FTCC 031/2015 2015 G NO. 38

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL & ADMIRALTY DIVISION)
AND
IN THE MATTER OF THE COMPANIES ACT NO 5 OF 2009
INCLUDING SECTIONS 230 – 241 & 256 OF THE SAID ACT

BETWEEN:

MOMOH ANSUMANA - PLAINTIFFS
(suing as Shareholder of Lora Golden Wings (SL) Limited)
4 SNA Quarters, Lungi, Kaffu Bullom Chiefdom, Port Loko District

BORRIS FARFELL
(suing as Shareholder of Lora Golden Wings (SL) Limited)

OLEG TSUKANOV
(suing as Shareholder of Lora Golden Wings (SL) Limited
through his Attorney: BORIS FARFELL above-mentioned)
Both of 29 Off Beach Road, Lumley, Freetown

AND

VOYTOVICH ROSTISLAV - DEFENDANTS
(Sued as Director/Shareholder of Lora Golden Wings (SL) Limited)
29 Off Beach Road, Lumley, Freetown

EDUARD MYRONENKO
(Sued as Managing Director of Lora Golden Wings (SL) Limited)
29 Off Beach Road, Lumley, Freetown.

Solicitors:-

Mr. M. P. Fofanah for the Plaintiffs
Mr. Y. H. Williams
and
Mr. B. Jones for the Defendants

RULING DELIVERED THIS DAY OF 2016 BY THE HON. MS. JUSTICE F. BINTU ALHADI J.

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The Plaintiffs action commenced by Writ of Summons filed on 21st April 2015 against the Defendants jointly and severally for the following Orders to wit:-

1. Full Statement of Account by the 1st and 2nd Defendants herein, being Director and Managing Director respectively (and in the case of the 1st Defendant being also a Shareholder) of Lora Golden Wings (SL) Limited (herein called "the Company"), of all accounts and transactions of the Company as well as a Statement and production of an Inventory of the assets of the Company from July 2013 to date;

2. An injunction restraining the said Defendants herein, their privies, assigns, servants, agents and representatives from continuing to deal or transact in, dispose of, transferring, assigning or in any other way interfering with the assets of the company, inclusive of its liquid/cash assets, bank accounts, land concessions and acquisitions, real property and equipment, gadgets and machinery of the Company pending the determination of this action.

3. An Order restraining the Defendants from dealing or transacting in, doing business with or in any other way from accessing their respective and/or joint assets/properties, shareholdings, dividends, profits and entitlements in various other companies incorporated by them in Sierra Leone or in which they hold respective shares/equities, namely, LGW Incorporated (SL) Limited, LGW Logistics (Sierra Leone) Limited, LGW Mining Company and LGW Foundation Trust Limited, among other companies pending the determination of this action.

4. An Order attaching the assets, shareholdings, dividends and entitlements of the Defendants herein in the companies listed in paragraph 3 above to the assets of the Company herein (namely, Lora Golden Wings (SL) Limited).

5. Immediate recovery of the said assets, shareholdings, dividends and entitlements of the Company from the Defendants.

6. Damages for breach of trust and for the arbitrary and dishonest conduct by the Defendants herein against the interests/shareholdings of the Plaintiffs in the Company.

7. An Order that the Defendants herein (who are non-Sierra Leonean citizens) provide security or enter an undertaking/bond for their personal appearance in Court in order to answer to the claims made herein against them by the Plaintiff until the determination of this action; and

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8. Costs of this action to be borne by the Defendants.

9. The Defendants entered appearance on the 29th day of April 2015, followed by a Statement of Defence filed on the 18th of May 2015 and a Counter-Claim filed on the 29th of December 2015 claiming: 'that a detailed account be provided by the Plaintiffs in respect of all monies, machinery, equipment and materials received by them during the period March 2013 to 31st July 2014.'

10. Five witnesses for the Plaintiffs filed Witness Statements and testified, including the 2nd Plaintiff.

11. Two Witness Statements were filed for the Defendants.

12. The 1st Defendant Mr. Voytovich Rostisnov testified in Court. The 2nd Defendant, Mr. Eduardo Myronenko did not.

EXAMINATION-IN-CHIEF OF THE 1ST WITNESS FOR THE PLAINTIFF

13. The first witness for the Plaintiff, Mr. Boris Farfell informed the Court that he made a Witness Statement on the 27th of November 2015 and that he would like the Court to consider it as part of his evidence in chief. He was examined-in-chief by Mr. M. P. Fofanah and he informed the Court that he was an Israeli citizen, who lives mostly in Sierra Leone. He also identified the 1st Plaintiff as a Sierra Leonean shareholder in Lora Golden Wings Company (SL) Limited and that he had known him since the year 2012, when he first arrived in Sierra Leone.

14. He also submitted that he knew the 3rd Defendant, Mr. Oleg Tsukanov, as a shareholder of the said company and that Mr. Tsukanov gave him a Power of Attorney, to act on his behalf and which was submitted as Exhibit B.

15. Mr. Farfell also submitted that he knew the 1st Defendant, Mr. Voytovich Rostisnov, as a shareholder and director of the said company.

16. The 3rd Plaintiff, Mr. Oleg Tsukanov, he pointed out was appointed General Director and was responsible to find the office building, convert it into an office and accommodation for occupation by Lora Golden Wings Company Limited.

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17. He maintained that throughout their initial discussions and arrangements in setting up the company, no minutes or any written records were made of each director's functions and responsibilities.

18. He said that the company Lora Golden Wings had been in occupation of the building on Beach Road, Lumley since December 2013 to November 2014.

19. Mr. Farfell informed the Court that in November 2014 due to the Ebola Virus Disease in Sierra Leone, the 2nd Defendant, Eduard Myronenko, told him whilst he was in Israel, not to visit Sierra Leone and that everywhere was closed. He stated that therefore, since November 2014 Lora Golden Wings Company and its staff did not occupy the building.

20. He reported that it was sometime in November 2014 that he received a letter, Exhibit Appendix D at pages 4, 6 and 8 terminating all official communications. He said that since then neither him nor the 3rd Plaintiff, Mr. Oleg Tsukanov, received any more communication. He stated that he was perplexed because himself, Oleg Tsukanov and Voystovich Rostisnov were the founding members.

21. He reported that the building on Beach Road, Lumley was currently occupied by a new group of companies formed by Mr Voystovich Rostisnov called LGW Group of Companies; Exhibit appendix E, J1 to J4 and alleged that the four LGW companies took over everything owned by Lora Golden Wings Company including its employees and assets.

22. Mr. Farfell emphasised that neither he, nor Oleg Tsukanov, nor Momoh Ansumana were saying that they own the company's assets including the machinery, equipment, mining exploration licence, concessions, money or the human resource. On the contrary, they as Plaintiffs were stating that all the assets belonged to Lora Golden Wings Company Limited.

23. He maintained that the machinery and equipment were acquired from a company called Golden Century Company, in which his son, Dimitri Portnov, was the director and shareholder based in Hanover, Germany. He exhibited a bill of lading as Exhibit F. He said that the company Lora Golden Wings was owned by himself and Oleg Tsukanov; and that the purported claim that it was the 1st Defendant, Voytovich Rostisnov, who solely provided funds was unfounded and untrue.

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Cross-Examination of the 2nd Plaintiff by Mr. Y. H. Williams

24. Mr. Farfell admitted that he owned a company called Roksolana (SA) Limited that was involved in exploration and mining of any kind of mineral. He said he bought the shares of a friend in November/December 2014.

25. He said that the 3rd Plaintiff, Oleg Tsukanov, was a director and shareholder of another company that was registered in Sierra Leone called Style Research (SL) Limited; a company licensed to carry out exploration for minerals in the Kabala area.

26. He maintained that he did not see anything wrong in being engaged in other mining exploration companies as well as having an interest in Lora Golden Wings (SL) Company Limited.

27. He reported that Oleg Tsukanov was shut out of Lora Golden Wings (SL) Limited in November 2014, even though he was the General Director and was in control from July 2013 to February 2014.

28. Mr. Farfell pointed out that the financial control of the company was under the nephews and cousins of the 1st Defendant, Voystovich Rostisnov, from September 2013 to January 2014. Then in January 2014, Mr. Rostisnov brought in a new Financial Controller from Russia by the name of Natasha Khohlova.

29. He explained that the 1st Plaintiff, Momoh Ansumana lived full time in Sierra Leone and was in charge of residence supplies such as generators, fuel, food, employment of mechanics for electrical and generator repairs from July 2013 to July 2014.

30. He testified that they made several attempts to call a general meeting of shareholders, but that Mr. Rostisnov was always busy. Also, during the period of July 2013 to July 2014 no audit report was produced because everything was under the control of Mr. Rostisnov.

31. Mr. Farfell informed the Court that his son, Dimitri Portnov of Golden Century Company Limited, received millions of Dollars from three different sources to purchase machinery and equipment for Lora Golden Wings Company Limited. He said that the first source was from the Dreizin family, the second source was from Lidon Trade Limited of the British Virgin Island and the third source was from Neftegazservice Company Limited.

