

SUPREME COURT OF SEYCHELLES

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Reportable  
CC 46/2025

In the matter between:

**IRYNA SUGAK**  
(*rep. by Mr Frank Elizabeth*)

**Plaintiff**

and

**1.CELTIC ENTERPRISE LTD**  
**2.MAURIZIO GIULIETTI**  
(*unrepresented*)

**Defendants**

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**Neutral Citation:** *Sugak v Celtic and another* (CC 46/2025) 16<sup>th</sup> January 2026  
**Before:** N. Burian J  
**Summary:** Unjust enrichment  
**Heard:** 19<sup>th</sup> September 2025  
**Delivered:** 16<sup>th</sup> January 2026

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**ORDER**

- For these reasons, the Court is satisfied that the elements of unjust enrichment have been established as against the 1<sup>st</sup> Defendant and I hereby order it to reimburse the Plaintiff as follows:
  - (i) the sum of € 164,082.04/-, along with interest at the commercial rate of 10% per annum from the date the amount became due until full repayment with costs.
- The Court having declined to lift the corporate veil and having determined that the Plaintiff has failed to establish a case against the 2<sup>nd</sup> Defendant, the claim of unjust enrichment against the 2<sup>nd</sup> Defendant fails and is dismissed accordingly.

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**JUDGMENT**

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**N. BURIAN J**

**BACKGROUND FACTS**

- [1] This claim is brought by Iryna Sugak ('the Plaintiff') against Celtic Enterprise Ltd, an IBC incorporated in the Seychelles ('1st Defendant'), and Maurizio Giulietti, her ex-husband ('2nd Defendant') whereby the Plaintiff is claiming the sum of € 164,082.04/, which is the amount allegedly due and owed by the Defendants to the

Plaintiff along with interest on the above amount at the commercial rate of 10% per annum from the date the amount became due until full repayment. The claim arises out of an alleged unjust enrichment by the Defendants at the expense of the Plaintiff, who has allegedly been correspondingly impoverished. The Plaintiff proceeded ex-parte upon service being duly effected on both the 1st Defendant and the 2nd Defendant's secretary on the 22nd July 2025.

## **EVIDENCE**

[2] The Plaintiff is aged 47 years, resides in Monaco and she is currently unemployed. She confirmed that she is a shareholder and director of the 1st Defendant ('the company'). She further confirmed that the 2nd Defendant, is her ex-husband and is also director and shareholder of the company. She produced as exhibits the following documents:

- **P1:** A copy of a Certificate of Incorporation dated 11th February 2011;
- **P2:** A copy of the Memorandum and Articles of Association of the Company;
- **P3:** A copy of a Consent Resolution by Memorandum of Directors of the Company; and
- **P4:** A List of Shareholders of S.C.I GERSEY
- **P5:** An invoice payment summary along with a bundle of invoices
- **P6:** A breakdown of the condominium fees from the 01/10/2012 -31/12/2023 and supporting invoices
- **P7:** report and financial statement as of 31st December 2022 of D1
- **P8:** Letter of demand dated 25th July 2024
- **P9:** Minutes of General meeting dated 27th February 2023
- **P10:** Minutes of General meeting dated 26th February 2024

[3] The Plaintiff went on to explain that S.C.I GERSEY is a company incorporated in Monaco in which the company holds 9,998 shares with the remaining held equally by the Plaintiff and the 2<sup>nd</sup> Defendant. She further confirmed that Strategies Services S.A.M ('S.A.M'), provides administrative services to S.C.I GERSEY in the same fashion as a corporate service provider ('CSP') in the Seychelles.

