

MICHAEL PAUL MASON
versus
TIMORE TRAINING SERVICES (PVT) LTD
and
T W SAMUNYAI
and
THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE, 8 November and 15 December 2005

Mr *N. Chikono*, for the plaintiff
Miss *Maunganidze*, for the 1st defendant

UCHENA J: The plaintiff entered into an agreement of sale with the 1st defendant. The contract was for the purchase of a house which belonged to the 1st defendant.

The 1st defendant is a company whose directors are Mr and Mrs Samunyai. The sale was purportedly duly authorised as per the agreement of sale. Mr Samunyai who signed for the seller is the 1st defendant's managing director. At the trial it became common cause that there was no resolution by the company authorising the sale of the house.

The facts of the case are common cause. The 1st defendant through the 2nd defendant against whom plaintiff has withdrawn its claim advertised the house for sale through two estate agents. The plaintiff first tried to buy the house through Keystone Estate Agents. He failed. He later saw another advert of the same house this time being advertised by Contact Estate Agents. He made an offer which was accepted after which he and the 2nd defendant signed an agreement of sale.

A director of the first defendant Mrs Moreblessing Chipare who is the second defendant's wife later objected to the sale alleging that she had not consented to the sale of the house. Mr Chihambakwe who gave evidence on behalf of the 1st defendant

having been given a special power of Attorney by Moreblessing Chipare said before the sale of the House Section 183 of the Companies Act [*Chapter 24:03*] hereinafter called the Act had not been complied with. This was not disputed by the plaintiff and his witness Mr Chadwick who gave evidence for the plaintiff said he did not see any resolution authorising the sale of the house. His company took the 2nd defendant's word that he was duly authorised.

The issue to be decided in this case is whether or not the parties entered into a valid contract of sale.

Mr *Chikono* for the plaintiff submitted that the parties entered into a valid contract as Mr Munyai who was the managing director signed the agreement of sale. Miss Maunganidze for the 1st defendant submitted that there was no valid agreement of sale as section 183 of the Act was not complied with.

Section 183(1)(b) of the Act provides as follows:-

"183(1) Notwithstanding anything in the articles, the directors of a company shall not be empowered without the approval of the company in general meeting-

(a)

(b) To dispose of the undertakings of the company or of the whole or the greater part of assets of the company."
(emphasis added)

My understanding of section 183(1)(b) of the Act is that:-

1. The directors of a company shall not be empowered without the approval of the company in general meeting.
2. To dispose of the company's undertakings or
3. Of the whole or greater part of the assets of the company.

In this case Mr Chihambakwe said the sale of the house has the effect of dissolving the existence of the company as the house is the company's major asset. Without the house the company would be dead. The house therefore forms the greater part of the company's assets.

He also said he searched the company records and found no minutes of the company in general meeting authorising the sale of the house. He also said Moreblessing Chipare the only other director of the 1st defendant did not consent to the sale and did not attend the 1st defendant's company general meeting. No evidence to the contrary was adduced by the plaintiff. Mr Chihambakwe's evidence was not disputed.

The plaintiff sought to rely on presumptions under Section 12 of the Act.

Section 12 of the Act provides as follows:-

"Any person having dealings with a company or someone deriving title from a company shall be entitled to make the following assumptions, and the company and anyone deriving title from it shall be estopped from denying their truth-

- (a) that the company's internal regulations have been duly complied with.
- (b) That every person described in the company's register of directors and secretaries, or in any return delivered to the Registrar by the company in terms of section one hundred and eighty seven, as a director, manager or secretary of the company, has been duly appointed and has authority to exercise the functions customarily exercised by a director, manager or secretary, as the case may be, of a company carrying on business of the kind carried on by the company."

Subsection 12(b) does not apply to this case because it deals with the directors, managers and secretaries having been duly appointed. In this case the issue is not on the appointment of directors. It also deals with the directors and secretaries having authority to exercise the functions customarily exercised by a director, manager or secretary, as the case maybe, of a company carrying on business of the kind carried on by the company. In this case the 1st defendant is not in the business of selling houses but that of providing training. Mr Chihambakwe's evidence is very clear on this. It is therefore clear that Mr Samunyai could not be presumed to have had authority to sale an asset forming the whole or greater part of the company. The sale of the house was therefore not a customary function of a director of a company whose business was to provide training services.

It seems to me that the only relevant subsection is subsection 12(a) which presumes that a company's internal regulations have been complied with. However in this case we are not dealing with internal regulations but requirements of the Companies Act. The requirements of section 183(1)(b) of the Act are not the 1st defendant's internal regulations. A failure by the 1st defendant's director to get the approval of the company in general meeting renders his unauthorized acts void as the Act clearly states that the directors of a company shall not be empowered. This means without approval their actions have no validity. It follows that Mr Samunyai's acts lack validity. He acted without approval and that should be the end of the inquiry. The provisions of the Act in section 183(1) are peremptory. Therefore a director is either empowered or not. If he is not then his acts are void. It is as if he has not acted.

Mr Chadwick said in his experience Estate Agents do not insist on seeing written approval of the company in general meeting when they sale houses on behalf of companies. This may be so but it does not change the law. In cases not involving the sale of the whole or greater part of the company's assets it may not be necessary. However that practice if it applies to Estates Agents in general is a dangerous one as it may as happened in this case cause prejudice to a client who is expected to assume that his Estate Agent has made proper enquiries before causing him to enter into an invalid contract.

It should also be mentioned that proviso (1) to section 12 of the Act clearly provides that the presumptions are not to benefit a person who has actual knowledge to the contrary or who ought to reasonably have known the contrary. In my view the plaintiff's agent the estate agent knew that the resolution of the company in general meeting was necessary. Mr Chadwick's evidence gives the impression that he knew the provisions of section 183 of the Act.

He ought to have reasonably known that the non-existence of the resolution was fatal to his client's reliance on a contract entered into without the approval of the company in general meeting.

In the circumstances the contract entered into between the plaintiff and the 1st defendant is invalid.

Therefore the plaintiff's claim is dismissed with costs.

Mhiribidi, Ngarava & Moyo, plaintiff's legal practitioners

Ahmend & Ziyambi, 1st defendant's legal practitioners