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32. He admitted that he knew that several machines and equipment and vehicles were shipped by his son, Dimitri Portnov, in the name of Style Research Limited instead of Lora Golden Wings Company. He said that this was because the custom duty was high and Lora Golden Wings had not acquired an exploration licence. He stated that when Lora Golden Wings eventually had an exploration licence, the said assets were transferred to it; although it may not have been a hundred per cent transfer.

33. Mr. Farfell denied that some equipment shipped to Sierra Leone meant for Lora Golden Wings Company, were shipped by his son, Dimitri Portnov, in the name of Style Research Company. However, on the same vein he admitted that it would not have surprised him that, many of the shipping documents such as, the bill of lading were in the name of the consignee – Style Research Limited. He argued that this was the case because, the money was provided by the Dreisden family.

34. He said he saw the money transfer documents by the Dreisden family to Style Research Company for the sums of One Million Five Hundred Thousand Euros; but that he did not know that it was Mr. Rostisnov that loaned the money to the Dreisden family.

35. Mr. Farfell also admitted that vehicles shipped to Sierra Leone by his son, Dimitri Portnov, were shipped in the name of Roksolana Company Limited; and that he did not know whether they were still registered in the name of Roksolana Company except for the Toyota Hilux he had driven to Court on that day, that was still in the name of Roksolana Company.

36. He informed the Court that an approximate amount of US$ 14,000,000 was provided to his son, Dimitri Portnov, by Lidon Trade Company and Neftegazservice Limited; and that part of it was expected to be repaid by Golden Century Limited.

37. Mr. Farfell maintained that the loans provided by Neftegazservice Limited were to Golden Century and they were without any obligation or purpose. Whilst the money provided by Lidon Trade was not a loan, even though he did not have much knowledge on the agreement.

38. He said that the agreements as exhibited in Volume D at pages 23 to 38 did not contain any securities or guarantees; and that it was his son and himself who decided to put the name into Lora Golden Wings Company.

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39. He reported that when the 2nd Defendant, Eduard Myrenenko, came to Sierra Leone between January and February 2014, the relationship between them was amicable.

40. Mr. Farfell opined that he was not sure whether Mr. Oleg Tsukanov was the only signatory to the account of Lora Golden Wings Company. He was however shown Exhibit B 37 to 44 which were withdrawals made by Mr. Tsukanov from the foreign currency account at Rokel Commercial Bank; thus substantiating the claim that Mr. Tsukanov was in financial control of Lora Golden Wings Company.

41. He asserted that it was after he left in February 2014, that he realised that Eduard Myronenko was in Sierra Leone to serve as Executive Director. He argued that in fact, the 1st Plaintiff, Momoh Ansumana and the Eduard Myronenko continued to work together; whilst Oleg Tsukanov and Eduardo Myronenko continued to live in the same company accommodation between January to July 2014.

42. Mr. Farfell maintained that Lora Golden Wings Company had not generated any income, in order to pay for any machinery on the list; or to pay to Golden Century.

43. He did not agree that it was as a result of a massive fraud that was detected to have been perpetuated by Oleg Tsukanov, that caused Mr. Voytovich Rostisnov to shut them all out. He argued that the dispute arose because Eduard Myronenko took over after he had left Sierra Leone.

44. He reported that Oleg Tsukanov took Le 3,500,000 per town lot from the company to purchase 15 acres of land at Waterloo for the company of Lora Golden Wings.

45. Mr. Farfell denied that he received Euro 300,000 in loans from Neftegazservice Limited that was given to Golden Century Limited, specifically to purchase Atlas Excavators and ship them to Sierra Leone.

46. He denied that the 1st Defendant, Mr. Voytovich Rostisnov, ever loaned money to Lora Golden Wings Company; and opined that the money that was used to purchase the land at Kerry Town and to renovate the Beach Road office, came from Golden Century Company Limited. He said the money came from loans given by Neftegazservice Limited to Golden Century.

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47. Mr. Farfell was presented with a number of exhibits. He described Exhibit D83 as a transfer of funds from Golden Century in Germany to his son, ILAYA Farfell in the United States on 17th June 2013 for the sum of US$ 60,000 and € 45,000; whilst the other transaction was from Golden Century Company to Oleg Tsukanov for the sum of US$ 53,000. He described Exhibit D 103 as money from Lidon Trade company to Golden Century company on 29th July 2013 for the sum of US$ 500,000. He described Exhibits D 104, 105, 106, 107, 108, 109, 111, 112, 113, 114,115,116, 117,118 and 120 as swift transfers from his son, Dimitri at Golden Century and that these payments were received from Lidon Trade Limited. He also described Exhibits D18, 19, 20, 21 and 22 as money transfers from Neftegazservice to Golden Century.

48. Mr. Farfell admitted that neither he nor the 1st and 3rd Plaintiffs contributed towards the purchase of the vehicles, machines and equipment. He averred that according to them the Plaintiffs, the equipment, vehicles and machines were financed by Golden Century Company. He argued that whatever transpired between Golden Century Company, Neftegazservice Limited and Lidon Trade Limited was not his business.

49. He submitted that for all the time he and the Plaintiffs were in control of Lora Golden Wings, no audited accounts were produced. He said that he queried the 1st and 3rd Plaintiffs about the availability of audited accounts but they reported that no one had given them any information. He also espoused that none of his requests or of the other Plaintiffs were put in writing. He admitted that not for once between July 2013 and July 2014 was a shareholders meeting called; even though there had been occasions when all of them were present in Sierra Leone.

RE-EXAMINATION BY MR. M.P. FOFANAH

50. Mr. Farfell informed the Court that he did not have a power of attorney to evict anyone from the company premises at Beach Road, Lumley.

51. He averred that the Company Secretary, Mr. Emode, was always present at meetings but that he did not remember seeing him taking minutes of the meetings.

52. He referred the Court to Exhibit L, which was an email dated 25th June 2015 , to show that an attempt was made by him to call a meeting but was unsuccessful.

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53. He reported that he was not shown any document to show that the 1st Defendant, Mr. Rostisnov, owned Neftegazservice Company. Furthermore, he stated that he conducted a search to find out the ownership of Neftegazservice and Lidon Trade; and saw no relationship between them and the 1st Defendant, Mr. Rostisnov. He said also that Mr. Rostisnov was neither a director or a shareholder and that he believed that Mr. Rostisnov was just a middle-man.

EXAMINATION – IN- CHIEF OF THE 2ND WITNESS FOR THE PLAINTIFF

54. The 2nd witness for the Plaintiffs was Mr. Christian Yawo Emode, the Company Secretary of Lora Golden Wings (SL) Limited.

55. Mr. Emode told the Court that he recalled making a witness statement on 27th November 2015 and that he would wish the Court to adopt it as part of his evidence in chief.

CROSS-EXAMINATION BY MR. Y. H. WILLIAMS

56. Mr. Emode described his legal status in Sierra Leone as a Ghananian, with a resident permit but with no work permit. He informed the Court that when he was working as a Company Secretary for Lora Golden Wings (SL) Limited, he was doing so illegally.

57. He reported that the 2nd Defendant, Eduardo Myronenko, came to Sierra Leone in February 2013 and that he was introduced by Mr. Rostisnov and Mr. Oleg Tsukanov to him. He stated that Mr. Myronenko was introduced as an Executive Director and that he was to work under Mr. Oleg Tsukanov. He said that Mr. Myronenko and Mr. Tsukanov worked together till Mr Tsukanov left Sierra Leone.

58. Mr. Emode confirmed that he knew that the property at Beach Road, Lumley was renovated and paid for by Lora Golden Wings (SL) Limited and that there was a written tenancy agreement.

59. He described his role as a Company Secretary was to file documents, organise meetings, and a few times he organised meetings; but that he did not have access to the seal of the company and that he did not have an office.

60. Mr. Emode reported that he had never filed any resolutions and admitted that he knew that one of his functions was to summon meetings of shareholders. He stated that between July 2013 and September 2014 he

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did not write any letter to shareholders summoning them to a meeting and that he did not remember summoning any shareholders meeting between September 2014 and April 2015. He however stated that based on a Court Order dated 13th August 2015 he summoned a share-holders meeting.

61. He also submitted that none of the Plaintiffs instructed him between July 2013 and April 2015 to write to any audit firm in Sierra Leone requesting an audit of the finances of Lora Golden Wings (SL) Limited.

62. Mr. Emode told the Court that Lora Golden Wings Company operated two accounts; and that they were at Rokel Commercial Bank (SL) Limited and Guaranty Trust Bank (SL) Limited. He said that Rokel Commercial Bank only had a United States Dollar account, whilst Guaranty Trust Bank had a Dollar account and a Leones Account.

63. He informed the Court that Mr. Oleg Tsukanov was not the only signatory to those accounts; but that he was also a signatory at Rokel Commercial Bank, together with the Accountant Natasha and Larna, the Director of Social Affairs in the company. However, at Guaranty Trust Bank, it was only Oleg Tsukanov and Natasha that were the signatories. Mr. Emode espoused that he knew that millions of Dollars went into those accounts, but that he did not know where the monies came from; and that he did not ask.