- [4] The Plaintiff then took the Court through the invoice payment summary and confirmed that on or before the 31st of December 2023, she had advanced the sum of € 164,082.04/- to the Defendants to assist them in paying off debt. She confirmed that she had also made certain payments on behalf of SC.I GERSEY, in which the company is the majority shareholder.
- [5] According to the invoice payment summary and supporting invoices, the Plaintiff has paid a total sum of € 25,785.57/- on behalf of the company from the 1st January 2012 until the 31st December 2022. The witness further confirmed that she had made monthly payments to S.A.M on behalf of the company in the amount of € 30,993.44/- from the 1st January 2012 until 31st December 2023. This payment, she clarified, was a payment for the company to be registered in the domicile of Monaco and she paid € 1,500/- and € 1,800/- each year on behalf of the company.
- [6] The witness tendered as a bundle all invoices as listed in the invoice payment summary which included invoices paid on behalf of the company in the total sum of € 30,993.34/- dated from 01/01/2012 to 31/12/23 (exhibit P5) She confirmed that the payments also included bank transfers for the condominium, which is in the name of SCI Gersey in Monaco, for which the company/1st Defendant is the majority shareholder. She further tendered a breakdown of all the condominium fees paid by herself on behalf of the company which also included proof of payments to the total sum of € 133,088.48/- (exhibit P6) She also produced the financial statements for the company dated 31st December 2022, in which the creditors of the company are listed as S.A.M in the sum of € 2,558/- (invoice dated 10/11/2017) and the second creditor being the Plaintiff, where it was stated a sum of € 122,916.68/- was owed to her for expenses ( condominium fees) for the subsidiary company SCI GERSEY and a sum in the amount of € 25,785.57/- which sum was paid to S.A.M for legal and administrative fees and general expenses paid on behalf of the company by the Plaintiff starting from 1st January 2022 (exhibit P7).
- [7] The Plaintiff confirmed that she had instructed her legal counsel to write a letter of demand dated 25th July 2024 to the Defendants requesting payment in the total sum of € 164,049.22/-. She confirmed that she was the sole contributor towards payment

of the debt owed by the Defendants and that all payments were effected from her personal bank account or via cash payments.

- [8] It was further confirmed that despite her contributions, the Defendants have refused to pay back the sum advanced, despite her numerous requests for the refund. According to the Plaintiff's testimony, these requests were made during company meetings and through letters however, the 2nd Defendant failed to respond to any of the written communication sent nor did he show up at the company meetings. It is the Plaintiff's case that as a result of her payments on the company's behalf, both the company and the 2nd Defendant have been unjustly enriched at her expense and to her detriment. Furthermore, they have benefited from her contributions, while she has been correspondingly impoverished as a result. She maintains that there is a connection between the unjust enrichment of the Defendants and her corresponding impoverishment and that there is no lawful cause, legal or moral, for the Defendants to retain the money which she advanced, and for her not to be refunded. As such, she has filed this case seeking loss and damage, and the assistance of the court to recover the money which she has advanced to the Defendants with interest at the commercial rate of 10% per annum per year from the date the amount became due until full payment is made and costs.

#### **SUBMISSIONS OF COUNSEL**

- [9] Counsel submits that the Plaintiff has presented comprehensive evidence before this Court, clearly demonstrating that she advanced a total of €164,082.04/- to cover the debts and expenses of the 1st Defendant. The Plaintiff contends that, as a result, the Defendants have been unjustly enriched at her expense and that she has no alternative legal remedy available. Accordingly, she seeks relief against both the 1st and 2<sup>nd</sup> Defendants, requesting that this Court lift the corporate veil and hold the 2<sup>nd</sup> Defendant jointly and severally liable for the sums advanced to the company, to her detriment.
- [10] Counsel has gone to considerable length in his submissions to outline the procedural history and nature of these proceedings, the legal framework governing *ex-parte* hearings, and the principles of the law of unjust enrichment, including both its

historical foundations and modern application. While I have carefully considered the entirety of those submissions, I will summarize below only the most relevant and pertinent aspects.

