IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)

GRENADA

CLAIM NO. GDAHCV2019/0299

BETWEEN:

FLEMING ESTATES LIMITED **CLAIMANT**

AND

[1] GARDEN GROUP LIMITED
[2] THE ATTORNEY GENERAL OF GRENADA

DEFENDANTS

Appearances:

Mrs. Celia Edwards, Q.C. with Mr. Deloni Edwards for the Claimant
Ms. Dia Forrester, Attorney General with Ms. Caryn Adams, Crown Counsel for the Second Defendant

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2021: February 24
March 16

RULING

[1] **GLASGOW, J.:** Fleming Estates Limited ("Fleming Estates") was at one time the owner of a small hotel property called Maffiken Apartments. In May 2002, Fleming Estates along with several other small hoteliers[1] entered into an arrangement termed a preformation agreement. The parties designed the preformation agreement to create, fund and operate a company called Garden Group Hotels Limited ("Garden Group"), the second defendant to this claim. The preformation agreement obligated the parties to sell certain properties to Garden Group in exchange for, among things, positions of directorship and an allotment of shares equal to the agreed value of their respective business that were to be sold to Garden Group. Garden Group was incorporated as company number 39 of 2002 on 23rd May 2002. The authorised shares to be allotted amounted to 4,000,000 common shares. Fleming Estates and the other

[1] Village Hotel, No Problems Limited, Cedars Inn Mall 21 and Camerhogne Park Hotel

hoteliers forming Garden Group were listed as the initial shareholders. The principals of Fleming Estates and the other hoteliers were listed as the initial directors of Garden Group Limited.

Background

[2] By August 2002, Flemings Estates and the other hoteliers entered into a Sale of Business Agreement with Garden Group whereby they agreed to sell several properties owned by them to Garden Group. Garden Group in turn agreed to discharge all the liabilities of Fleming Estates and the other hoteliers and to adopt and perform all their outstanding contracts as at the completion of the sale. Garden Group was also obligated to allot shares to Fleming Estates and the other hoteliers to extent of the value of their various contributions. All the hoteliers, including Fleming Estates sold their properties to Garden Group, had their liabilities liquidated and were awarded shares. In particular, Fleming Estates transferred its properties by deed of conveyance dated 20th February 2003. The deed lists Grenada Cooperative Bank Limited ("the bank"), Fleming Estates and Garden Group as parties. The deed notes, among other things, that Fleming Estates would sell its property to Garden Group in exchange for (1) the discharge of Fleming Estates' obligations to the bank and (2) the allotment of fully paid common shares to the value of $764,992.00.

[3] By August 2002, Garden Group was incorporated and operational as a private corporate entity. Garden Group was seeking to raise investment capital of about US$8.9 million. It sought to do so by "through the private issue of secured fixed rate bonds…" maturing in 2012. The Government of Grenada ("the Government") and Garden Group entered into an agreement dated 7th August 2002 whereby Government agreed to guarantee the issuance of the bonds in exchange for "equity participation and company management…" In furtherance of the agreement to guarantee, Government passed legislation authorising the same[2] and issued its guarantee. Further to its obligation under the agreement, Garden Group allotted 25% of its issued share capital in common shares to Government. Government was permitted to appoint 3 of the 7 directors of Garden Group's Board of Directors.

[4] By the year 2006, Government and Garden Group further extended their business engagement by entering into a Memorandum of Understanding (MOU) dated 25th September 2006. The MOU indicated Government's interest in revitalising the small hotel sector and recited Government's previously

[2] Garden Group Hotel Ltd (Bond Issue) (Guarantee of Payment) Act No. 2 of 2002

mentioned investment in Garden Group. The MOU also notes that notwithstanding the USD 8.9 million investments guaranteed by Government, Garden Group continued to flounder financially. Government offered the much-needed assistance in exchange for an undertaking that Garden Group would (1) increase Government's 25% shareholding in Garden Group to 60% and (2) increase the number of Government appointed directors from 3 to 4. A buy back option was included in the MOU that permitted Garden Group to repurchase its shares from Government at such time the company was operating in a financially viable manner. There is no evidence before the court that Garden Group ever issued additional shares to Government or that Government invested the additional funds. I pause here to point out that if a complaint is being made that Government reneged or failed in its obligations to Garden Group, legal issues or claims may arise between Government and Garden Group. It must be trite that the individual shareholders may not simply bring an action to ventilate and vindicate any injury or loss sustained by Garden Group for any purported breach of an agreement or arrangement with Government. For such a course to be pursued, it would seem also trite that the shareholder would be enjoined to seek the court's leave to institute a claim pursuant to section 239 of the Companies Act.