64. He stated that he did not know of Lidon Trade Company Limited and Neftegazservice Company. He reported that Lora Golden Wings Company was in exploration business and that it was not a profit making business. He said he meant that, money was coming into the company but was not going out.

65. Mr. Emode submitted that he knew Roxsolana Company Limited and that he obtained money from Lora Golden Wings Company to do the registration of the said company. He maintained that he did not know that Lora Golden Wings was doing mining; but knew of exploration.

66. He confirmed that he was the Company Secretary and Promoter of Roxalana Company and Style Research Company Limited; and that he prepared all the documents that led the 2nd Plaintiff, Mr. Boris Farfell to acquire shares in Roxsolana.

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67. Mr. Emode argued that he could not see any conflict between what he did at Lora Golden Wings Limited and what he did at Roxsolana Company.

68. He reported that he was close to a co-worker called Isata Yamba; and that she did not inform him that almost 700 grams of gold was retrieved from Oleg Tsukanov's personal belongings.

EXAMINATION –IN-CHIEF OF 3RD WITNESS – MUSTAPHA DABONTA TURAY

69. Mr. Mustapha Dabonta Turay informed the Court that he made a witness statement on the 27th of November 2015 and that he would like the Court to consider it as part of his evidence in chief. He said that he started work at Lora Golden Wings Company in November 2013 as a Mechanic in charge of maintenance and repairs at the Kerry Town site.

70. He testified that he worked for the said company for 16 months before being transferred to LGW Logistics Company Limited. He said that he was informed that as from 1st March 2015 he would start work with LGW Logistics, before being given an appointment letter. He asserted that he asked the Human Resource Manager, Mr. Ibrahim Koroma questions about his past service benefits from Lora Golden Wings Company; who informed him that a decision had been made to add their past service benefits to the new appointment letter; and that was done.

71. He informed the Court that a meeting was held with all of them as staff of Lora Golden Wings Company Limited, in which Oleg Tsukanov was introduced as the Managing Director, Eduardo Myrenenko as the Chief Financial Controller and Boris Farfell.

CROSS-EXAMINATION OF MR. MUSTAPHA DABONTA TURAY BY MR. WILLIAMS

72. Mr. Turay informed the Court that he knew Oleg Tsukanov and that they met sometimes in Kono and Kerry Town; but that he never sent him to work in Kono. He said that during Oleg's time in Sierra Leone, he used to send his maintenance work men to Kono and Kabala to maintenance and repair machines; since his men were stationed in those places. He admitted that this was during Oleg Tsukanov's time in Sierra Leone.

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73. He reported that Mr. Tsukanov had two excavators, two bulldozers and some trucks, bailing machines in Kono. He said that this was because Lora Golden Wings Company and LGW were both mining at the time.

74. He maintained that when he joined Lora Golden Wings in November 2013, the company was mining. He told the Court that this was because bailing machines were only used for mining.

75. He submitted that he did not know when Oleg Tsukanov left Sierra Leone; but that after his departure, mining continued and there were special machines as well, including cranes, caterpillars, excavators, passenger vehicles, Hilux trucks, flight transport that were the heavy trucks and so on. He pointed out that in Kabala, there were two bulldozers, two excavators, fire force trucks, ambulance trucks, MAN trucks, plants, generators, heavy and special machines.

EXAMINATION – IN – CHIEF OF THE 4TH WITNESS MR. ISSAH ANYAN

76. Mr. Anyan informed the Court that he made a witness statement on the 27th of November 2015 and that he would like the Court to consider it as part of his evidence in chief. He testified that he worked for Lora Golden Wings Company as a Mining Engineer and was appointed in February 2013. He informed the Court that he had started working for Roxolana Company and then continued with Lora Golden Wings Company.

77. He said that he was the Administrator of the Company as well and that he was a Ghananian national. He informed the Court that he had a work permit that expired some time ago; and that it was not Lora Golden Wings Company that obtained the work permit for him.

78. He averred that he was suspended from work and given a letter to that effect on 11th April 2015. He said that he was not given a termination letter and he did not receive a salary.

CROSS-EXAMINATION OF MR. ANYAN BY MR. Y.H. WILLIAMS

79. Under cross-examination, Mr. Anyan informed the Court that as a Mining Engineer, his role entailed acquiring land for exploration, introducing the company to chiefs, taking care of the company's properties and pay workers their salaries.

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80. He informed the Court that Oleg Tsukanov, Boris Farfell and Voytovich Rostisnov went to Kono from Lora Golden Wings company to find land from the paramount chiefs.

81. Mr. Anyan confirmed to the Court that, he acquired land between March and December of 2013 for Lora Golden Wings for exploration, but that he did not obtain any exploration licence for the company; nor did he know how to acquire an exploration licence.

82. He reported that Oleg Tsukanov did not go to Kono in 2014 and that during Oleg's time the company only had one excavator and a bulldozer in Kono. According to him, the company was not involved in mining in 2013 and that all the time that Oleg Tsukanov was in Sierra Leone, the company was not involved in mining.

83. He informed the Court that he was suspended from duties on the 11th of April 2015 and since then had not signed any document for the company nor received any salary. He said that he knew that the staff were being paid their salaries during ebola times and that he did not know where the funds were coming from.

EXAMINATION – IN – CHIEF OF THE 5TH WITNESS – MR. MOHAMED TURAY

84. Mr. Mohamed Turay informed the Court that he made a witness statement on 27th day of November 2015 and that he would like the Court to consider it as part of his evidence in chief. He told the Court that he was a former Mechanic; and that he worked for both Lora Golden Wings Company Limited and LGW Logistics. He said that started to Work for Lora Golden Wings on the 11th March 2014 and for LGW Logistics on 1st March 2015. He acknowledged that he knew all of the parties as shareholders of Lora Golden Wings and the 2nd Defendant, Mr. Myronenko as the Financial Controller and Director of both companies mentioned earlier.

85. He espoused that when he worked for both companies, he was stationed at the Kerry Town site. He said that he was present when machines were rented out, since he took out the machines to the mining sites that they were hired to. He also said that sales of machines also took place at Kerry Town.

86. He averred that mining operations took place, whilst he was working for LGW Logistics; and diamonds and gold were mined. He pointed out that LGW Logistics did mining at Jaiama Sewafeh, Purundu in Kenema District.

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He maintained that Lora Golden Wings was not involved in mining operations but exploration work; whilst LGW Logistics did mining.

87. He told the Court that Mr. Eduardo Myronenko was in charge of Lora Golden Wings whilst he was working there as a Mechanic.

CROSS – EXAMINATION OF MR. MOHAMED TURAY

88. Mr. Mohamed Turay submitted that his immediate boss was Mr. Mustapha Dabonta Turay and that he was the senior Mechanical Engineer; and that he was the one that assigned duties to him and that they had a good working relationship.

89. He admitted to the Court that he was arrested and locked up by the Police in December 2015 for four days. This was because it was alleged that he was the leader of a group that deflated and slashed the tyres of vehicles belonging to Lora Golden Wings.

90. Also, he denied that he was the leader of another group of protestors outside the Court; but that he later went to the group to remove "his men" and by that he meant his friends and colleagues.

91. He also denied that he came to the precincts of the Court with any placard; and that his conduct showed that he had a grudge against Lora Golden Wings Company.

92. He also denied that he had been schooled to lie to the Court. He reiterated that he visited the sites that he said he did; and that he was told that vehicles were being sold, although he did not see any exchange of money.

RE-EXAMINATION BY MR. M. P. FOFANAH

93. Mr. Turay recalled the demonstration out of the Court building and reported that it was about back log in salaries, pay entitlements and other entitlements; owed by Lora Golden Wings and LGW Logistics.

94. He reported that they have still not been paid the back log and benefits they were entitled to.

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EXAMINATION – IN – CHIEF OF THE 1ST DEFENDANT – MR. VOYTOVICH ROSTISNOV

95. Mr. Rostisnov informed the Court that he made a Witness Statement on 30th November 2015 and that he would like the Court to consider it as part of his evidence in chief.

96. He confirmed that he knew Lora Golden Wings Company and that it was incorporated in July 2013; and that between June 2013 and August 2014 about 400 workers were employed by the company.

97. He reported that during the period of the Ebola Virus Disease, the company continued to maintain the staff strength and were paid US$ 100 each as an adjustment to their salaries. He said that even though they were being paid reduced salaries, most of them were not going to work; and those that were going to work were based at the company residence, quarantined and not allowed to leave the premises and some were on full salary. He also reported that workers based at the Kerry Town site were on full salary.

98. Mr. Rostisnov admitted that a front load runner machine was rented to Sierra Rutile for two months and the rent received was between US$ 10,000 and US$ 15,000. He also admitted that machines were being rented out on a short term basis to other companies after the Ebola episode between March to May of 2015 and about US$ 10,000 to US$ 20,000 was received as rent payment. He confirmed that the monies received were being utilised to purchase spare parts to maintain the machines and the workers.