- [11] As correctly pointed out by Counsel, the courts have over time established that five essential elements must be proven for a plaintiff to succeed in an action for unjust enrichment. Counsel has cited extensive jurisprudence in support of this position, including the cases of *Larue v Hertel & Another*<sup>1</sup>, *Labonte v Labonte*<sup>2</sup>, *Searles v Pothin*<sup>3</sup>, *Hoareau v Loizeau*<sup>4</sup> and most recently the landmark case of *Richet & others v Payet*<sup>5</sup>.
- [12] Counsel submits that a critical defining feature of the principal of unjust enrichment is that it is only available where no other legal remedy exists.<sup>6</sup> It is further submitted that in the present case the Plaintiff has no other cause of action, contractual or otherwise and he proceeds to explain why this is the case. It is argued by Counsel that the payments made by the Plaintiff do not constitute a director's loan under the Companies Act because there existed no agreement in writing between the Plaintiff and the company, no board resolution authorising the company to borrow the money and no evidence whatsoever that the Plaintiff and the company ever agreed that the said advances were to be treated as loans. The evidence demonstrates rather that the Plaintiff made direct payments to 3rd party creditors on the company's behalf in order to discharge its liabilities.
- [13] It is further argued that the Plaintiff has no legal remedy under the International Business Companies Act, 2016 which legislation provides no automatic mechanism for recovery of funds paid by the directors personally on the company's behalf. That there is also no remedy available to her in quasi-contract, delict or quasi-delict. As such, if the Plaintiff seeks reimbursement she must look to general principles of unjust enrichment, being her only legal remedy available.

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<sup>1</sup> (CS 39/2015) [2017] SCSC 832

<sup>2</sup> [2004] SCCA 1

<sup>3</sup> (SCA 7 of 2014) [2017] SCCA 14

<sup>4</sup> (CS 85/2020) [2023] SCSC 413

<sup>5</sup> (SAC 21 of 2023) [2024] SCCA 9

<sup>6</sup> *Isaac v Quilindo* (25 of 2009) [2011] SCCA 26 and *Chez Deenu Pty Ltd v Seychelles Breweries Limited* (SCA 22 of 2011) [2013] SCCA 15

[14] Counsel submits that the Plaintiff has adduced comprehensive, detailed and uncontroverted evidence to prove her case on a balance of probabilities. Additionally, it is argued that the Defendants have formally and explicitly acknowledged the debt in the minutes of the company meeting held on the 26th February 2024. That this acknowledgment constitutes an admission of fact which has not been challenged by the Defendants. It is submitted that the Defendants have not challenged the evidence adduced by the Plaintiff and as such the Court is bound to accept the Plaintiff evidence as credible, reliable, and proven.

[15] Counsel proceeded to demonstrate that all five (5) essential elements required for a successful claim in unjust enrichment had been conclusively proven.

- Enrichment of the 1st Defendant/company:

[16] It is Counsel's contention that it has been proven that the company has been enriched by the Plaintiff having discharged the 1st Defendant's legal obligations to creditors. Furthermore, the payments preserved the company's corporate reputation and standing, by ensuring payment in a timely manner and the Plaintiff prevented the accrual of additional interest and penalties and the payments maintained the company's business relationships with essential service providers. Most importantly, the company obtained clear, direct and quantifiable financial benefits valued at € 164,082.04/- which satisfies the requirement of enrichment.

- Enrichment of the 2nd Defendant:

[17] Counsel asks the Court to lift the corporate veil and hold that the 2nd Defendant has also been personally unjustly enriched. It is argued that as a director, the 2nd Defendant shared joint responsibility with the Plaintiff for managing the company and ensuring that its debts were properly discharged. It is counsel's submissions that by making the payments in question, the Plaintiff effectively relieved the 2nd Defendant of this obligation and the corresponding financial burden. Secondly, it is contended that the company failed to meet its financial obligations, and that under certain circumstances, the 2nd Defendant could have been exposed to personal liability. Thirdly, as a shareholder, the 2<sup>nd</sup> Defendant benefited from the preservation of the company's assets, reputation, and continued viability. Fourthly, by avoiding the need

to contribute his own funds toward the company's debts, the 2<sup>nd</sup> Defendant retained personal wealth that would otherwise have been used to fulfill his responsibilities as both director and shareholder. Accordingly, it is argued that the element of unjust enrichment has been clearly and conclusively established in respect of both defendants.

