

IN THE SUPREME COURT OF BERMUDA

APPELLATE JURISDICTION

2017 : No 48

BETWEEN:

ANJULA BEAN

Appellant

-v-

CHRISTOPHER E. SWAN & CO.

Respondent

JUDGMENT¹

Incorporation of limited liability company - Disputed claim for legal fees - Legal fees claimed for work defending action brought against Appellant in her personal capacity - Appellant denying claim for legal fees because the Respondent failed to ensure the action was brought against the limited liability company

Date of Hearing: 28 November 2017

Date of Judgment: 5 January 2018

Mr Tyrone Quinn, Apex Law Group Limited, for the Appellant

Mr Christopher Swan, Christopher E. Swan & Co., for the Respondent

Introduction

1. In 2003, Mrs Anjula Bean instructed the law firm Christopher E. Swan & Co. to incorporate the limited liability company Bees Knees Limited of which she would be the principal and a director. Mrs Bean thought the veil of protection she instructed

¹ The Judgment was circulated without a formal hearing for handing down to save costs.

Christopher E. Swan & Co. to create by the incorporation of Bees Knees Limited, would shield her personally from financial obligation and legal responsibility; even from Christopher E. Swan & Co.

2. Commencing in 2005, a series of events took place which ultimately led to court proceedings. First, in 2005, Bees Knees Limited acquired the business known as "Juice N' Beans Café". In April 2009, Mrs Bean agreed with a contractor, Kevin Outerbridge, trading as Columbia Maintenance, that Mr Outerbridge would carry out construction work to the storefront of Mrs Bean's business property known as "Juice N' Beans Cafe" located at 61 Front Street In the City of Hamilton. Mrs Bean and Mr Outerbridge fell out. Mrs Bean claimed Mr Outerbridge overcharged her and produced substandard work. Their dispute resulted in a trial before the Worshipful Magistrate Juan Wolffe. Mrs Bean was named as the Defendant in the action under the title "Anjula Bean (t/a Juice N' Beans Cafe)". Christopher Swan, a barrister and attorney in the law firm Christopher E. Swan & Co, represented Mrs Bean in the trial before the Worshipful Juan Wolffe.
3. On Friday 7th July 2017, the Worshipful Acting Magistrate Leopold Mills heard a dispute between Mrs Bean and Christopher E. Swan & Co. in which Christopher E. Swan & Co. claimed unpaid legal fees in two separate Ordinary Summonses. The Acting Magistrate ruled that Mrs Bean cannot rely upon the incorporation of Bees Knees Limited and the protection of the corporate veil as a defence to the claim for legal fees. He found that Mrs Bean never disputed any bills for legal services which she received, nor, did she complain about the bills being made out to her personally. He also found there was no evidence before the court that Mrs Bean did not intend to contract with Mr Outerbridge in her personal capacity.
4. In summons No 17CV00760, Acting Magistrate Mills found Mrs Bean personally responsible to Christopher E. Swan & Co. in the sum of \$7,275.00 in respect of work performed for Bees Knees Limited. In summons No 17CV00761, the Acting Magistrate found Mrs Bean personally responsible to Christopher E Swan & Co. in the sum of \$4,312.00 for work undertaken when Christopher Swan defended Mrs Bean in the action brought against her by Mr Outerbridge.
5. By Notice of Appeal dated 24th July 2017, Mrs Bean now appeals to the Supreme Court against the decision of Acting Magistrate Leopold Mills in summons No 17CV00761. The

appeal in respect of summons No 17CV00760 was formally abandoned at the hearing of the appeal. The Notice of Appeal contains the following three grounds of appeal:

- (I) Mr Swan wrongfully allowed Mr Outerbridge to sue Mrs Bean in her private capacity instead of being sued in the company name, Bees Knees Limited. Under this ground, Mrs Bean further complains that Acting Magistrate Leopold Mills did not consider this argument when he entered judgment against Mrs Bean for the legal fees claimed by Christopher E. Swan & Co.
 - (II) The second ground of appeal repeats the first ground of appeal and adds an additional complaint. Mrs Bean complains that at the hearing on 7th July 2017, the Acting Magistrate fell into error because since the action between Mr Outerbridge and Mrs Bean should never have been brought against Mrs Bean in her personal capacity, ruling that Mrs Bean must pay Christopher E. Swan & Co. legal fees for her representation resulted in Christopher E. Swan & Co. benefiting from its error.
 - (III) The Magistrate erred by awarding legal costs to Christopher E. Swan & Co. which is inequitable because at all material times Mrs Bean ensured Christopher E. Swan & Co. knew the action brought against her by Mr Outerbridge should have been brought against the company Bees Knees Limited.
6. I rule against Mrs Bean on all three grounds of appeal for the following three reasons. First, Mrs Bean allowed the trial with Mr Outerbridge to proceed against her in her personal capacity without complaint. Second, the evidence demonstrates that Mrs Bean was, at all times, aware Mr Outerbridge sued her in her personal capacity and third, Mrs Bean is yet to file an appeal against the ruling of Magistrate Wolfe complaining that Mr Outerbridge incorrectly sued her personally instead of suing Bees Knees Limited. Acting Magistrate Leopold Mills, therefore, had no evidence upon which he could accept the arguments made by Mrs Bean that Christopher E. Swan & Co was not entitled to its legal fees.

