

IN THE DISTRICT COURT OF COLOMBO

Nihal Sri Ameresekere of No.167/4,  
Sri Vipulasena Mawatha, Colombo-10.

Plaintiff.

Case No.21819/MR.

Vs.

1. Gamini Lakshman Peiris of "  
"Visumpaya", Staples Street,  
Colombo-2 - and also of No.37,  
Kirula Place, Colombo-5.
2. Hotel Developers (Lanka) Limited  
c/o Colombo Hilton Sports Complex  
Echelon Square, Lotus Road,  
Colombo-1.

Defendants.

On this 21<sup>st</sup> day of January, 1999.

The answer of the 2nd Defendant abovenamed appearing  
by G.G.Arulpragasam, its Attorney-at-Law, states as  
follows :-

01. By way of a preliminary objection the 2nd Defendant states that the Plaintiff is not entitled to maintain this action on behalf of the 2nd defendant company unless he can establish that the Directors of the Company have deliberately and in bad faith failed to safeguard and protect the interests of the Company. The 2nd defendant therefore submits that being unable to state the reasons or motivation for the decisions of its Directors it is not in a position to answer several of the averments made against them in the Plaint and upon which the very right of the Plaintiff to proceed with his action would be determined. The 2nd defendant therefore states that the failure of the Plaintiff to make the Directors of the 2nd Defendant Company parties to the action necessitates that the action should be dismissed.
02. Without prejudice to the preliminary objection taken by the Plaintiff hereinabove, the 2nd Defendant states the following in response to the averments made in the Plaint.

03. The 2nd defendant denies all and singular each and every one of the several averments made by the Plaintiff in his Plaint save and except those that are specifically admitted hereinafter.
04. The 2nd defendant admits the contents of paragraphs 3, 4, 5, 6, 9 and 16 of the Plaint.
05. The 2nd defendant admits the contents of paragraph 1 of the Plaint but denies that the Plaintiff has a cause of action against the 2nd defendant.
06. The 2nd defendant is aware of the contents of paragraph 2 of the Plaint but states that is not aware as to whether the Plaintiff "wished not to continue" as Advisor to the Ministry of Finance or not.
07. The 2nd defendant admits the contents of paragraph 7 of the Plaint save and except the averment in 7(d). The 2nd defendant states that it is unaware of the existence of the contents of the Cabinet Memorandum referred to therein.
08. In answer to paragraph 8 of the Plaint the 2nd defendant states that while it is aware that the Plaintiff gave evidence before the Special Presidential Commission referred to therein it is unaware of the specific material placed by the Plaintiff before the said Commission.
09. In answer to paragraph 10 of the Plaint the 2nd Defendant states that while it is generally aware that a press conference was held to announce the settlement the exact details of the statement made by the 1st defendant thereat are unknown to the 2nd defendant.
10. Answering paragraph 11 of the Plaint the 2nd defendant states that while it is aware that a condition was included in the Settlement Agreement signed on 28.06.1995 to take action against the then members of the Securities and Exchange Commission, this condition was subsequently withdrawn in October 1996 by an addendum to the Settlement Agreement.
11. The 2nd defendant is unaware of the contents of paragraph 12 of the Plaint.
12. In answer to paragraphs 13 and 18 of the Plaint the 2nd defendant states that while it is aware that the Settlement Agreements were suspended it (the 2nd defendant) is unaware of the reasons or motivations that led to the suspension of the said Agreements, except to the extent of what is reported in the Hansard of 08.08.1995 regarding the circumstances in which the suspension of the implementation of the said Agreements took place.

13. The 2nd defendant admits the contents of paragraph 14 of the Plaintiff.
14. The 2nd defendant in answer to paragraph 15 of the Plaintiff,  
(a) admits the contents of paragraph 15(a) of the Plaintiff;  
(b) answering paragraph 15(b) of the Plaintiff, whilst admitting that a clause was included in the Settlement Agreement for the construction of the 3rd Tower and the restructuring of the finances is unable to state whether such matters could have been implemented within the grace period;  
(c) answering paragraph 15(c) of the Plaintiff, the 2nd defendant only admits that a sum of Rs.288.567 million had to be borrowed from the Government in July 1997 at 12.5% interest per annum.  
(d) answering paragraph 15(d) of the Plaintiff the 2nd defendant states that it is unaware of the same.
15. The 2nd defendant states that while it is generally aware of the contents of paragraph 17 of the Plaintiff it is unaware of whether the Plaintiff's role has been acknowledged or not.
16. The 2nd defendant admits the contents of paragraph 19a(1) and 19a(11) of the Plaintiff. Answering paragraph 19c(1) of the Plaintiff the 2nd defendant only admits that a sum of Rs.288.567 million had to be borrowed from the Government in July 1997 at 12.5% per annum.  
  
Answering paragraphs 19(b)(1), 19(b)(2), 19(c)(iii) and 19(d) of the Plaintiff the 2nd defendant states that, whilst admitting that a clause was included in the settlement agreement for the construction of the third tower and the restructuring of the finances, is unable to state whether such matters could have been implemented within the grace period.
17. In answering paragraph 20 of the Plaintiff the 2nd defendant only admits being aware that there has been litigation instituted by Mr. Cornel Perera and that the 2nd defendant filed objections and answers setting out its position in relation to the subject matter of such actions.
18. The 2nd defendant is unaware of the averments made in paragraphs 21 and 22 of the Plaintiff.
19. The 2nd defendant admits the contents of paragraph 23(a) and (b) of the Plaintiff. However, it is unaware of the contents of paragraph 23(c) thereof.  
  
Whilst admitting the contents of paragraph 24(b) of the plaintiff, the 2nd defendant is unaware of the contents of paragraph 24(a).

20. The 2nd defendant in answering paragraph 25 of the Plaintiff states that it is unaware of the memorandum referred to therein.
21. In answering the several averments made in paragraphs 26 of the Plaintiff the 2nd defendant states that it is aware of the contents mentioned therein, but states that the Chairman had properly advised the Secretaries of the Company that unless the Minutes are confirmed by the Board of Directors the matter should not be referred to the lawyers.
22. Whilst admitting the contents of paragraph 27(a) of the Plaintiff the 2nd defendant specifically states that the directors of the Company include persons holding senior positions in the Ministry of Finance and other senior business persons who have the interests of the company at heart and therefore that it has no reason to believe that Directors of the Company referred to in subparagraphs (b), (c) and (d) thereof would not have acted in the best interests of the 2nd defendant Company.
23. In answering paragraph 28 of the Plaintiff, the 2nd defendant states that,
- (a) the Plaintiff has been an active Director of the Company;
  - (b) it reiterates that it has no reason to believe that the board of directors of the Company would not have acted in the best interests of the company in order to protect the interests of the 2nd defendant as required of them by the Law.
24. The 2nd defendant is unaware of the contents of paragraph 29 of the Plaintiff.
25. In answer to paragraphs 30 and 31 of the Plaintiff, the 2nd defendant reiterates that this Plaintiff does not have a legal right to bring the action on behalf of the 2nd defendant unless the Plaintiff can establish that the Directors of the Company have deliberately and in bad faith failed to act in the best interests of the Company.

WHEREFORE THE 2ND DEFENDANT PRAYS

- (a) that the Plaintiff's action be dismissed;
- (b) for costs; and
- (c) for such other and further relief as to Your Honour's Court shall seem meet.



Attorney-at-Law for 2nd Defendant.