- The Plaintiffs impoverishment

[18] It is submitted that the Plaintiff has suffered a direct, substantial, and quantifiable impoverishment in the sum of € 164,082.04/-. The Plaintiff transferred this amount from her personal bank account to satisfy the debts of the Defendants' creditors, resulting in a clear and measurable reduction of her personal assets. The Plaintiff has produced comprehensive documentary evidence supporting this claim, including bank statements, transfer records, and payment receipts, which conclusively establish that the funds originated from her own resources and not from company accounts or any other source. She has further demonstrated that she was deprived of repayment for several years, thereby losing the opportunity to invest or otherwise utilize these funds for her own benefit. The Plaintiff also testified that she is currently unemployed and that the advances made have materially affected her financial circumstances. The prolonged deprivation of such a significant sum has therefore caused her genuine financial hardship. Finally, despite formal demands for repayment and an express acknowledgment of the debt recorded in the company's minutes, the defendants have failed to reimburse the Plaintiff, either in part or in full, for the amounts advanced.

- Causal link between enrichment and the impoverishment

[19] It is submitted that there is a direct, immediate, and undeniable causal connection between the Plaintiff's impoverishment and the Defendants' enrichment. The causal link is clearly established by the identifiable amount of € 164,082.04/-, representing the sum lost by the Plaintiff and correspondingly gained by the Defendants. The payments made by the Plaintiff directly discharged the liabilities of the company, creating a clear and traceable flow of value from the Plaintiff's personal bank account to the company's creditors. This flow of funds directly benefited the Defendants by extinguishing their debts. Substantial documentary evidence supports this connection, demonstrating a direct and uninterrupted relationship between the Plaintiff's payments and the discharge

of the Defendants' financial obligations. The evidence further shows that these payments were made precisely when the 1<sup>st</sup> Defendant's debts fell due, thereby preventing the company from defaulting on its obligations. Moreover, the minutes of the meeting dated 26<sup>th</sup> February 2024 explicitly acknowledge that the Plaintiff's payments were applied to the company's debts, thereby confirming the existence of the causal link. Finally, there is no intervening act, event, or transaction that could be said to have broken this causal connection. The enrichment of the Defendants flows directly and exclusively from the Plaintiff's impoverishment. Accordingly, it would be untenable to deny that the Defendants' gain resulted directly from the Plaintiff's financial loss.

• The enrichment and impoverishment are without lawful cause:

[20] It is submitted that both the enrichment of the Defendants and the impoverishment of the Plaintiff occurred without lawful cause, and that there exists no legal, contractual, moral, or natural justification for the Defendants to retain the benefits derived from the Plaintiff's payments.

[21] The absence of lawful cause is demonstrated by several key factors:

- i. No contractual obligation: There was no agreement requiring the Plaintiff to settle the 1<sup>st</sup> Defendant's debts.
- ii. No loan arrangement: There was no loan contract granting the 1<sup>st</sup> Defendant the right to use the Plaintiff's funds.
- iii. No donative intent: The payments were never intended as a gift or donation, as evidenced by the Plaintiff's formal written demand for reimbursement dated 17 July 2024.
- iv. No statutory or legal duty: No law or regulation imposed an obligation on the Plaintiff to pay the company's debts. Her only duty as a director was to ensure proper management of the company, not to personally finance its operations.
- v. No legal compulsion: The payments were not made pursuant to any judgment, court order, arbitration award, or other binding legal process requiring her to do so.

- vi. No moral or natural duty: The Plaintiff had no moral or natural obligation to pay the company's debts on behalf of the defendants.
- vii. No entitlement of the Defendants: The 1<sup>st</sup> Defendant had no legal or equitable right to receive the benefit of these payments, and the 2<sup>nd</sup> Defendant having failed in his managerial responsibilities had no entitlement to profit from the Plaintiff's intervention.

[22] Finally, it is submitted that the Plaintiff's impoverishment was not caused by her own fault. She acted reasonably and in good faith, making the payments solely to protect the company from legal action and insolvency. Her conduct was prudent, necessary, and entirely devoid of fault.

- No other remedy available:

[23] It is argued that the Plaintiff has no other legal remedy available to her as demonstrated in paragraphs 12-13 above.