Protection behind the Corporate Veil

7. The central issue in this appeal is whether Mrs Bean can rely upon the separate and independent legal personality Bees Knees would have acquired when incorporated by Christopher E. Swan & Co. Based upon the proposition of separate legal personality, Mrs Bean contends she is not responsible for the legal fees claimed by Christopher E. Swan & Co., Bees Knees Limited is responsible for the legal fees. Mr Tyrone Quinn on behalf of Mrs Bean relied upon the well-established legal principle that a limited liability company holds a separate and distinct legal personality independent from those who took part in its incorporation.
8. In *Salomon v Salomon [1897] AC 22 at page 30*, Lord Halsbury sitting in the House of Lords set out the classic statement on the separation of corporate and individual legal personality

"...it seems to me impossible to dispute that once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in dis-cussing what those rights and liabilities are."

The Appellant's Submissions

9. Mr Quinn made four main points in support of the grounds of appeal. First, he relied upon various documents found in pages 22 through 25 of the Record, comprising cheques, invoices and the executed agreement between Mr Outerbridge trading as Columbia Maintenance and Mrs Bean. Mr Quinn submits that at all material times, Mrs Bean executed these documents, conducted transactions and operated under the company name Bees Knees Limited. Alternatively, he placed reliance upon the same documents to suggest Mrs Bean executed transactions trading as Juice 'N Beans Café which was owned by Bees Knees Limited.

10. Second, Mr Quinn relied upon sections 21 and 97 of the Bermuda Companies Act 1981 (the 1981 Act). Section 97 of the 1981 Act establishes the duty of care of officers of a company. Mr Quinn contended that Mrs Bean did not act unlawfully nor did she breach her duty of care to the company. I am not persuaded section 97 of the 1981 Act bears upon the issues in this appeal.

11. Mr Quinn relies upon the agency principle contained in section 21 (1) (a) (i) of the 1981 Act, in support of the contention that when Mrs Bean signed documents in her personal capacity, she was signing as agent on behalf of Bees Knees Limited. A proper application of Section 21 of the 1981 Act, to the facts of this case Mr Quinn argued, demonstrates Christopher Swan and Acting Magistrate Mills failed to recognize Mrs Bean's personal identity was separate and apart from the company identity she created when she incorporated and transacted business through Bees Knees Limited. Section 21 of the 1981 Act reads as follows:

Form of contracts

21 (1) Contracts on behalf of a company may be made as follows:-

(a) a contract, which if made between private persons would by law be required to be under seal, may be made on behalf of the company in writing—

(i) signed by any person acting under the express or implied authority of the company,

(i) executed under the common seal of the company, or

(iii) signed or executed in such other manner as the bye-laws of the company may provide.

12. Third, Mr Quinn asserted that Mr Swan's defence of Mrs Bean in the action brought by Mr Outerbridge was below the acceptable standards of a member of the Bermuda Bar. Christopher E. Swan & Co. incorporated Bees Knees Limited which in turn acquired Juice N' Beans. Therefore, Christopher Swan knew and understood that when Mrs Bean conducted business for Juice N' Beans, she was acting on behalf of Bees Knees Limited.

13. The Appellant identified three breaches of the Barristers Code of Professional Conduct 1981 ("Barristers Code"). First Mr Swan failed to advise Mrs Bean to defend the action

against Mr Outerbridge in the name of the company in breach of section 9 of the Barristers Code. Second, Mr Swan failed to notify Mrs Bean he made a mistake when he allowed the action to proceed against her in her name in breach of section 13 of the Barristers Code. Third, in light of these failures, Mr Swan charged an unreasonable fee for the work he carried out defending the action brought against her by Mr Outerbridge in breach of section 90 of the Barristers Code.

14. The fourth argument appealed to the policy behind the legal principle which separates personal and corporate identity. Mr Quinn argued that if Mrs Bean's signature on the documents she executed with Mr Outerbridge is not legally attributed to Bees Knees Limited, a dangerous precedent will be set for all directors and officers of limited liability companies in Bermuda. Officers and directors signing documents which they believe are for the benefit of their companies will be taking upon themselves personal undertakings and responsibilities they did not contemplate and would not be prepared to accept.

The Respondents Submissions

15. Mr Swan put up a robust defence to the grounds of appeal and supporting legal arguments. He relied upon six points to urge the court to dismiss the appeal. First, details of the trial between Mr Outerbridge and Mrs Bean and the decision rendered by the Worshipful Magistrate Wolffe in that action were not before this court and could not be reargued in this appeal.
16. Second, Mr Swan referred to a number of documents in the record showing Mrs Bean received correspondence and court documents identifying her in her personal capacity. Mr Swan countered that Mrs Bean either approved the documents or made no complaint to Christopher E. Swan and Co. that the documents incorrectly referred to her in her personal name. These documents included the quote for construction work rendered by Columbia Maintenance, the letter Mr Swan wrote to Mr Outerbridge's attorneys on behalf of Mrs Bean in response to the letter before action, Mr Outerbridge's attorney's letter in reply to that letter and the front page of the bill of costs filed by Mr Outerbridge at the conclusion of the trial which names Mrs Bean in her personal capacity as a party to the action.

