[1980–87 Gib LR 188]

IN THE MATTER OF KEY CITY PROPERTIES LIMITED

SUPREME COURT (Alcantara, A.J.): January 24th, 1984

Companies—objects—alteration—court may sanction alterations falling within Companies Ordinance (cap. 30), s.7(1), enabling company to carry on business more efficiently/economically or attain purpose by new, improved means—not to sanction alterations useless in effect, creating ambiguity or substantially altering main object of company

The petitioner company sought the sanction of the court, under the Companies Ordinance, s.7, to the alteration of its objects.

The petitioner company resolved at an extraordinary general meeting to alter its objects. It deleted all the objects in its existing memorandum which had enabled it to carry on the business of an investment trust company, deal in the acquisition of property, including land, and erect, construct, maintain and alter property. It wished to carry on its business more effectively and to attain its main purpose by new or improved means. It proposed, *inter alia*, new clauses which allowed it (cl. (c)) "to carry on any other trade or business whatsoever which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with or ancillary to . . . the general business of the company." Clause (e) proposed to allow it "to erect, construct . . . roads, railways, aerodromes . . . factories . . . necessary or convenient for the company's business." Clause (j) would allow it "generally to act as bankers for customers and others."

The court considered how to exercise its discretion to sanction the alterations in the light of the accepted proposition of law that the alterations should not be of such character as to substantially alter the main object for which the company was formed.

Held, giving qualified sanction to the alterations:

The court would sanction the new objects of the company, subject to certain deletions. It was clear that the Companies Ordinance sought to prevent too easy an alteration of a company's objects, but s.7(1) permitted alterations which enabled the company to carry on business more economically or efficiently or allowed it to attain its purposes by new and improved means. It was important, therefore, that the purpose of the alterations fell within the wording of one of the paragraphs of s.7(1) of the Companies Ordinance and it followed that—

(a) the words "in the opinion of the board of directors" in cl. (c) should be deleted. They created a power in favour of the board of directors and whilst powers could be validly contained in a company's objects, this one added nothing but ambiguity to the object (para. 14);

(b) clause (e), giving the company power to become a general building company could not be approved. The company was an investment company dealing with properties and allowing it to become a building company would have substantially altered the main object for which it was formed (para. 15); and

(c) the words "and generally to act as bankers for customers and others" in cl. (j) would be deleted with the agreement of the parties as, since it was not the intention of the company to go into banking, it was therefore useless to have these words as part of its objects (para. 16).

Cases cited:
(1) *Cyclists' Touring Club*, *In re*, [1907] 1 Ch. 269, followed.
(2) *Scientific Poultry Breeders' Assn. Ltd.*, *In re*, [1933] Ch. 227, followed.

Legislation construed:
Companies Ordinance (Laws of Gibraltar, *cap.* 30), s.7: The relevant terms of this section are set out at para. 2.

D. Azopardi for the petitioner.

1 **ALCANTARA, A.J.:** This is a petition under s.7 of the Companies Ordinance, seeking the confirmation of the court to the alteration of the objects of the company.

2 The relevant part of s.7 reads:

> "(1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—
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> (a) to carry on its business more economically or more efficiently;
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> (b) to attain its main purpose by new or improved means;
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> (c) to enlarge or change the local area of its operation;
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> (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
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> . . .

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interest will, in the opinion of the court, be affected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the court is entitled to object and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit."

3 One must find some guidance on how the court should exercise its discretion of confirming or not confirming. That guidance can only be found in cases decided before the Companies Act 1948, as the present-day law in England is different. There are two decided cases which are of assistance. The first one is *In re Cyclists' Touring Club* (1), where the memorandum stated that the objects were " to promote, assist, and protect the use of bicycles, tricycles, and other similar vehicles on public roads." The company proposed to alter its power by admitting all tourists, including motorists. The court held that the alteration must not be allowed as it did not fall within cll. (a) and (d) of the then English equivalent of our s.7 of the Companies Ordinance.