- Joint and several liability of the Defendants:

[24] The Plaintiff seeks judgment against both Defendants, jointly and severally, with primary liability attributed to the 1<sup>st</sup> Defendant. It is submitted that the 1<sup>st</sup> Defendant's liability is clear and indisputable, as it was the primary and direct beneficiary of the Plaintiff's payments amounting to € 164,082.04/-. The debts discharged by the Plaintiff represented the 1<sup>st</sup> Defendant's legal obligations to its creditors, and by satisfying those debts, the Plaintiff conferred a direct financial benefit upon the company. Consequently, the 1<sup>st</sup> Defendant has been unjustly enriched by the full amount of € 164,082.04/- and possesses no lawful basis to retain this benefit. Despite formal written demands for reimbursement, the company has refused to repay the Plaintiff. Accordingly, the Plaintiff contends that the 1<sup>st</sup> Defendant's liability is established through the straightforward application of Article 1381-1 of the Civil Code, which governs claims for unjust enrichment.

[25] However, Counsel for the Plaintiff urges the Court to go further and hold the 2<sup>nd</sup> Defendant personally liable, alongside the company, by lifting the corporate veil. While it is acknowledged that directors ordinarily benefit from the protection of

separate corporate personality, it is submitted that such protection is not absolute. In this instance, several compelling factors warrant the Court's consideration of piercing the corporate veil and imposing personal liability upon the 2<sup>nd</sup> Defendant.

- [26] Firstly, it is submitted that, as a director and co-shareholder, the 2<sup>nd</sup> Defendant bore joint responsibility with the Plaintiff for the proper management of the company. As a director, he was under a duty to ensure that the company's debts were paid and that it was operated in accordance with sound governance and statutory obligations. However, in breach of these directorial duties, the 2<sup>nd</sup> Defendant failed to act, and his conduct amounted to gross mismanagement, rendering him personally liable. He effectively abdicated his responsibilities, displaying a complete lack of interest in the company's affairs.
- [27] Secondly, it is argued that the 2<sup>nd</sup> Defendant failed to contribute toward the payment of the company's debts, thereby forcing the Plaintiff to assume the entire financial burden. Thirdly, he took no steps to ensure that the company met its obligations to creditors, and his continued inaction and negligence would likely have led to the company's collapse had the Plaintiff not intervened.
- [28] Counsel points out that, under the International Business Companies Act, directors may be held personally liable where they act in breach of their duties or engage in acts of mismanagement. It is submitted that the 2<sup>nd</sup> Defendant's conduct meets this statutory threshold.
- [29] Moreover, the 2<sup>nd</sup> Defendant has personally benefited from the Plaintiff's payments as he was relieved of his obligation to contribute to the company's debts, shielded from potential personal liability arising from directorial breaches, and his shareholding interest in the company was preserved and protected as a result of the Plaintiff's intervention. Having been thus personally enriched, it is argued that he must be held personally liable to make restitution.
- [30] Finally, Counsel submits that it would be manifestly unjust to allow the 2<sup>nd</sup> Defendant to escape liability by hiding behind the corporate veil, given his dereliction of duty, personal enrichment, and disregard for his directorial obligations. The Court is reminded that it possesses an inherent equitable power to pierce the corporate veil

where justice so requires, particularly in the context of small, closely held companies where directors and shareholders are effectively one and the same, and where their conduct demonstrates impropriety or misuse of the corporate form.

[31] Counsel further argues that by ordering joint and several liability, the Court would ensure that the Plaintiff is able to recover the full amount of €164,082.04/- from either Defendant, or from both Defendants in such proportions as the Court deems appropriate. This approach guarantees that the Plaintiff will not be left without an effective remedy should one defendant prove unable to satisfy the judgment. By holding both Defendants accountable for their respective roles in the unjust enrichment, the Court would ensure that justice is fully served and that all parties who have benefited at the Plaintiff's expense are made to answer for their enrichment.

## LAW AND ANALYSIS

[32] I have considered the pleadings and arguments put forth by the Plaintiff and I am of the view that the issues that require determination are as follows:

- i. Whether a case has been made out against the 1st Defendant under the principal of unjust enrichment.
- ii. Whether a case has been made out against the 2nd Defendant under the principal of unjust enrichment, and if so can this Court lift the corporate veil and hold the 2nd Defendant liable to the Plaintiff.