17. Mr Swan's third argument was that the trial between Mr Outerbridge and Mrs Bean concluded three years before this appeal. That action lasted four years between 2010 and 2014. Mrs Bean's did not complain about her personal role as a defendant in the proceedings during the trial, nor did she raise any objection at the time judgment was rendered. Instead, Mrs Bean satisfied the judgment debt awarded to Mr Outerbridge in full and made no mention to Christopher Swan of her desire to appeal the judgment.
18. The fourth point Mr Swan made is that throughout his firm's representation of Mrs Bean, Christopher E. Swan & Co. rendered invoices to Mrs Bean in the name of "Anjula Bean". No complaint was made about this practice. Unfortunately, neither party to the appeal included as part of the Record copies of the retainer agreement for representation in the dispute with Mr Outerbridge or written copies of the invoices referred to in Ordinary Summons No 17CV00761. As I said during the appeal, both documents would have gone some way to resolving the issues in the appeal.
19. Fifthly, as part of the process of enforcement to collect the unpaid judgment debt, Mr Outerbridge issued enforcement proceedings against Mrs Bean in her personal capacity. The final point is that taking the previous five points together, the real reason Mrs Bean now complains representation was not in the name of the company is to create a platform for her refusal to pay the unpaid Christopher E. Swan and Co. invoice.

Disposition of the Appeal

20. Section 14(4) of the Civil Appeals Act 1971 sets out the legal test the Appellant must surmount to succeed in this appeal. The section provides as follows:

Determination of appeals

14 (4) No appeal shall succeed on the ground merely of misdirection or improper reception or rejection of evidence unless in the opinion of the Court substantial wrong or miscarriage of justice has been hereby occasioned in the court of summary jurisdiction

21. The Appellant must satisfy two tests. First, she must establish the Learned Acting Magistrate made an evidential error or misdirected himself on the law. Second, having

satisfied either limb of the first test she must demonstrate that the error or misdirection has occasioned substantial wrong or miscarriage of justice.

22. Taking each argument made by Mrs Bean, I find the same issue undergirds her three grounds of appeal. In each ground of appeal, Mrs Bean seeks to avoid responsibility for payment of legal fees owed to Christopher E. Swan and Co. because Mr Swan failed to defend the action filed against Mrs Bean in the company name Bees Knees Limited. Contrary to the submissions made by Mr Quinn, I do not accept that the outcome of this appeal turns on section 21 of the 1981 Act and maintaining the well-established separation between an individual and a limited liability company for whom that person may be acting.
23. Mr Quinn's submissions are all based upon the premise that Mrs Bean instructed Christopher E. Swan and Co. to defend the action commenced by Mr Outerbridge in the company name Bees Knees Limited. And, that ignoring her instructions, Christopher Swan failed to defend the action in the company name. The evidence before Acting Magistrate Mills did not support such a finding. There is a vacuum between Mr Quinn's submissions and the evidence contained in the Record of Appeal.
24. The evidence before the Acting Magistrate not only suggested Mrs Bean knew she was sued in her personal capacity, the evidence also supports the finding that with this knowledge, Mrs Bean personally paid Mr Outerbridge the sum he was awarded in the ruling made by Senior Magistrate Wolffe. Further, the first time Mrs Bean raised the complaint that Christopher Swan and Co Limited failed to defend the action by the proper party was on 7th July 2017, in the proceedings before Acting Magistrate Mills; approximately seven years after Mr Outerbridge commenced the action.
25. For the reasons submitted by Mr Swan, I find Mrs Bean's objection to paying legal fees owed to Christopher E. Swan and Co. is the more likely reason she now raises the argument Christopher E. Swan and Co. failed to ensure Bees Knees Limited was named the defendant in the action commenced by Mr Outerbridge. Accordingly, I also find that Mrs Bean cannot now claim that Christopher E. Swan and Co. failed to defend the suit brought by Mr Outerbridge in the company name Bees Knees limited as a defence to the demand for payment of legal fees.

26. In my view, Mrs Bean has failed to establish any material misdirection where the Acting Magistrate wrongfully applied the law. I also find Mrs Bean has been unable to establish the Acting Magistrate wrongfully accepted or rejected evidence. On the totality of the evidence before the Acting Magistrate and the arguments made before this court, I find Mrs Bean also failed to establish errors resulting in a substantial wrong or miscarriage of justice.
27. I accordingly dismiss the appeal. Unless either party applies within 28 days by letter to the Registrar to be heard as to costs, the Appellant shall pay the Respondent's costs of the appeal.

Dated this 5th day of January 2018.

DELROY B. DUNCAN
Assistant Justice