99. He told the Court that the logo of Lora Golden Wings company was not removed on vehicles and other assets, but that he mistakenly removed the name "Lora Golden Wings" from the logo on the boots of the vehicles and replaced them with "LGW".

100. Mr. Rostisnov stated that no staff salary was outstanding. He stated that a computation of all salaries and benefits paid was sent to the Ministry of Labour and the Ministry responded that it was correct as exhibited in Exhibit B 3, B 4, B 5 and B 6. He also said that salaries and benefits were paid into staff bank accounts. and that the computation of the staff benefits was also sent to NASSIT. However, he failed to produce evidence of that to the Court.

101. He admitted that cars were sold to staff in April 2014 for about US$ 2,000 to 3,000 and sometime in 2015 for about a total of US$ 5,500. He

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reported that these monies were utilised to buy spare parts. No evidence of these purchases were presented to the Court.

102. According to Mr. Rostisnov, US$ 900,000 was diverted to the account of Oleg Tsukanov and that Exhibits D 76 to 111 were the transfer documents from Dimitri's account to Oleg Tsukanov's account. He testified that it was after receiving the loans, that Golden Century and Dimitri Portnov transferred the total amount of US$ 900,000 into the personal account of Oleg Tsukanov.

103. He asserted that the loans were from Lidon Trade Limited and Neftegazservice Company; and that they were given to buy equipment, machinery, cars, heavy vehicles, excavators, to set up the office for staff and to buy fixtures for Lora Golden Wings in Africa. He stated that no account has been given for this sum by Dimitri Portnov of Golden Century or Oleg Tsukanov.

104. Mr. Rostisnov stated that Oleg Tsukanov carried out mining activities in Bindika and Bambakunaya in Sierra Leone at the end of February 2014 to the end of June 2014, when he was in charge of Lora Golden Wings. He said that Oleg mined gold and diamond, sponsored by Lora Golden Wings and who in turn received monies from Neftegazservices. He told the Court that this was not accounted for by Oleg Tsukanov. That instead, Oleg Tsukanov departed Sierra Leone in July 2014.

105. He admitted that all of the workers of Lora Golden Wings Company were transferred to the LGW Companies and that this was for several reasons. Firstly, Lora Golden Wings had no means of income because it was not generating any income; the company could not pay its staff and the money the company had was a loan from Neftegazservices. Furthermore, it was discovered after Oleg Tsukanov's departure, that he had mismanaged the company; hence Neftegazservices stopped sending money to Lora Golden Wings.

106. Mr. Rostisnov submitted that due to this development, he decided to open a new company and transfer all of the staff of Lora Golden Wings to the new company called LGW. That it was after this development that Neftegazservices began sending money to LGW Company in order to assist Lora Golden Wings, upkeep staff and pay salaries. He said that he sought the approval of Neftegazservices before setting up the LGW Companies and it was agreed to send money only to the new company. He reported that meetings were held in Russia but no evidence or Minutes of the meetings held were produced in Court.

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107. Mr. Rostisnov informed the Court that it was only the staff of Lora Golden Wings that were transferred but not the machinery and equipment. That the machinery and equipment were still under the name of Lora Golden Wings, since it was only Lora Golden Wings that possesses the exploration licences since they had the two sites.

108. He affirmed that Lora Golden Wings and the LGW companies were able to produce about fifteen (15) diamonds from July 2014 to date; Exhibit Appendix J 12 to 17 showing list of diamonds mined in Kono. Whilst the diamonds Lora Golden Wings mined under Oleg's control were not accounted for.

109. He told the Court that a US$ 600,000 sent to Oleg to transfer machines and equipment was not accounted for. He also stated that a € 300,000 paid to purchase three (3) new atlas excavators to be shipped to Sierra Leone in the name of Lora Golden Wings never materialised; and nor did Boris Farfell or his son Dimitri Portlov of Golden Century ever accounted for this money.

110. Mr. Rostisnov reported that there was a lien in place over the equipment and machinery because the debts had not been paid. He said that all of the shareholders of Lora Golden Wings, except Boris Farfell, agreed to the lien whilst the loans remain unpaid.

111. He informed the Court that in order to repay Neftegazservices, since the year 2015, the company had to do exploration, so that gold or diamond could be found.

CROSS – EXAMINATION BY MR. M. P. FOFANAH

112. Under cross-examination, Mr. Rostisnov admitted that it was only at the commencement of these proceedings in Court that he paid up his 40% share in the company and so did Oleg Tsukanov, Boris Farfell and Momoh Ansumana pay up their total 60% share ownership in Lora Golden Wings Company Limited.

113. He testified that during a meeting in June 2013 with the other shareholders at which he was promised 65% share ownership if he agreed to become an investor and bring other investors on board. However, he was only given 40% of the shares when the company was formed because Oleg Tsukanov did the incorporation documents and told him that according to Sierra Leone Laws they had to bring on board a Sierra

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Leonean and that was how Momoh Ansumana became a shareholder with 25% share ownership.

114. He agreed that he told the Court that a company called Neftegazservices gave loans around November to December 2013 to Lora Golden Wings; and that as a Board, it was agreed that the three of them except Momoh Ansumana, to borrow money from Neftegazservices and Lidon Company. He maintained that he brought the documents to be signed to Sierra Leone and that the agreement to get the loan from Neftegazservices was not put in writing, since he as the investor initiated the idea, as well as it was his own function.

115. He insisted that there was a loan agreement between Lora Golden Wings and Neftegazservices since without this agreement, there would have been no transfer of the funds; and in Russia, the transfer would not have been effected.

116. Mr. Rostisnov could not produce the loan agreements between Neftegazservices and Lora Golden Wings; he reported that they must be in the company's archive. He agreed that the loan agreements exhibited in Appendix I did not show anything concerning Lora Golden Wings Company Limited; but concerned Golden Century Company of which Dimitri Pavlov was the Managing Director.

117 He also admitted that Lidon Company did not have a direct loan agreement with Lora Golden Wings Company Limited. He accepted that the agreement between Lidon company and Golden Century was not a loan agreement but an agency agreement.

118. Mr. Rostisnov accepted that he did not own Neftegazservice Limited and that he was also not a shareholder or a director in Lidon Company Limited.

119. He also testified that the equipment bought and shipped to Sierra Leone by Boris Farfell and Dimitri Potnov and used by Lora Golden Wings, were Boris Farfell's functions.

120. He told the Court that Exhibits C 9-13, which is the Defendants inventory was what was available at the time that the inventory was taken. It was put to him by Counsel that Exhibit Appendix M, which is the Plaintiff's inventory, was also in his possession.

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121. On the question of whether Lora Golden Wings kept a record of all the machinery and equipment shipped into Sierra Leone, he said that he did not know since it was Oleg Tsukanov's responsibility. He later said that there was a record.

122. Counsel put it to him that the equipment and assets did not personally belong to him; to which he responded that, some of the equipment and assets of the company belonged to him.

123. In explaining how the equipment and assets personally belonged to him, he reported that prior to the incorporation of Lora Golden Wings, he spoke to Mr. Farfell in May 2013 and the agreement was that he, Voytovich Rostisnov, would transfer about US$ 1,050,000 (One Million and Fifty Thousand United States Dollars) to a nephew of Mr. Farfell by the name of Saar Dreizer from a town in Russia called "Kharborbsk." Saar Dreizer he opined, was to have sent that money to Dimitri Potnov to buy some equipment, excavators, bulldozers and so on in the name of Voytovich Rostisnov. But that was not done; instead Dimitri made an invoice bearing the name of Emma Dreizer.

124. Counsel suggested that what had transpired were simply personal discussions but Mr. Rostisnov disagreed with that version and claimed that it was a fact that, Oleg Tsukanov was a rogue.

125. Mr. Rostisnov also claimed that he provided Oleg Tsukanov with a sum of US$ 600,000; to buy equipment, heavy weight vehicles, cars and excavators. Oleg was then supposed to exchange the money with equipment he had at Style Research since he had completed his time as the Director-General of Style Research Company Limited. He also reported that between July 2013 and July 2014, whilst Oleg Tsukanov was controlling and managing the money of Lora Golden Wings Company; he was responsible to disburse money.

126. Mr. Tsukanov was responsible for the financial aspect in 2013 and this entailed withdrawing money from the company's accounts and payment of salaries and other expenses incurred by the company. In the year in question, i.e. 2013, Oleg Tsukanov gave no account or report on the financial activities of the company; and as a result he, Rostisnov brought in Natasha in January 2014 from overseas.

127. Mr. Rostisnov submitted that as a director of the company, he asked a few times for a financial report from Mr. Tsukanov, but he was never given. He admitted that he spoke personally to Oleg Tsukanov and

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by skype but that he did not put it in writing and did not have minutes of their discussions. He said that it was all between the two of them. He said that he did not call for any meeting of the company's Board of Directors to demand for these financial reports.

128. He reported that Lora Golden Wings bought a piece of land at Kerry Town at the end of 2013; but that he had not seen any conveyance or title deed of the property.