[5] In time, Garden Group paid off the liabilities of Fleming Estates and the other hoteliers. Shares were also allotted to the various shareholders including the Government of Grenada. Fleming Estates and the other hoteliers had also transferred their hotel properties to Garden Group.

[6] The facts suggest that over the years Fleming Estates, the other hoteliers and Garden Group had discharged their various obligations expressly recited in the Sale of Business Agreement. However, Fleming Estates takes the contrary view. It filed an amended claim on 24th July 2019 in which it asserts its ownership of the Maffiken Apartments. It also relied on Garden Group's 2003 financial statement that was made further to the Sale of Business Agreement. That financial statement outlined the properties assigned by Fleming Estates and the various investors, the liabilities of Fleming Estates and others liquidated by Garden Group, the remaining equity in each property and the shares allotted to Fleming Estates and the other investors including the Government.

[7] Fleming Estates' claim also asserted its transfer of Maffiken Apartments to Garden Group and affirms that Garden Group paid off Fleming Estates outstanding mortgage debt *"with the assistance/support/financial input from the Government of Grenada…"* Fleming Estates then pleads that, despite its demands "no further steps have been taken to formalise the … agreement." I assume

that the reference to the "agreement" refers to either the preformation agreement or more properly, the Sale of Business Agreement. In that regard, Fleming Estates complains that –

(1) No further funds have been paid to the claimant;
(2) The claimant has been out of possession of its property which was destroyed by Hurricane Ivan;
(3) The claimant is unaware in whose the legal title of the property now stands;
(4) No shares have been issued as intended as per the agreement of the parties;
(5) The claimant has been without its business and income since 2002;
(6) The building has been destroyed.

[8] Fleming Estates has asked the court for orders returning its property, vesting the same in Fleming Estates in fee simple, damages, costs and further or other relief. Garden Group has filed a defence in which it repeats much the matters set out above in this ruling. The court took the view that based on all the above matters, Garden Group was the proper entity to answer this claim. The entire affair centres on the arrangement whereby certain business sold their assets to Garden Group in exchange for their debts being paid off by Garden Group. Additionally, Garden Group would allot portions of its shares to those investors. The investors were also authorised to appoint directors to Garden Group's Board of Directors. Government, the second defendant, also invested significantly, when, for instance, it issued its guarantee of the 2.8 million USD loan to Garden Group in 2002. For this action, Government was allotted shares and was authorised to appoint a number of Garden Group's directors.

[9] Based on those facts, I was hard pressed to agree with Fleming Estates that the Government ought to remain a party to the claim. Government was merely one of the shareholders caught up in the seeming misfortune of this corporate arrangement. Fleming Estates maintained that Government was the "main mover and shaker" of this entire affair and ought to remain a party. Fleming Estates did offer nonetheless that it would be prepared to proceed against Garden Group solely if the court disagrees with its posture. Government concurs with the court's trepidation about the propriety of a claim being brought against Government based on the current facts before the court. However, Government says that, while it can sustain a successful argument that there is no claim for which it must answer, it does have a sufficient interest in this claim as a party who is or may be affected by the court's ultimate determination of the matter. Accordingly, Government says that it is well placed to argue that Fleming Estates has no claim before this court. I must confess that the issue of whether Fleming Estates has pleaded a proper claim

was unfortunately cast as a jurisdiction point. Rather, the more appropriate question is whether Fleming Estates' pleadings have set out any claim to answer. I invited submissions from both sides.

Fleming Estates' submissions

[10] Fleming Estates makes several points –

(1) Garden Group has not acknowledged or defended the claim and as such no argument in defence can be made on its behalf;

(2) If the Government wishes to dispute the court's jurisdiction to hear the claim, then it should have filed an application pursuant to CPR 9.7 or 9.7A. The CPR 9.7 or 9.7A application should have been made early in the proceedings and not "at this 99th stage."; and

(3) In any event, even if the Government can raise objections at this time, the Government fails in its argument that the claim engages sections 238 to 241 of the Companies Act. This is since Fleming Estates has not filed a claim on behalf of Garden Group. Rather, counsel argues, Fleming Estates has filed a claim against Garden Group on the grounds that the contract between the parties has been frustrated because the refurbishment moneys have disappeared, Maffiken Apartments' building has been destroyed and the foundation of the contract has been frustrated. Fleming Estates, counsel says, is merely asking for the return of whatever is left of its property in order to salvage the same.