4 The other case is *In re Scientific Poultry Breeders' Assn. Ltd.* (2), where, on appeal from the refusal of the judge to confirm an alteration, it was said by Lord Hanworth, M.R. ([1933] Ch. at 229):

"It is quite clear from the section I have read that the intention of the Legislature was to prevent too easy an alteration of the conditions contained in the memorandum of association of a company; but it is also plain that there was no intention to shut out a company from making some alteration which was of a nature and quality to enable it to carry on its business more economically or more efficiently, or to attain its main purpose by new and improved means."

5 In allowing the appeal, the other member of the court, Lawrence, L.J. put the matter in the following words (*ibid.*, at 234–235):

> "With the greatest respect to the learned judge, I think that the fact that the alterations substantially alter the objects of the company is not a relevant consideration for the purpose of ascertaining whether the court has jurisdiction to sanction the alterations. It may well be that if the alteration is of such character as substantially to alter the main object for which the company was formed, the court ought not to sanction the alteration . . . although it might come within the words of the section."

6 The petitioning company was incorporated on July 2nd, 1965, under the name of Reserve Securities Ltd. It changed its name to Key City Properties Ltd. on February 11th, 1972. The first object of the company, set out at cl. 3 of its memorandum of association, is:

> "(a) to carry on the business of an investment trust company and to undertake and to transact all kinds of trust and agency business."

7 There were other clauses dealing with the acquisition of property, including land. Also the power to erect, construct, alter and maintain property.

8 On January 7th, 1982, by special resolution at an extraordinary general meeting, it was decided to alter the objects of the company.

9 On the evidence before me, I am satisfied that there was due compliance with the requirements as to notices to debenture holders, creditors and others. Affidavits have been filed and read to me. It is therefore unnecessary to deal with this aspect of the matter.

10 In the normal case you expect that an alteration is the deletion of a clause and the substitution of another, or the adding of words to an existing clause. In this case before me the company thought fit to delete all the objects of its memorandum and replace it with a different set. The difficulty I have encountered is how many of the original objects are still in force. It has been necessary for me to compare clause by clause to find out what is new and what is old.

11 The purpose of the alterations according to the petition is to enable the company to carry on its business more efficiently and to attain its main purpose by new or improved means. The petitioner is in fact relying on paras. (a) and (b) of s.7(1) of the Companies Ordinance.

12 There are three clauses in the new objects put forward which call for further consideration and on which I invited counsel to comment. They are cll. (c), (e) and (j).

13 They read:

> "(c) To carry on any other trade or business whatsoever which can, in the opinion of the board of directors, be advantageously carried on

by the company in connection with or as ancillary to any of the above business or the general business of the company.

. . .

(e) To erect, construct, lay down, enlarge, alter and maintain any roads, railways, aerodromes, tramways, sidings, bridges, reservoirs, shops, stores, factories, buildings, works, plant and machinery necessary or convenient for the company's business, and to contribute to or subsidize the erection, construction and maintenance of any of the above.

. . .

(j) To make advances to customers and others with or without security, and upon such terms as the company may approve, and generally to act as bankers for customers and others."

14 My objection to (c) is the inclusion of the words "in the opinion of the board of directors", which leads me to the conclusion that it is a power and not an object. Although powers are sometimes found in memorandums of association, like the power to mortgage or the power to grant a pension, I have never before encountered a power relating to the opinion of the directors. Counsel for the petitioner has agreed or consented that those words should be deleted as it adds nothing to the object other than create an ambiguity.

15 My objection to cl. (e) is that this company is an investment company dealing with properties. Giving it power to become a building company to enable it to construct aerodromes, *etc.* would substantially alter the main object for which the company was formed. I will not sanction this alteration in exercise of my discretion under s.7 of the Companies Ordinance, following the criterion of the two authorities quoted above.

16 My objection to cl. (j) are the words at the end of that clause "and generally to act as bankers for customers and others." There is no need to exercise my discretion, as counsel has agreed that they be deleted, as it is not the intention of the company to go into banking.

17 I sanction the new objects of this company, subject to the deletion of cl. (e), and the amendments to cll. (a) and (j), by the deletion therefrom of the words "in the opinion of the board of directors" and "and generally to act as bankers for customers and others."

Ruling accordingly.