[33] Black's Law Dictionary defines unjust enrichment as the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected.<sup>7</sup>

[34] The principle is provided for in Article 1381 (1) of the Civil Code as follows:

*"If a person suffers a detriment without there being a reason in law for that detriment, and another is correspondingly enriched, the former may recover from the latter the extent of the enrichment of the latter. Provided that this action for unjust enrichment shall only be admissible if the person suffering the detriment cannot avail himself of another action in contract, or quasi-contract, delict or quasi-delict; provided also that detriment has not been caused by the fault of the person suffering it."*

[35] Unjust enrichment arises where one person receives a benefit or value from another at the expense of the latter without any legal cause for such receipt or retention of the

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<sup>7</sup> Black's Law Dictionary, p. 1536, 7th edition (1999).

value or benefit by the former. Its aim is to balance the interests of individuals and provide restitution where necessary.

[36] In the case of *Tree Sword (Pty) Ltd v Puciani*<sup>8</sup> Justice Twomey referred to an action for unjust enrichment as a subsidiary action and reaffirmed that when a claim can be made under contract or delict, a claim under unjust enrichment cannot be entertained.

[37] Justice Msoffe in the case of *Searles supra* took into consideration the American case of *Fowler v Taylor*<sup>9</sup> which he found provided useful guidance on the law of gifts as follows:

*“unjust enrichment occurs when a person has and retains money or benefits that in justice and equity belong to another, however, “the fact that a person benefits another is not itself sufficient to require the other to make restitution.” Money or benefits that have been “officially or gratuitously furnished” are not returnable. A person acts gratuitously when, at the time he conferred the benefit “there was no expectation of a return benefit, compensation, or consideration”.*

[38] Under the principles of gift, the donor’s intent is an important element that has to be taken into consideration in deciding the parties’ rights in a particular case. In other words, it is important to ascertain from the available evidence as to whether or not in giving the gift the donor intended, or gave on condition, that it would be returned to him by the donee in future.

[39] The case of *Antonio Fostel v Madalena Ah-Tave and Another*<sup>10</sup> lays out five conditions which must be satisfied if a claim for unjust enrichment is to succeed, namely:- (i) an enrichment; (ii) an impoverishment; (iii) a connection between the enrichment and impoverishment; (iv) an absence of lawful cause or justification; and, (v) an absence of other remedy which in French law is referred to as “caractère subsidiaire”. In other words, the action is available only where there is no other cause of action in contract or other laws.

[40] In the American case of *Cooper v Smith*<sup>11</sup> it was held that:

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<sup>8</sup> (SCA 9 of 2014) [2016] SCCA 19 (12 August 2016)

<sup>9</sup> 554 P-2d 205, 209 (Utah 1976)

<sup>10</sup> SLR [1985] 113

<sup>11</sup> 15 Ohio App. 3d 218, 2003-Ohio-6083

*“many gifts are made for reasons that sour with the passage of time. Unfortunately gift law does not allow a donor to recover/revoke an inter vivos gift simply because his or her reasons for giving it have “soured”.*

- [41] The general principle is that a person who confers a benefit upon another manifesting that he does not expect compensation or restitution, is not entitled to restitution merely because his expectation that an existing relationship will continue or that a future relationship will come into existence is not realized, unless the conferring of the benefit is conditioned thereon.
- [42] It was further laid out in the case of *Gangadoo v Cable and Wireless*<sup>12</sup> that under the common law, one of the preconditions to invoke an equitable remedy for restitution is that the Plaintiff should not have any other legal remedy provided by law, vide section 6 of the Courts Act. The same condition is required to be satisfied under Article 1381-1 of the Civil Code of Seychelles, to uphold an unjust enrichment claim.
- [43] I will now consider whether in the case on hand, the five conditions defined have been fulfilled to uphold the claim of the Plaintiff in this action.

