



## **Nominee shareholder's breach of trust** *"The strings of the marionette have been cut"*

**Part 2**

**By Dr. Pavlos Neofytou Kourtellos**

In two previous publications "[Nominee shareholders – valid trusts arrangements or a mere façade?](#)" and "[Nominee-Shareholder's breach of trust Cutting the strings of the marionette](#)", exploring the related issues we had indicated that our firm had launched legal proceedings against, among others, a nominee shareholder unwilling to co-operate with the beneficial owners of the shares and in particular with the instructions of the beneficial owners to have the shares held by the nominee shareholder transferred and registered unto their names. During proceedings at interim stage on an ex parte basis, the Cyprus Court issued prohibitory interim orders against such nominee shareholder and the officers of the company - service provider to prevent alienation of the shares in issue pending final adjudication of the dispute.

We had then commented that this could be interpreted as a *prima facie* indication of the readiness of the Cyprus Court to protect the beneficiary's rights over the shares and that the law of trusts will always find the path to operate in aid of the beneficiary.

With its first instance judgment delivered in June 2017, the District Court re-affirmed the above that is that the Cyprus Courts are ready and willing, provided that this is justified by

the facts of every given case, to come to the aid of a "trapped" beneficial owner through the inactions and refusal of the nominee shareholder to co-operate and protect the rights of such a beneficial owner. With its recent landmark decision the first instance District Court ordered that:

- (a) The appointment of the law firm, which through its affiliate entities providing corporate administrative services to the company the shares of which were held by a nominee shareholder, be immediately terminated and/or that such an appointment be revoked.

The issue of such a drastic order resulted from the fact that the said law firm entered a notice of appearance in the proceedings on behalf of the company (the shares of which constitute the subject matter of the dispute) without receiving instructions from the beneficial owners (given that the nominee directors were acting on the basis of trust deeds entered into with the beneficial owners). The question posed by the first instance District Court and which remained unanswered was on whose behalf was the law firm defending the proceedings in the absence of any instructions from the beneficial owners? The first instance judgment made extensive references to the limited case law that is available on this issue has concluded that "*the law firm and its affiliated companies providing corporate administrative services have breached their fiduciary duties towards the plaintiffs – beneficial owners*". The Honorable Judge citing tried law indicated that "*...for a fiduciary cannot act at the same time both for and against the same client and his firm is in no better position. A man cannot without the consent of both clients act for one client while his partner is acting for another in*





*the opposite interest. His disqualification has nothing to do with the confidentiality of client information. It is based on the inescapable conflict of interest which is inherent in the situation”.*

The correct approach by the said law firm, according to the Honorable Judge, was for the law firm to withdraw and not to attempt to serve the interests of only the one out of the three beneficial owners involved by taking sides and in effect turning against the plaintiffs towards whom they have a fiduciary relationship pursuant to the laws of trusts and equity.

- (b) The existing nominee shareholder be removed and that he be replaced by a new trustee of the choice of the beneficial owners – plaintiffs in the proceedings and the shares under trust be registered onto his name.

Such removal was successful by invoking the provisions of the Cyprus Trusts Law CAP 193, first time to be applied and tested in Cyprus courts, and in conjunction with the surrounding circumstances of the case which clearly indicated that the nominee shareholder in collaboration with one out of the three beneficial owners was purposefully refusing to follow instructions by the other beneficial owners – plaintiffs in an attempt to trap the beneficial owners – plaintiffs in the proceedings. It was made obvious before the Court that someone else was pulling the strings. The overriding consideration is the welfare of the beneficiaries and the competent administration of the trust in the beneficiaries’ favor. The Honorable Judge made a finding that the trustee, whose removal was sought, not only was acting in breach of his duties towards the beneficial owners – plaintiffs but was also not able to discharge his duties as such in a competent manner.

The plaintiffs – beneficial owners were intentionally deprived and prevented from exercising their rights over the shares of a company. The actions and/or inactions and/or omissions of the nominee shareholder in this particular case opened the path to the beneficial owners to claim what was rightfully theirs. The arbitrary actions of the law firm, which in the absence of any instructions from the interested parties, decided to file a notice of appearance and oppose an application for the issue of an order which was right in law and in equity, did not escape the criticism of the presiding judge hence the issue of the order for the termination of their appointment.

The *strings of the marionette* have been cut irrevocably and in no uncertain terms.

For further information on this topic please contact Dr. Pavlos Neofytou Kourtellos at P. N. KOURTELLOS & ASSOCIATES LLC, by telephone: +357 25 745575 or by fax: +357 25 755525 or by e-mail: [pnk@kourtelaw.com](mailto:pnk@kourtelaw.com)

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