Government's submissions

[11] Government takes the view that this claim is a derivative action brought pursuant to section 239 of the Companies Act, Cap 58A ("the Act") for which the court's leave is required before a claimant files a claim. The Government says that Fleming Estate's claim is a nullity and should be struck out because the company has not obtained the court's leave before commencing the same. The essence of the section 239 argument is that Fleming Estates cannot recover damages for wrongs done to Garden Group even though Fleming Estates may have been injured by the alleged wrongs done to Garden Group. The right to bring a claim for wrongs done to Garden Group, injuries suffered by the company or losses it incurred as a consequence is a right vested in Garden Group as opposed to its shareholders. Fleming Estates, like other shareholders, has no separate and independent right of action for alleged wrongs done to Garden Group. If Garden Group has been wronged, then Fleming Estates may seek leave to bring a

derivative claim on Garden Group's behalf "so that each shareholder can be made whole…" if Fleming Estate is awarded compensation from the wrongdoer.

[12] Government explains at paragraph 12 of its submissions why it argues that this claim a derivative claim pursuant to 239 of the Act. Government recites Fleming Estates claim that it is suffering by Garden Group's alleged conduct which "has resulted in the claimant allegedly not benefitting financially or being paid the equivalent of the claimant's equity in the first defendant …and the properties of the first defendant were not refurbished." Government goes on to say that this complaint is compounded with the pleading that Garden Group failed to act in the financial interest of its investors in that millions of dollars disappeared from Garden Group.

[13] Government's view is that a derivative action must be pursued if Fleming Estate's claims are to be vindicated[3]. Government says the following had to be established –

(1) Reasonable notice must be given to the directors or to the subsidiaries of an intention to institute a derivative action (section 239(2) (a) of the Act);

(2) The court must be satisfied that the claimant to the derivative action is acting in good faith (section 239(2)(b) of the Act;

(3) That the derivative action must appear to the court to be in the best interest of the company (section 239(2)(b) of the Act).

[14] Having failed to apply for leave, the Government says that the claim is a nullity (see **Oliver McDonna v Benjamin Wilson Richardson**[4]). The Government goes on to say that even if Fleming Estates did apply for leave to bring a derivative action, the same would not have met the threshold requirements. In that regard Government points out that Fleming Estates did not serve notice of the claim on any of Garden Group's directors as prescribed by section 239(2(a). The court had previously joined the other shareholders but they were subsequently removed. Government also makes the point that Fleming

[3] Government relies on Foss v Harbottle (1843) 67 ER 189 and sections 238 to 241 of the Act,
[4] AXAHCVAP2005/03

Estates' claim may not have been brought in good faith since Fleming Estates' statement of claim exhibits a number of fallacies when it asserts that –

(1) "no further sums were paid to the claimant". Government reminds the court that the Sale of Business Agreement provided for payments only of Fleming Estates' debts and liabilities and no other payments. The only other payments that Garden Group may make to Fleming Estates are in the form of, for instance, dividends paid by Garden Group to its shareholders. This would evidently flow from the proper management of the company;

(2) "it is out of possession of its property". Government again reminds the court that Fleming Estates transferred the property in question to Garden Group and as such is no longer the owner of that property. The property now forms part of the real property assets of Garden Group. If Fleming Estates' interest as a shareholder is injured or affected by Garden Group's failure to utilise its assets in a manner beneficial to Garden Group, then Fleming Estate may seek the court's leave to bring a derivative claim;

(3) "it is unclear in whose name the legal title to the property stands". Government adverts to the deed of conveyance dated 20th February 2003 whereby Fleming Estates transferred its property to Garden Group. The court is reminded that the deed is now a matter of public record since it is registered in the records of the Deeds and Land Registry;

(4) "no shares were issued as intended as per the document exhibited as "C". Government again recites the Sale of Business Agreement and other records indicating the allotment of shares. Government argues that if Fleming Estates is complaining about a failure to issue shares then that is a failure of the management of the company. Fleming Estates must obtain leave to bring a derivative claim to ventilate such claims on behalf of Garden Group; and

(5) "the claimant has been without its business and income therefore since 2002". Government maintains that any income that Garden Group is obligated to pay to Fleming Estates is an internal management issue to be resolved by the company. If Garden Group is being mismanaged and

Fleming Estates is not receiving returns on its investment as a consequence, then Fleming Estates has to seek the court's leave to bring a derivative claim on Garden Group's behalf.