Liability of the 1<sup>st</sup> Defendant/company:

- [44] I am satisfied that it has been proven by the uncontroverted evidence of the Plaintiff and on a balance of probabilities that the company has been enriched by the Plaintiff having discharged the 1<sup>st</sup> Defendant’s legal obligations to creditors. Most importantly, the company obtained clear, direct and quantifiable financial benefits valued at € 164,082.04/.
- [45] I am further satisfied on the evidence as presented that the Plaintiff has suffered a direct, substantial, and quantifiable impoverishment in the sum of € 164,082.04/-. The Plaintiff transferred this amount from her personal bank account to satisfy the debts of the 1<sup>st</sup> Defendant’s creditors, resulting in a clear and measurable reduction of her personal assets. The Plaintiff has produced comprehensive documentary evidence supporting this claim, including bank statements, transfer records, and payment receipts, which conclusively establish that the funds originated from her own resources and not from company accounts or any other source. She has further demonstrated that

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<sup>12</sup> (Civil Side No: 274 of 2009) [2011] SCSC 81 (25 July 2011)

she was deprived of repayment for several years, thereby losing the opportunity to invest or otherwise utilize these funds for her own benefit. The Plaintiff also testified that she is currently unemployed and that the advances made have materially affected her financial circumstances thus I am satisfied that the prolonged deprivation of such a significant sum has caused her genuine financial hardship. Finally, it has been established that despite formal demands for repayment, the 1<sup>st</sup> Defendant has failed to reimburse the Plaintiff, either in part or in full, for the amounts advanced.

[46] Furthermore, the Plaintiff has proven that a direct, immediate, and undeniable causal connection between her impoverishment and the 1<sup>st</sup> Defendant's enrichment. The causal link is clearly established by the identifiable amount of € 164,082.04/-, representing the sum lost by the Plaintiff and correspondingly gained by the Defendant as payment to 3<sup>rd</sup> party creditors. The payments made by the Plaintiff directly discharged the liabilities of the company, creating a clear and traceable flow of value from the Plaintiff's personal bank account to the company's creditors. This flow of funds directly benefited the 1st Defendant by extinguishing its debts. Accordingly, this Court accepts that the 1st Defendant's gain resulted directly from the Plaintiff's financial loss.

[47] It is further accepted by this Court that both the enrichment of the 1<sup>st</sup> Defendant and the impoverishment of the Plaintiff occurred without lawful cause, and that there exists no evidence of any legal, contractual, moral, or natural justification for the 1<sup>st</sup> Defendant to retain the benefits derived from the Plaintiff's payments.

[48] It has also been established on the balance of probabilities that the Plaintiff's impoverishment was not caused by her own fault and that there exists no other legal remedy available to the Plaintiff but for a claim of unjust enrichment.

Liability of the 2<sup>nd</sup> Defendant:

[49] This Court is thus left to determine whether the lifting of the corporate veil is justified in this instance in order to hold the 2<sup>nd</sup> Defendant jointly liable to the Plaintiff. With regards to lifting of the corporate veil, it is established law that a limited liability company is vested with a separate legal personality and its shareholders are not

personally liable for the debts of the company. The corporate veil may be lifted in certain circumstances, for instance where fraud is established, in order to reach the persons responsible for misconduct who would otherwise be shielded by the company's separate legal personality<sup>13</sup>.

[50] In the case of *Swiss Renaissance v General Insurance*<sup>14</sup>, it was held that directors act as agents of the company which means that directors who act as agents of a company will not incur personal rights or obligations to the counterparty under a contract, unless explicitly provided for.

[51] The landmark decision in *Salomon v A. Salomon & Co Ltd*<sup>15</sup> created two basic legal concepts, namely, (i) "corporate entity" and (ii) "limited liability". On principle, the Courts will generally hold the company liable for all actions or debts that are legally the responsibility of the corporation, not its shareholders. However, if shareholders' actions were clearly designed to pass personal liability off to the corporation, the Courts have disregarded the rigid application of the Salomon principle, when such rigidity resulted in corporate calamity and legal absurdity. Historically, the Courts have lifted the corporate veil for good reasons. In a number of circumstances, the Courts have pierced or ignored the corporate veil, to reach the person behind the veil or to reveal the true form and character of the concerned company. The rationale behind this is that the law will not allow the corporate veil to be misused as a masquerade by unscrupulous individuals to swindle and defraud others, and escape from the clutches of law by hiding behind the corporate veil.