129. In response to the questions about how money was being paid to Lora Golden Wings and where the money was coming from; Mr. Rostisnov informed the Court that from December 2013 to around February 2014, money came from Dimitri Portnov and this amounted to more than US$ 100,000 (One Hundred Thousand United States Dollars) for the purchase of land at Kerry Town. He confirmed that the company's machines and equipment were parked at the Kerry Town site. He stated that monies were paid generally by Mr. Dimitri Portnov into the personal account of Mr. Oleg Tsukanov.

130. Mr. Rostisnov later reported that in actual fact, Mr. Tsukanov gave him and the others the conveyance for the Kerry Town site he obtained from The Administrator and Registrar-General at Roxy Building; and that a structure which has the company's hangers and houses was built on the site.

131. He rejected the suggestion that he alone employed the 2nd Defendant, Mr. Eduardo Myrenenko; but that he personally employed him to work for Lora Golden Wings in consultation and agreement with the other directors, namely, Boris Farfell and Oleg Tsukanov. He said that they knew of his employment and they spoke to him by skype. He however admitted that there was no written document showing the agreement of the other directors in the appointment of Mr. Myronenko.

132. Mr. Rostisnov asserted that a meeting was held in February 2014 between all of the directors in which it was agreed that Mr. Myrenenko was to be appointed an Executive Director of Lora Golden Wings Company Limited. He however pointed out that there were no minutes of the meeting and said that Mr. Myronenko was to take over the overall running of the company; i.e. to control the overall running of the company.

133. He later told the Court that he suggested to the others the appointment of Mr. Myronenko and they all agreed. He said that in fact, it

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was Oleg Tsukanov that introduced Mr. Myronenko as Executive Director to other members of staff of the company.

134. He denied that it was Mr. Myronenko's imposed appointment that caused the problems and disputes faced by the company and also denied that he wanted to remove Oleg Tsukanov as General Director. Mr. Rostisnov replied that in fact, he brought in Mr. Myronenko in order to assist the General Director.

135. Mr. Rostisnov stated that all the financial records of the company were available after Mr. Myronenko's appointment in February 2014 and that he had access to them.

136. Mr. Rostisnov reported that he formed the four (4) LGW companies on 5th November 2014; Exhibit – Appendix E and this was to support Lora Golden Wings even though Ebola had disrupted its operations.

137. In his testimony to the Court, Mr. Rostisnov submitted that the four LGW companies wrote letters to the staff of Lora Golden Wings, informing them that they had been transferred to the new LGW Logistics, LGW Mining and LGW Incorporated. He also admitted that the LGW companies were also using the equipment, machinery, offices, licences, staff and operational site at Kerry Town.

138. He also admitted that some of the equipment that belonged to Lora Golden Wings were being rented out and were being used to mine for diamonds in Kenema and Kono under the LGW companies.

139. Mr. Rostisnov informed the Court that it was impossible to send money directly to Lora Golden Wings as a loan because the loans from Neftegazservices were not invested in Lora Golden Wings; and for Lora Golden Wings to continue to function, monies had to be diverted to the LGW companies.

RE-EXAMINATION BY MR. Y. H. WILLIAMS

140. Mr. Rostisnov reiterated that there were loan agreements between Neftegazservice and Lora Golden Wings that were in the company's archive. He identified Exhibits D 7 to 17 as evidence of the loan agreements between Neftegazservice and Lora Golden Wings.

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141. He told the Court that 3 excavators, 2 bulldozers, about 2 or 3 heavy duty trucks and about 2 generators belonged to him. He also said that of these, 2 bulldozers and 2 excavators were in Babankuniya.

142. Mr. Rostisnov could not produce documentary evidence to prove how much he paid for those particular equipment and machinery. He said that he could not because the document was in Russian and that this case was also in progress in Russia and in Israel.

143. He explained that out of the US$ 1,050,000,000 (One Million and Fifty Thousand United States Dollars) the equipment that was purchased were not put in the name of Lora Golden Wings or his name; but that Dimitri Potnov sent them to other companies under names such as Roxalana and Style Research Companies.

144. In response to whether he was responsible for the control and financial management of Lora Golden Wings, he told the Court that after the Ebola Virus Disease period in Sierra Leone, he started to manage the finances from January 2015 to the present time.

145. He reported that over US$ 100,000 was disbursed to Oleg Tsukanov and Christian Emode to purchase the land at Kerry Town and could not tell whether all of the money was utilised to purchase same. He said that he saw some receipts for different amounts pertaining to the land.

146. Mr. Rostisnov submitted that the company did not have any external auditor. He also could not tell the Court how the company was regulated. Instead, he said that since there were no financial documents, he decided to bring in Natasha from Moscow to assist and that the company applied for a work permit for her.

147. He maintained that he was not a shareholder in Neftegazservice but a business partner. He also said that the company provides services but did not expand on what services it offered. Lidon Company he averred, invests in different countries and that it was an investment company. He also pointed out that, Mr. Boris Farfell used his son Dimitri Portnov, as an agent to buy and export equipment. He said that Golden Century was Dimitri Portnov's private company.

148 He explained that Neftegazservices was registered in Russia, Lidon Company was registered in the British Virgin Island, Roxalana and Style

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Research Companies were registered in Sierra Leone; whilst Golden Century was registered and incorporated in Hanover, Germany.

DECISION

Having enumerated the facts of the proceedings in Court and before deciding, I need to address a number of pertinent issues. The first question that arises is this:

149. Do the Plaintiffs as shareholders of Lora Golden Wings have a right to sue another shareholder/director of the same company? The answer is, without prejudice to the rights of members, Section 256 (1) of the Companies Act No 5 of 2009 . It gives the Plaintiffs as shareholders/members of the company the power to apply to the Court for an injunction or declaration, to restrain the company from inter alia, ... (c) an act affecting the applicant's individual rights as a member; (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done; (e) where a meeting of the company cannot be called in time to be of practical use redressing a wrong done to the company or to minority shareholders; (f) where the directors are likely to derive a profit or benefit or have profited or benefitted from their negligence or breach of duty.....

150. Shareholders are also empowered to seek judicial enforcement of their rights, most significantly, for breach of management's fiduciary duties to the company and its shareholders, by means of derivative litigation; Velasco, J. 'The Fundamental Rights of the Shareholder' University of California, Davis, Law Review [2006] vol 40, at 421.

151. Furthermore, when directors are conflicted, shareholders are permitted to take legal action on behalf of the company and this allows them to enforce the duties of which they are the indirect beneficiaries; Velasco, J. (supra).

152. From the facts and evidence before the Court, issues have arisen that have clearly caused some concern to all the parties in this case; and such concerns have invoked the provisions set out set out in Section 256 (1) of the Companies Act of 2009. Members/shareholders/directors have

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been excluded from the Management of the company unconstitutionally; issues or allegations of fraud in the company and against each other have arisen; disputes around convening of meetings of the Board of Directors or Shareholders; and accusations of invalid profits or benefits accrued by directors/shareholders have been made. As such, the fact that evidence has been led to show the aforementioned, satisfies the conditions laid down in Section 256 (1) of the Companies Act of 2009 and therefore answers the question in the affirmative that shareholders/directors in a company can bring action against fellow shareholders/directors.

153. There is also enough evidence before this Court that, both sides have been in breach of their fiduciary duties to the company and both sides have exhibited serious conflicts of interests; all of which will be delved into later in this judgment.

154. The second question is: Was there a Share-holders Agreement prior to or after the incorporation of Lora Golden Wings (SL) Limited? The testimonies of the 2nd Plaintiff, Mr. Boris Farfell on the 8th and 9th of December 2015 and that of the 1st Defendant, Mr. Voytovich Rostisnov on the 26th, 27th and 28th of January 2016 and of the 2nd of February 2016 revealed that, before the incorporation of Lora Golden Wings (SL) Limited, informal discussions together with the 3rd Plaintiff, Mr. Oleg Tsukanov were held and agreements were reached. Minutes of those meetings however were not taken and this was what contributed significantly to the dispute between the parties. I have no doubt in my mind that there was an oral agreement and that it was a serious error of judgment not to reduce it into writing, considering the quantum of money involved. I wonder what would make a group of people with a capacity to invest such volume of funds, decide not to commit such investment into a written document?

155. According to Mr. Farfell, they decided that they should each be a director on the board, as well as a shareholder and the role they should each play in the company. That Mr. Oleg Tsukanov was to be the General Director in charge of finding the office building and to convert it into an office and accommodation. I am of the opinion that, this was part of the

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agreement between the parties and Mr. Rostisnov did not dispute this assertion in his testimony.

156. Mr. Voytovich Rostinav told the Court that, Mr. Farfell, Mr. Tsukanov and himself, agreed on the establishment of the company, Lora Golden Wings (SL) Limited. He said that they agreed that, he should be in charge of 'financing the project by putting in efforts to attract investments for the implementation of same and ensure the operations of the company.' That Oleg Tsukanov was to be 'in direct control of the project in Sierra Leone and be appointed to the position of Director-General.' Mr. Tsukanov was also to be responsible for the 'daily management of the company and the registration of all documents.'