[15] Government also addressed the court on whether the claim could be one seeking an oppression remedy pursuant to section 241 of the Act. Government cautions, however, that in order for Fleming Estates to bring an oppression claim, it must demonstrate that it has been personally affected by the wrongs committed. Fleming Estates is not permitted, Government says, to bring a claim that it is oppressed, unfairly prejudiced or its rights unfairly disregarded when in substance the claim is one for a derivative claim. Government relies on the learning in **Rea v Wildeboer**[5] where the court stated that –

> "…the appellants' open-ended approach to the oppression remedy in circumstances where the facts support a derivative action on behalf of the corporation misses a significant point: the impugned conduct must harm the complainant personally, not just the body corporate, i.e., the collectivity of shareholders as a whole.
>
> The oppression remedy is not available – as the appellants contend – simply because a complainant asserts a "reasonable expectation" (for example, that directors will conduct themselves with honesty and probity and in the best interests of the corporation) and the evidence supports that the reasonable expectation has been violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard". The impugned conduct must be oppressive" of or "unfairly prejudicial" to, or "unfairly disregard" the interests of the complainant. No such conduct is pled here.
>
> That the harm must impact the interests of the complainant personally – giving rise to a personal action – and not simply the complainant's interests as a part of the collectivity of stakeholders as a whole - is consistent with the reforms put in place to attenuate the rigours of the rule in Foss v. Harbottle. The legislative response was to create two remedies, with two different rationales and two separate statutory foundations, not just one: a corporate remedy, and a personal or individual remedy.
>
> The derivative action provides aggrieved minority stakeholders with the ability to pursue a cause of action on behalf of the corporation to redress wrongs done in respect of the corporation, provided leave is obtained from the court to do so. As Professor MacIntosh has observed:
>
> > The corporation will be injured when all shareholders are affected equally, with none experiencing any special harm. By contrast, in a personal (or "direct") action, the harm has a differential impact on shareholders, whether the difference arises amongst members of different classes of shareholders or as between members of a single class. It has also been said that in a derivative action, the injury to

[5] Natale Rea & Ors. v Robert Wildeboer & Ors. 2015 ONCA 373 at paras. 33-36

shareholders is only indirect, that is, it arises only because the corporation is injured, and not otherwise."

[16] Government submits that **Rea v Wildeboer** supports their view that the issues raised by Fleming Estates are matters concerning the internal management and operations of Garden Group. Government explains that none of these matters affect Fleming Estates' interest personally but rather the complaints may concern Fleming Estates' interest as shareholders in the collective of shareholders.

[17] Government presented arguments on whether it has the standing to make these arguments about the viability of Fleming Estates' claim. I will not recite these submissions for the simple fact that I believe that the point is beyond moot. The parties presented some arguments on the court's jurisdiction. However, as I have indicated above the issue before the court is not about its jurisdiction. This was a rather unfortunate casting of the matter. This court clearly has jurisdiction to hear this claim and all the underlying issues. What is at issue is whether there is any claim to answer. When put this way, it is beyond debate that both or either of the defendants may raise any defence in answer to the claim or address any of the matters arising thereon. Indeed, I have made the point on the last hearing that I am of the view that, as a shareholder of Garden Group, Government has a vested legal interest in the conduct and outcome of these proceedings. Government is therefore properly positioned to address this court on the viability of the claim.