[52] In our jurisdiction the Courts under certain circumstances have lifted the corporate veil, when justice and necessity demanded us to do so<sup>16</sup>. However in the case of *Cultreri v Eible and Another*<sup>17</sup> the court held that where there is no pleading or any allegation made by the plaintiff that fraud or breach of trust or deceit has been perpetrated behind the corporate veil the Court cannot pierce the veil in order to hold the defendants unduly liable for the debts, which the company might or might not

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<sup>13</sup> *State Assurance Corporation of Seychelles v First International Financial Company Ltd* (409 of 1998) [2006] SCSC 1 (13 June 2006); *Cultreri v Eible and Another* (361 of 1999) [2007] SCSC 17 (03 December 2007); *Lesperance v Ernestine & Ors* (CC 69/2015) [2018] SCSC 802 (05 September 2018)

<sup>14</sup> [1999] SLR 17

<sup>15</sup> [1897] AC 22 (Appeal Cases, 1897, page 22)

<sup>16</sup> *SACOS Vs. First International Financial Company- Civil Side 409 of 1998*

<sup>17</sup> (361 of 1999) [2007] SCSC 17 (3 December 2007)

have incurred. Accordingly, it was determined that both defendants were neither jointly nor severally responsible for the debts of the company.

[53] In most jurisdictions, there exists no standardized rule calibrating the standard required to be applied by the Court on the question of judicial “veil lifting” and decisions are taken on case-by-case basis. It is important to note however that the lifting of the corporate veil is usually seen as the last resort and is only used in exceptional circumstances. Therefore, taken all the above into account and after careful reflection on the facts of the present case, this Court is of the view that the lifting of the corporate veil in order to hold the 2<sup>nd</sup> Defendant liable would not be appropriate in this instance.

[54] Though it is accepted that as a director, the 2<sup>nd</sup> Defendant shared joint responsibility with the Plaintiff for managing the company and ensuring that its debts were properly discharged, I am not satisfied that there is sufficient evidence laid before this Court to establish any fraud, deceit or abuse of the corporate form to further an improper purpose by the 2<sup>nd</sup> Defendant. It is clear from the evidence that the debts paid off by the Plaintiff were accrued during the general course of business operations and not due to any wrongful or negligent acts of the 2<sup>nd</sup> Defendant.

[55] There is further no evidence that the 2<sup>nd</sup> Defendant has been enriched at the expense of the Plaintiff. The contention that the 2<sup>nd</sup> Defendant has benefited from the preservation of the company’s assets and reputation, or that he was thereby relieved from personally meeting those liabilities, is in my view, too far of a stretch. Whilst on an abstract level, the argument is intelligible, the proposed benefits to the 2<sup>nd</sup> Defendant do not in my view constitute an enrichment cognisable in unjust enrichment. The benefits to the 2<sup>nd</sup> Defendant must in my view be real and measureable and personal to the 2<sup>nd</sup> Defendant. Furthermore, the relief from personal liability presupposes a legal obligation on the director to pay in the first place and in the absence of the piercing of the corporate veil there is no personal liability from which the 1<sup>st</sup> Defendant was ‘saved’ and ultimately the debts were and continue to remain the responsibility of the 1<sup>st</sup> Defendant. In the circumstances, the Court rejects the Plaintiff’s contention that the 2<sup>nd</sup> Defendant was enriched at the Plaintiff’s expense.

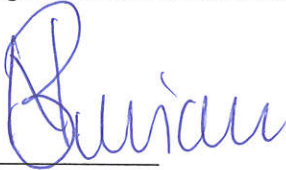
## CONCLUSION AND ORDERS

[56] For these reasons, the Court is satisfied that the elements of unjust enrichment have been established as against the 1<sup>st</sup> Defendant and I hereby order it to reimburse the Plaintiff as follows:

- (i) the sum of € 164,082.04/-, along with interest at the commercial rate of 10% per annum from the date the amount became due until full repayment with costs.

[57] The Court having declined to lift the corporate veil and having determined that the Plaintiff has failed to establish a case against the 2<sup>nd</sup> Defendant, the claim of unjust enrichment against the 2<sup>nd</sup> Defendant fails and is dismissed accordingly.

Signed, dated and delivered at Ile du Port on 16<sup>th</sup> January 2026



N. Burian J