157. I believe Mr. Rostisnov's version of events. I think he was telling the truth, when he gave the above testimony and more particularly, that he was supposed to be in charge of the financing. The issue I have with his financing is that, he has not been able to produce to this Court evidence of his financing of the business activities of Lora Golden Wings (SL) Limited, which includes mining; except for his paid – up capital which was fully paid only as a result of an Order made by the Honourable Mr. Justice Sengu – Koroma, J.A. on the 13th of August 2015. In fact, none of the parties had paid their share capital until the said Order of the Court was pronounced.

158. There is proof of loans being given to Lora Golden Wings (SL) Limited by Neftegazservice Company and Lidon Trade Company Limited in May 2014 to July 2014, much later in the life span of the company, but proof of a direct link with Mr. Rostisnov has not been furnished. As I mentioned earlier, I do believe him when he said that he was supposed to be responsible for the financing of the project; but no evidence has been proferred or submitted to this Court to show a nexus between the finance of Lora Golden Wings Company and himself. So the question that arises is: where is the link?

159. Mr. Rostisnov maintained that, Mr. Boris Farfel had to do the 'necessary equipment purchases through an agent, his son, Dimitri Portnov.' He said that they agreed that 'all the equipment and machinery were to be bought from loans provided by Neftegazservice Company Limited and Lidon Trade Limited; and that they would remain the property

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of these two companies until the said loans were repaid.' That the 'two companies would have a lien on these machines and equipment until they recover their loans.' He testified that the three of them incorporated the company, Lora Golden Wings (SL) Limited on the 4th of July 2013 and became the first shareholders and directors.

160. I am of the view that the parties agreed orally that Mr. Farfell should be in charge of equipment purchases. But how they were to procure the machinery and equipment is in dispute and provision of the financing of them is also in dispute. Whether it was agreed that Mr. Farfell's son, Dimitri Portlov was to be an agent for the purchase of the machinery and equipment as part of the agreement, is not clear because this is also in dispute. A review of the loan agreements, which I will discuss later, has not revealed any information of having a lien on the equipment and machinery. There is no doubt that there is a business link between Mr. Farfell and his son, Dimitri Pavlov of Golden Century. Also, there is a strong link between Golden Century and Neftegazservice Company and Lidon Trade. However, what is clearly certain as well, is that all these companies, all three of them are distinct separate legal entities from Lora Golden Wings (SL) Limited.

161. Again, it is instructive to note that none of these discussions or resolutions was reduced into writing. The parties all testified that there were no Minutes of the meetings prior to the incorporation of the company; and not surprising, they dispute the terms of their agreement.

162. Thirdly, should the shareholders/directors have documented their resolutions?

163. It is well established that if all the shareholders, who could also be the directors, are present at a meeting and unanimously give their assent to a proposal, it does not matter that no formal resolution was put to the vote ; Re Express Engineering Works [1920] 1 Ch 466 (CA). It is also the case that if all the shareholders have given their consent to a proposal, it is not necessary that they should have held a meeting. This was confirmed in the case of Parker and Cooper v Reading [1926] Ch 975 where the Court held that, all the members had informally ratified a debenture

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granted by the directors, even though no meeting had been held. This decision also establishes that all that is required is the unanimous assent of the shareholders with the right to vote; Re Duomatic Limited [1969] 2 Ch 365. It has also been held before that, it is only in small private companies that the informal agreement of all the share – holders is likely to occur; Attorney-General for Canada v Standard Trust Company [1911] AC 498.

164. In my opinion however, in spite of the above legal authority, it would have made good business sense to document same. This is because huge sums of money and investment were at stake and in order to avoid controversy, as is clear has developed between the parties. I am of the view that, the parties agreed and gave their unanimous assent to most of the proposals, if not all, as submitted by the parties and subject to the reservations I have expressed.

165. Turning to the fiduciary duties of the directors of a company as the next pertinent issue. What are the fiduciary duties of the directors of a company? How do we define a director of a company? A director is an agent of the company but in practice, is not subject to much control by his principal, the company, acting through the shareholders in general meeting; Berle and Means 'The Modern Corporation and Private Property' (Harcourt, Brace & World Inc, revised edn, 1967) . In some respects, 'the director is a trustee but not a full trustee, not least because his main function, is an entrepreneurial one and he may properly take risks with the company's funds, which a trustee in the strict sense cannot'; Birds, J et al, 'Boyle & Birds' Company Law' [2004] 5th edition, Jordan Publishing Limited, at p 349.

166. Directors are seen as trustees of company property, which is in their hands or under their control; and the main ramification of this principle of trusteeship is that, a director is accountable as a trustee for any misapplication of the company's property, in which he participated and which he knew or ought to have known to be a misapplication; Selangor United Rubber Estates Limited v Cradock (No 3) [1968] 1 WLR at 1575-1576. 'A misapplication in this context means, any disposition of the company's property, which by virtue of any provision of the company's constitution or any statutory provision or any rule of general law, the company or the board is forbidden or incompetent or unauthorised to make, or which is carried out by the directors otherwise than in

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accordance with their duty to act bona fide in the interests of the company and for the proper purposes; the second limb covers not only misappropriations of the company's property, but also dispositions in favour of third parties, which do not satisfy the test of bona fides;' Boyle & Birds (supra) at p 498.

167. 'Where the directors have possession or control of the property beneficially owned by the company, their trusteeship will arise whether the property is legally vested in the company, in one or more of the directors, or in a third party;' Boyle & Bird (supra)at p 499. A trusteeship has been held to cover funds standing to the company's credit in a bank account; Selangor United Rubber Estates Ltd v Cradock (No 3)(supra).

168. The scope of the directors' fiduciary duties are as listed in Article 19 to 22 of the Articles of Association of Lora Golden Wings (SL) Limited or Sections 231 to 239 of the Companies Act No. 5 of 2009. However, the most common fiduciary duties include: to act in good faith in the best interest of the company; not to make secret profits; to avoid conflict of interest; Boyle & Bird (supra) at 493, 501; the duty to keep proper books of account and the duty to exercise care; Dorchester Finance Co. Ltd v Stebbing (1989) BCLC 498.

169. It is also an established general rule that, insofar as a director of a company is bound by fiduciary duties at general law, these duties are owed to the company only; Percival v Wright [1902] 2 Ch 421.

170. All of the parties, as in the Plaintiffs and Defendants in this matter are and were in a position of trust and are all therefore accountable for the assets of Lora Golden Wings (SL) Limited. All of the parties are jointly and severally liable and accountable for the assets and liabilities of the company. It is clear that the parties worked out even before the company was incorporated, what role each person was to play Mr. Farfell was charged with the procurement of equipment and machinery, Mr. Tsukanov with the financial arrangements and Mr. Rostisnov with bringing in money; and of course Mr. Myronenko became a director on the Board, albeit without any formal agreement or Board approval and he became entrusted with the company's physical assets and

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financial/cash assets. Each and every director is therefore accountable as a trustee for any misapplication of the company's property.

171. Have the directors acted in good faith? Every director had a duty to act honestly and in what he considered to be in the best interests of the company. They should have exercised their powers for the purposes for which they were conferred and must have avoided any circumstance where their duties to the company were in conflict with their own personal interests. They must have taken proper care of the assets of the company and must account to the company for any unauthorised gains made out of their position; Barber, B. 'ICSA's Corporate Governance Handbook'(2nd ed, 2011) Published by ICSA Information and Training Limited, at p 48. In other words, they are in the position of a fiduciary and should be aware that they owe trustee-like obligations to the company; Regal (Hastings)Limited v Gulliver [1942] 1All ER 378.

172. I am not convinced that Mr. Farfell and Mr. Tsukanov intended to be honest from the beginning. This is because they did not disclose their interests in Style Research and Roksolana companies to Mr. Rostisnov. Even though Mr. Farfell testified that it was only at a later stage that he bought shares in Style Research Company, I do not think he was being honest and acted in good faith at the start of the discussions. If the parties, that is, Mr. Farfell and Mr. Tsukanov really believed in the new company they were about to establish, that is, Lora Golden Wings (SL) Limited, all the shipments of equipment and machinery would have been in the name of Lora Golden Wings Company and sent directly there. They should not have been sent to companies in which they had interests and were in the same business of mining. This created a conflict of interest and raised suspicions.

173. The exploration licence and customs waiver Mr. Farfell raised as an excuse, were just a ploy to transfer the equipment and machinery to their other companies and to avoid paying customs duty. What was better than shipping them in the name of the new company, Lora Golden Wings (SL) Limited, that was created for a new purpose and with another investor who had no interest in Roksolana and Style Research Companies? I believe Mr. Rostisnov, when he said in his testimony that, the trust he had developed in Mr. Farfell and Tsukanov was taken advantage

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of, because he did not know Sierra Leone. I think at the beginning, Mr. Rostisnov acted in good faith in attempting to invest in the new company, Lora Golden Wings (SL) Limited.

174. I say attempting to invest in Lora Golden Wings because, even though it is quite plausible that he was behind the initial investment in the setting up of the company and most probably, in the financing of the machinery and equipment; no direct evidence was submitted to the Court to show that the capital expenditures, that is, the money to purchase the machinery and equipment were directly his own finances. Also, no evidence was submitted to the Court to show that he was "Neftegazservice Company and/or Lidon Trade Limited.

175. On the issue of the loans, which according to the 1st Defendant, Mr. Voytovich Rostisnov, were arranged by him on behalf of Lora Golden Wings (SL) Limited; I have no doubt about the veracity of the statement made by Mr. Rostinov in paragraph 9 of his witness statement and particularly where he said that "that explains why Lora Golden Wings (SL) Limited's shares are allocated in such a way, despite the fact that none of the shareholders, except for myself, ever contributed a single cent to the project." I say I believe him because, according to the informal/oral agreement they entered into prior to the incorporation Lora Golden Wings (SL) Limited, Mr. Tsukanov was responsible for the documentation and setting up of the company, whilst Mr. Rostinov was to provide funds for the business. It was clear that money had been invested in the setting up and operations before the actual incorporation of the company. It is also clear that all of the shareholders were not fully paid up members until the Order of the Honourable Mr. Justice Sengu Koroma was made on the 13th of August 2015.

176. However, what I have not been able to establish is the nexus between the loans that Mr. Rostinov claims were organised and provided by him to Lora Golden Wings. He said in paragraph 10 of his witness statement that he organised the provision of loans to Lora Golden Wings Limited from Neftegazservice Limited Company registered in Russia and Lidon Trade Limited registered in the British Virgin Island. That between 5th November 2013 and 12th December 2014, the loans provided were to the tune of more than US$3,500,000 (Three Million Five Hundred Thousand

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Leones). Furthermore, in paragraph 5 of the amended Defence, Mr. Rostislav averred that 'the equipment, machinery, vehicles, gadgets, tools and accessories of Lora Golden Wings Limited, were absolutely paid for by him through companies that he owns and/or controls.....'

177. I have perused the loan agreements and observed that, most of the loan agreements are between Neftegazservice Company Limited as the Lender and Golden Century Limited as the borrower; rather than between Neftegazservice Limited and Lora Golden Wings. Exhibits Volume D23 to D65 are loan agreements between Neftegazservice Limited and Golden Century Company ranging from 28th October 2013 to 10th December 2014. Also, what is obvious from these agreements is the fact that the purpose of all these disbursements were not stated. Mr. Rostislav was also not a signatory to these agreements and no evidence has been produced to this Court, linking him to Neftegazservice Company as a shareholder, director or creditor.

178. Also, even if Mr. Rostislov was a shareholder or was in control of this company, as has been claimed, it would have been the Board of Neftegazservice or its Management that would have approved the loans and not him alone. I have not seen any proof of his ownership or control of Neftegazservice; nor any direct evidence of Neftegazservice Limited giving Lora Golden Wings Company any loan during the period in time of Oleg Tsukanov as the Director General. In other words, I cannot see why repayment of the loans given to Golden Century by Naftegazservice should be made to Mr. Rostislav and why it should be the business of Lora Golden Wings to make this repayment. I cannot see the nexus.

179. I also observed that, under the General Directorship of Mr Eduard Myronenko, loan agreements in Exhibit D 3 to D16 between Neftegazservice Limited and Lora Golden Wings (SL) Limited were entered into from May 2014 to July 2014. I note that the agreements did not specify the purpose of the loans. The total amount lent to Lora Golden Wings (SL) Limited totaled US$ 890,000 during this period. I still maintain however, that no evidence has been submitted to this Court to prove that it was Mr. Rostisnov that provided the above mentioned loans to Lora

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Golden Wings Limited. If this amount is owed, if at all, to Neftegazservice Limited, did the Board of Lora Golden Wings approve it?

180. Additionally, I note that on the 1st of July 2013, a contract for services, Exhibit D 121, was entered into between Lidon Trade Limited, a company incorporated under the laws of the British Virgin Islands, as the 'Customer' ; and Golden Century, a company with its registered address in Hannover, Germany, as the 'Performer'. The terms of the agreement were that 'Golden Century was to perform services such as: exploration, services of the complete set of special equipment, machinery, tools and equipment and followed by delivery to Africa and services for permission to use in Africa.' The price of the contract consisted of: remuneration of Golden Century of € 5,000 per month and the price of the contract was € 3,100,000 (Three Million One Hundred Thousand Euros). The contract also stipulated that it was not assignable to any third party without the written consent of the other party.

181. This is where Mr. Farfell's fiduciary duty to act in good faith to Lora Golden Wings also becomes questionable. The company Golden Century is run by his son. It is clear here that it is Golden Century and Lidon Trade contracting to do a competing business with Lora Golden Wings. Mr. Farfell has been working closely with his son. Is this not a conflict of interest as well? Of course it is.

182. Exhibit D 125 is an addendum to the contract of services dated 31st March 2014 between Lidon Trade Limited and Golden Century to purchase additional equipment for the production programme; which included a helicopter Robinson, Terex Rough Terrain Crane and a track Mercedes Actros 4 x 4 with a total amount of € 2,000,000 (Two Million Euros). Up to Exhibit D 130 show contracts between Lidon Trade Limited and Golden Century Limited; and not between Lidon Trade Limited and Lora Golden Wings Limited nor Mr. Rostisnov, the 1st Defendant.

183. I still maintain that I see no nexus between Mr. Rostisnov and Lidon Trade Limited; nor any nexus between Lidon Trade Limited and Lora Golden Wings Limited. This contract is clearly between Lidon Trade Limited and Golden Century Limited; companies that are not parties in this action.

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184. The other pertinent issue that needs to be addressed is: Did the Directors/Shareholders of Lora Golden Wings have a right to exclude the other directors/shareholders from participating in the management of the company? According to the Articles of Association of Lora Golden Wings (SL) Limited, Article 21 stipulates that 'the company may by an extraordinary resolution remove any director and appoint another person in his place.' Article 23 prescribes the circumstances under which a director may be removed from office. Article 24 provides that 'the quorum necessary for the transaction of the business of the directors shall be a simple majority of those present.'

185. Furthermore, Article 26 postulates that 'a resolution in writing signed by every director shall have the same effect and validity as a resolution of the directors passed at the meeting of the directors duly convened, held and constituted.' The Article also provides that 'all or any of the members of the board .....may participate in a meeting of the Board .....by means of a conference telephone or any communication equipment which allows all persons participating in the meeting to hear each other; and that 'a person so participating shall be deemed to be present in person at the meeting.....and be counted in a quorum accordingly.'

186. This is the agreement that the shareholders and directors of Lora Golden Wings (SL) Limited signed to. And even though Mr. Rostisnov pointed out in his Witness Statement at paragraph 9 that, the company's Memorandum and Articles of Association were prepared by the 3rd Plaintiff, Oleg Tsukanov, it still does not absolve him from responsibility. Also, even Section 222 (1) of the Companies Act of 2009 provides for the removal of directors. In fact, it only calls for removal by an ordinary resolution and for appointment of a replacement by an ordinary resolution as well. It also stipulates that, the director being removed, has a right to be heard at the meeting to which the ordinary resolution is passed.

187. Having stated the position of the law as determined by the members themselves and as prescribed by the Companies Act of 2009, I cannot see from the evidence submitted in Court, that the Board of Directors of Lora Golden Wings followed the law. The conduct of Mr.

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Rostisnov was prejudicial to the interests of the Plaintiffs as shareholders and directors, save for the 1st Plaintiff, Momoh Ansumana, who was not a director but a shareholder. The behaviour of Mr. Rostisnov in excluding Mr. Farfell and Mr. Tsukanov from the management of the company, where there was a legitimate expectation of participation, was an abuse of power and breach of the company's Articles of Association and the Companies Act of 2009.

188. Where Mr. Rostisnov had become suspicious or aware of the breach of the fiduciary duties in conducting the company's business by Mr. Farfell and Mr. Tsukonov, he should have called a general meeting or sought legal redress, were it would have been impossible to call a meeting. But removing them as directors and replacing them without the approval of a general meeting was a breach of the fiduciary duties of a director/shareholder.

189. The next pertinent issue that arises is: has there been a breach of the principle of avoidance of 'Conflict of Interest'? The law is that directors are in general, bound by the broad principle affecting all persons who are subject to fiduciary duties that, 'no-one', having such duties to discharge, shall be allowed to enter into engagements in which he has or can have a personal interest conflicting or which possibly may conflict, with the interests of those whom he is bound to protect'; Aberdeen Rly Co v Blaikie (1854) 1 Macq 461 at 471-472 (HL) per Lord Cranworth LC.