Analysis

My views

[18] I must confess that Fleming Estates' pleadings are rather parsimonious in respect of identifying the specific cause of action that is before the court. In my view a number of possible causes of action may arise –

(1) A derivative claim brought by Fleming Estate on Garden Group's behalf regarding –

(a) breaches by Government in respect of contractual obligations to Garden Group;

(b) possible mismanagement of the affairs of Garden Group that resulted in its alleged dire financial state and ultimately the alleged injuries and losses suffered by Fleming Estates and the other shareholders;

(2) A claim by Fleming Estates against Garden Group for oppressive conduct that resulted in the alleged injuries and losses suffered by Fleming Estates;

(3) A claim by Fleming Estates against Garden Group for breach(es) of the Sale of Business Agreement or the terns of the deed of conveyance of its property to Garden Group;

(4) A claim by Fleming Estates against Government for breach (es) of any agreement between Fleming Estates and the Government.

[19] Items 1 and 2 engage sections 239 and 241 (1) and (2) of the Act which reads –

"239. Derivative actions

(1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which such company or any of its subsidiaries is a party.

(2) No action may be brought, and no intervention in an action may be made, under subsection (1) unless the court is satisfied—

(a) that the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;

(b) that the complainant is acting in good faith; and

(c) that it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued."

"241. Oppression restrained

(1) A complainant may apply to the court for an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates—

(a) any act or omission of the company or any of its affiliates affects a result;

(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a negligent manner; or

(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of."

Derivative claim

[20] In respect of whether the claim is a derivative action, I agree with the arguments made by Government. Without repeating the facts, the arguments and law recited above, it is difficult to see how the complaints set out on the pleadings concern any other matter but Garden Group's operations and its management. The pleadings disclose that Fleming Estates engaged in an agreement with Garden Group whereby it would transfer its property to Garden Group in exchange for the liquidation of its debts, allotment of shares and shared directorship of Garden Group. Fleming Estates' property became the property of Garden Group once the arrangement under the Sale of Business Agreement was concluded via the deed of conveyance dated 20th February 2003. Fleming Estates has not and cannot assert that it did not transfer its property to Garden Group since this is now a matter of public record. Garden Group allotted shares to Fleming Estates and as such, it is now a shareholder of Garden Group. Fleming Estates complains that beyond the payment of its debt on transfer of its property, it has received no "further funds" from Garden Group. This pleading, in my view and as correctly argued by Government, may expose a complaint that Garden Group failed to honour its obligations to its shareholders, including Fleming Estates to pay these alleged "further funds."

[21] Instructively the pleadings do not state the type or nature of the "further funds" alluded to by Fleming Estates. Beside the payment of Fleming Estates' debts, does Garden Group owe any "further funds" to Fleming Estates under the Sale of Business Agreement? Did Garden Group owe these "further funds" to Fleming Estates as payments for personal loans or sums received from Fleming Estates under some scheme or agreement between Fleming Estates and Garden Group? If so, Fleming Estates does not say

so on its pleadings. Alternatively, were these "further funds" owed to Fleming Estates as anticipated dividends or other returns to shareholders on investments? Fleming Estates has not been forthcoming on its pleadings as to what payments were anticipated or agreed and the basis for the same. In the absence of any material to ascertain what "further funds" are being referenced one is left to surmise that the "further funds" claimed on the pleadings are anticipated returns to shareholders in the normal course of administering the affairs of a well-run company. If this is the complaint, then this surely is a complaint about the management and operation of Garden Group. Any complaint by Fleming Estates in these circumstances would require leave of the court to bring a derivative claim pursuant to section 239 of the Act. The same conclusion is drawn about the complaint that no shares have been issued. This is a charge about the possible mismanagement of Garden Group and ought to be ventilated as a derivative claim.

Oppressive conduct

[22] However, Fleming Estates argues that this claim is not brought on behalf of Garden Group. It strenuously maintains that these are wrongs committed by the defendants personally against Fleming Estates. Fleming Estates says that the agreement with Garden Group is frustrated because the refurbishment moneys have disappeared and Maffiken Apartments building has been destroyed. Two points can be made here –

(1) As correctly argued by Government, these are not matters exclusive to Fleming Estates outside of the collective of shareholders. If indeed this corporate venture has failed, then the investment made by all the shareholders has been lost. Indeed, again, the pleadings lack generosity in exposing whether the injuries and losses pleaded by Fleming Estates are personal to it in the sense elucidated in cases such as **Rea v Wildeboer**. Accordingly, I cannot conclude that this claim does not fall into the category of claims for which leave is required under section 239; and

