be tried as a preliminary issue.

[92] In the circumstances of this case the court is constrained to say that there is no alternative to striking out the claim and the application for the injunction. The court comes to this conclusion notwithstanding the clear position that the Notice of Appointment/Change of Directors document dated July 26, 2021 and filed with the Registrar of Companies must have been invalid based on the applicant's own evidence. Further, AIBGAL does not presently have a properly constituted Board of Directors and the business of the company cannot be done.

[93] Leave to appeal is granted to the respondents to this application.

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Andrea Pettigrew-Collins
Puisne Judge