190. This principle equally applies, if the director has an 'outside' duty which clashes or may clash with his fiduciary duties to the company; Transvaal Lands Co v New Belgium (Transvaal) Land and Development Co [1914] 2 Ch 488 (CA). A director may not allow an undisclosed interest which conflicts with that of the company. The reason for the duty is to protect the company against improper conduct by the director. Disclosure of the matter which would give rise to a conflict, may overcome the difficulty because the entity to which the duty is owed, is thereby informed of the circumstance and may decide whether to authorise or ratify the director being involved in the transaction.

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191. The principle in my opinion has been breached by Mr. Farfell, Mr. Tsukanov and Mr. Rostisnov in this action. The breach started at the time of the decision to incorporate Lora Golden Wings (SL) Limited. It was evident that Mr. Farfell and Mr. Tsukanov were not honest in disclosing their interests in Style Research and Roksolana Limited to Voytovich Rostisnov at the beginning. They should have informed him that they had competing businesses with Lora Golden Wings. Had this information been disclosed, Mr Rostisnov would have advised himself as to whether he wanted to invest in Lora Golden Wings Limited that was about to be formed. He may not have allowed an undisclosed interest which conflicts with that of the company, because the reason for the duty is to protect the company against improper conduct by the directors.

192. Alternatively, disclosure of interests at a general meeting, which would give rise to a conflict may overcome the difficulty, because the entity to which the duty is owed, Lora Golden Wings Limited, in this case, is thereby informed of the circumstance and may decide whether to authorise or ratify the directors being involved in the transactions. These interests however, were not disclosed to the company; Nash v Lancegaye Safety Glass (Ireland) Limited (1958) 92 ILTR 11.

193. Mr. Rostisnov as well failed in his fiduciary duty to exercise care and skill as a non-executive director of Lora Golden Wings Limited; and failed his duty to exercise independent judgment. Even though he may have received briefing and advice from both internal and external sources, it still did not absolve him from his responsibility to come to his own conclusion in relation to the matter in hand. It is not sufficient for him to blindly follow the recommendations made to him. He is required to exercise his own judgment; his judgment should be independent and not clouded by personal considerations; ICSA's Corporate Governance Handbook (supra) at p 53.

194. If he possesses the experienced investor acumen, which he appeared to exude, he should have exercised that degree of skill when he was dealing with the Plaintiffs as shareholders and directors. Since one of the main reasons for having a non-executive director on a board, is so that the skill and expertise which the non-executive director has may be brought to bear on the affairs of the company. As a non-executive director, Mr. Rostisnov, may have a higher standard of care than his

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executive director colleagues; Dorchester Finance Company Limited v Stebbing (1989) BCLC 498.

195. Furthermore, when Mr. Rostisnov became aggrieved by the actions and behaviour of Mr. Farfell and Mr. Tsukanov, instead of seeking legal redress, he also conflicted himself by setting up rival companies; that is, the 'LGW Group of Companies.' This conduct together with utilising the assets of Lora Golden Wings to transact his business at the LGW Group of Companies, was a breach of his fiduciary duties to Lora Golden Wings. As the majority shareholder of Lora Golden Wings Limited, he diverted the business of Lora Golden Wings to other companies in which he had interests. Thus giving himself financial benefits at the expense of Lora Golden Wings and thereby abused his position and breached the company's constitution. In other words, Mr. Farfell, Mr. Tsukanov and Mr. Rostisnov were all conflicted.

196. The next pertinent question is: whether directors have a duty to Keep Proper Books? Directors must ensure that proper books of account are kept; Section 281of the Companies Act of 2009; Boyle and Birds' Company Law (supra) at p 410. These books must correctly record and explain the transactions of the company and must enable the financial position of the company to be determined with reasonable accuracy at all times; Boyle and Birds' Company Law (supra). The records must be sufficient to enable the directors to ensure that any balance sheet, profit and loss account and income and expenditure account of the company, complies with the requirements of the Companies Act; and to enable the accounts of the company to be audited; Boyle and Birds' Company Law (supra).

197. The books must be kept up to date by making entries in a timely manner and the books must be consistent from year to year. The books must give a true and fair view of the state of affairs of the company and must explain its transactions. For instance, income and expenditure must be entered on a day to day basis and must be explained. The books must contain a record of the assets and liabilities of the company; Boyle and Bird's Company Law (supra).

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198. From the evidence and testimonies submitted to the Court, I observed that all of the parties were clearly in breach of the duty to keep proper records. At various points in the testimonies, I asked for the Minutes of meetings and records of income and expenditure. In the absence of records, I was not surprised with the deep seated acrimony amongst the parties. It became very clear that it was as a result of the rules and laws governing the running of the company that were not being complied with. The company of Lora Golden Wings (SL) Limited was being used as an instrument of fraud. The directors were all busy with their personal interests, whilst the company was being stripped apart and its employees being tossed around from one company to another without complying with the labour laws.

199. I did not find any proper accounting records and controls in place. There was no internal auditor and no external auditor was appointed by the Board. There were no audit reports of the company and no clear regulator of the affairs of the company. No statutory Board Meeting or Annual General Meeting was held.

CONCLUSION

200. In conclusion and having considered the above issues, the Court is of the opinion that all of the parties have been in breach of their fiduciary duties towards the company of Lora Golden Wings (SL) Limited and have not observed the utmost good faith towards the company in their transactions or dealings with it or on its behalf; Section 231 of the Companies Act No. 5 of 2009. They have not exercised their powers and discharged the duties of their office honestly, in good faith and in the best interests of the company; nor exercised the degree of care, diligence and skill which reasonable prudent directors would exercise; Section 232 of the Companies Act No. 5 of 2009.

201. As directors of the company, they were trustees of the company's monies, properties and as such must account for all the monies over which they exercised control and refund any monies improperly paid away; Section 233 of the Companies Act (supra). They acted ultra vires the powers conferred on them by the Act or the company's Memorandum and Articles of Association; Section 234 of the Companies

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Act (supra); and they placed themselves in positions in which their duty to the company conflicted with their personal interests and as a consequence, used for their own advantage monies and property of the company, and made secret profits and unauthorized benefits; Section 235 of the Companies Act (supra).

202. In their actions with the company, there is evidence of deliberate deception to secure unfair and unlawful gain and to deprive each other/shareholder of their legal right. The Court will not allow a company to be used as an instrument of fraud; and where it is clear that incorporation of a company is being used as a method of evading obligations, incorporation will be ignored and the persons controlling the company will be personally liable.

203. Most of the financial transactions were between a company called Neftegazservice, Lidon Trade and another company called Golden Century. These are companies that are not registered in Sierra Leone and ones that the Court had no knowledge about. They did not have any direct business relationship with Lora Golden Wings (SL) Limited; except in the very limited period that they did business and that was when Eduardo Myronenko joined Lora Golden Wings (SL) Limited. Most of the transactions before then, were complex and unusually large patterns of transactions for which there was absent an apparent commercial or lawful purpose. In other words there were suspicious activities involved in the manner of business of the companies involved. It was also noted that there was an absence of transparency of legal persons and arrangements utilized by the parties in transacting business to do with the running of Lora Golden Wings (SL) Limited.

204. As a result of these activities, it was impossible for the company to make a profit thereby depriving the Government of Sierra Leone of much needed tax revenue.

205. In order to assist the Court in establishing a true and fair assessment of the state of affairs of the company, it behoves the Court to invoke Section 268 (2) (a) to (e) of the Companies Act No. 5 of 2009. I therefore make the following Orders as an interim measure pending the Final Judgment:

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(i) The affairs of Lora Golden Wings (SL) Limited is to be investigated by a competent Inspector to be appointed by the Court in accordance with Section 268 (2) (a) to (e) of the Companies Act No. 5 of 2009.

(ii) The appointed Inspector is to submit the Investigation Report to the Court within two (2) months from today's ruling.

(iii) That in addition to the Powers conferred on the Inspector by Section 270 of the Companies Act (supra), the Plaintiffs and the Defendants are to give full statements of account as directors of Lora Golden Wings (SL) Limited, of all accounts and transactions of the Company as well as Statements and production of inventories of the assets of the Company from March 2013 to date. This includes detailed account in respect of all monies, machinery, equipment and materials received by each pary during the period March 2013 to date.

(iv) An injunction restraining all parties herein, their privies, assigns, servants, agents and representatives from dealing or transacting in, disposing of, transferring, assigning or in any other way interfering with the assets of the Company, inclusive of its liquid/cash assets, bank accounts, land concessions and acquisitions, real property and equipment, gadgets and machinery of the Company pending the determination of the recommendations of the Inspector's Report by the Court.

(v) That the parties in this action (who are non-Sierra Leonean Citizens) provide security or make an undertaking/bond in the sum of One Million United States Dollars (US$ 1,000,000) each to ensure their personal appearance in Court and to the Inspector in order to answer to questions until the determination of the recommendations of the Inspector's Report by the Court.

(vi) The Plaintiffs and Defendants are to share the costs of the investigation.

(vii) Costs in the cause.

Justice F. Binta Alhadi

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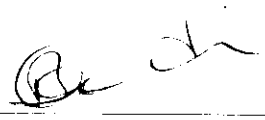
Signed: 

Hon. Ms. Justice F. Bintu Alhadi J.

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