(2) Even if I am wrong about this and this claim is about properly laid in an action for oppressive conduct, then I agree with the Government that the basis for the complaints set out at paragraph 8 of the statement of claim cannot be sustained in face of the available facts –

(a) With respect to the claim that no "further funds" have been paid to Fleming Estates, I agree with Government's response to this charge. I have already set out my

difficulties in figuring out what "further funds" are alluded to when the Sale of Business arrangement is explicit as what was to be paid to Fleming Estates. Fleming Estates admits at paragraph 7 of the statement of claim that its debts have been paid. Indeed this was the entire basis on which Fleming Estates transferred its property to Garden Group as is evidenced by the 20th February 2003 deed of conveyance.

(b) With respect to the claim that Fleming Estates is out of possession of its property, I must confess that I do not agree with this assertion since the record reflects that Fleming Estates was no longer owner of this property once the transfer to Garden Group had taken place via the 20th February 2003 deed of conveyance;

(c) The assertion that Fleming Estates does not know in whose name the property is registered is also unsustainable. Having executed a transfer of its property to Garden Group, Fleming Estate has divested itself of the same to Garden Group. A perusal of the 20th February 2003 or a search of the Deeds and Land Registry could have foreclosed this debate;

(d) The same conclusion must be drawn about what is pleaded about the shareholding of the company. There is no pleading to expose the grounds on which it is asserted that Garden Group did not meet an obligation to issue shares. In any event, such a complaint cannot form the basis of an oppressive conduct claim;

(e) The assertion that Fleming Estate has been without its business and income is a general and unsupported contention in view of all the circumstances.

Is this a breach by Garden Group of a contract with Fleming Estates?

[23] Regarding whether this is a claim for breach of contract, Fleming Estates appears to have grounded this complaint on the terms of the Sale of Business Agreement, including the 20th February 2003 deed transferring its property to Garden Group. Fleming Estates has not asserted or pleaded any other agreement or arrangement with Garden Group. I have already set out the nature and extent of the various

obligations of Fleming Estates and Garden Group pursuant to the Sale of Business Agreement. I have made the point repeatedly in this ruling that both sides have met the obligations of that agreement. To repeat, Fleming Estates undertook to transfer its assets and liabilities to Garden Group in exchange for the payment of its debts, the allotment of shares and the right to appoint directors on the board of Garden Group's directors. Fleming Estates does not dispute that both parties have fulfilled these terms of the Sale of Business Agreement. Fleming Estates acknowledges these facts both in its act transferring its property via the 20th February 2003 deed and at paragraph 7 of its statement of claim. There is therefore no basis for a claim by Fleming Estates that Garden Group has breached the Sale of Business Agreement or by extension, the terms of the 20th February 2003 deed of transfer. In the absence of any other pleaded or apparent agreement between Fleming Estates and Garden Group, it cannot be said that this is a claim about Garden Group's breach of an agreement with Fleming Estates.

Is there a possible claim by Fleming Estates against Government for breach of contract?

[24] In respect of a possible claim by Fleming Estates against Government for a breach of an agreement between these two parties, it may be helpful to recall that Government is a fellow shareholder. There is no basis set out on the pleading for a claim by one shareholder against another. However, Fleming Estates' position may be that Government undertook certain obligations to Garden Group that Government has failed to honour. If this is the case, then Garden Group may have a cause of action against Government for any breach(es) of those obligations. All of the shareholders or some or one of them may have suffered loss(es) because of the injuries inflicted on Garden Group due to Government's alleged failure to keep those promises to Garden Group. However, as discussed above, the law closely circumscribes the manner in which the individual shareholder may proceed to file a claim alleging wrongs done to Garden Group, even though the individual shareholders may have suffered injury and/or loss consequently. A shareholder may only pursue remedies for the wrongs done to the company with the leave of the court. Conversely, Fleming Estates may assert that it entered an agreement with Government that obligated Government to do certain things with respect to Fleming Estates. That would clearly be a claim that has little or nothing to do with obligations flowing between Garden Group and its shareholders. However, there is no pleading to demonstrate any agreement between the Government and Fleming Estates.

Conclusion

[25] For all the above reasons, I do not believe that Fleming Estates has brought a claim that has reasonable prospects of succeeding against either party. As such, I must dismiss this claim. I do so with no costs to Fleming Estates.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar