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IN THE DISTRICT COURT OF COLOMBO

Hotel Developers (Lanka) Limited
Colombo Hilton Sports Complex
Echelon Square
Lotus Road
Colombo-01.

Plaintiff

Case No : 15322/MR

- Vs -

Nihal Sri Ameresekere
Comindtax Management Services Ltd.
167/4, Sri Vipulasena Mawatha
Colombo-10.

Defendant

on this 15th day of December, 1994.

The Replication of the Plaintiff above named appearing by Hussain Ahamed its Attorney-at-Law states as follows :-

1. The Plaintiff denies all and singular several averments contained in the Answer save and except those that are hereinafter specifically admitted. The Plaintiff reiterates the averments contained in the plaint and joints issue with the defendant on the several denials contained in the answer.
2. The Plaintiff states that
 - a) The Answer is not comparity with the imperative provisions of the civil procedure code.
 - b) The Answer is vague and contains irrelevant unrelated, false material in an endeavour to confuse the specific allegations of the plaintiff set out in the plaint. It is a deliberate attempt to digress from the relevant points in issue and material in this case.
 - c) The averments in the Answer are also malicious vindictive and in the nature of a personal vendetta with the Chairman of the Plaintiff Company which are totally alien and are irrelevant to the allegation made to the defendant by the plaintiff.
 - d) All the alleged claims and reconvention are not of the same kind, nature and quality as that of the claim in convention and cannot be had and maintained and have been made maliciously in an attempt to embarrass, intimidate and cause delay by causing confusion in recovering damages claimed by the Plaintiff.
 - e) In any event the Defendant is not entitled in fact and in law to have and maintain the claims in reconvention.

- f) The several relief prayed for in the Answer are totally misconceived in law and appears to disclose the vindictive and malicious intent of the defendant.
 - g) The averments and reliefs prayed for in the Answer are totally inconsistent in form and procedure as set out in the civil procedure code.
 - h) The defendant is not entitled in law to any damages as set out in the third claim in reconvension in as much as in any event it does not disclose any cause of action recognised in law.
 - i) The defendant is not entitled in Law to any declarations prayed by way of claim of reconvention.
 - j) For any one or more of the above reasons the Answer should be rejected in limine and or at least returned for amendment to be put into proper form.
3. Without prejudice to the aforesaid the Plaintiff Answers to the several averments in the Answer.
4. The Plaintiff denies the averments contained in para 5 and 6 of the Answer and states that in terms of the Investment Agreement Cornel & Co., Ltd. owns 52.62% of the shares of the Plaintiff company of which 51% was transferred to the state to be held by the state till such time as the state Guarantee is operative and valid. The Plaintiff Company is not a party to the said Investment Agreement but is an agreement operative between the Government and the major shareholders of the company.
5. Answering the averment contained in paragraphs 8, 9, and 10 of the Answer the Plaintiff denies same and state that:-
- a) The Defendant was employed as a Management and Tax Consultant of Cornel group of companies from about 1978 and as Chief Executive of the said group from Dec. 1982.

Cornel & Co., Ltd. was the main promoter of the Plaintiff Company. The Plaintiff annexes hereto and pleads as part and parcel hereto.

The defendants handwritten document dated 15.09.1982 claiming percentage of the profits as professional fees and a minimum drawing of Rs.50,000/- drawings in lieu thereof and a further 25% ownership of any new projects marked "X1"

Letter dated 27th December 1983 from Defendant to Cornel & Co, marked "X2"

Letter dated 27th September 1984 from Defendant to Cornel & Co, marked "X3"

Letter dated September 27th 1984 from Defendant to Cornel & Co, marked "X4" wherein his contribution to Cornel & Co., in respect of the Hilton Project has been set out as follows.

"Initiated the formulation of strategy of capitalising the Land Lease enabling not only the formulation of Financial Plans, but also resulting in a tremendous "tax shelter" situation to Cornel & Co., Ltd., including ensuring 51% ownership.

- b) The Defendant was appointed to the Board of Directors as a nominee Director of the said Cornel & Co Ltd. After the appointment of the defendant to the board of the plaintiff company he commenced acting as a Chief Financial Consultant to the plaintiff company and/or agreed to act and/or represented that he was so acting on behalf of the plaintiff company. The defendant reported to the board all financial matters relating to the plaintiff company.
- c) The plaintiff company allotted 100,000 SHARE of Rs.10/- each to the defendant and his wife which was paid for by Cornel & Co.
- d) The defendant was the chief adviser to Cornel & Co and all matters relating to the Hilton project by Cornel & Co were on the advise and executed by the defendant. Copy of letter dated 14th May 1980 to Cornel & Co and letter dated 3rd November 1980 to the Peoples Bank from the defendant is annexed hereto marked X5 and X6 respectively.
- e) All matters relating to the preparation of the prospectus and the cash flow statements relating to profitability were prepared and coordination with the contractors and architects was by the defendant.
- f) The defendant has even applied for a liquor licence on behalf of Cornel & Co which was unsuccessful. Copy of letter dated 26/01/1983 signed by the defendant to the Commissioner of Excise is filed herewith marked X7.
- g) All the Cornel group of companies were totally mismanaged by the defendant and most of the companies have now been liquidated.
- h) Even the telex marked D2 by the defendant is sent to the attention of the defendant which also states that the matter is urgent. The defendant totally neglected attending to the said matter having represented to the board and agreed to attend to such matters, while

practising as Professional Management and specially Tax Consultants.

6. Answering the averments contained in paragraphs 10, 11 and 12 of the Answer the Plaintiff denies same and state that it was the responsibility of the Defendant to submit the required information to the Island Revenue which information was made available to the defendant by telex marked D2. It was the responsibility of the Defendant to inform Auditors of same. Even in about 1987 when the defendant was attending to matters relating to payment of interest on loan agreement the defendant has neglected to obtain the necessary exemption from the department of Island Revenue. True copy of the minutes of the board of directors of the Plaintiff company held on 15th July 1987 is filed herewith marked X8.

7. Answering the averments contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Answer the defendant admits only the Institution the said actions 3155/Spl and 3231/Spl and denies the rest of the averments contained therein and state that the said cases are totally irrelevant for the purpose of this case. The plaintiff further states that -
 - a) The said case has been filed by the defendant on the basis of an alleged derivative action stating that the hotel should have 456 rooms when in fact the contractors had built only 387 rooms and that the cash flow statement on the basis of 456 rooms.

 - b) The defendant was fully aware that total square area was about 40,000 square meters and in fact there is 39,000 square meters of 452 rooms bays in different configurations of certain suites consisting of several room bays, board rooms consisting of two room bays, General Manager's and other residential quarters consisting of several room bays giving saleable guest room bays of 387. This is in accordance with the construction Agreement dated 31st January 1984 the first page of which is annexed hereto marked X9(a) and the investment agreement dated 31st January 1984, the second page of which is annexes hereto marked X9(b) and pleaded as part and parcel hereto. The defendant should have realised this fact and appraised cash flow statements on the basis of 452 room keys. Even the Interior Design Agreement entered into on 28th June 1985 refers only to 395 rooms as some room bays were configured for board rooms etc and not as Guest rooms, whereas some guest rooms such as suites contain several room bays. The defendant when advising the board had nor taken into account any such information.

- c) The plaintiff is confident that in the event of the said cases proceeding into trial they will be dismissed. The Japanese Lenders even prior to the defendant instituting action had discussions to reduce and fix the loan due to them to approximately US \$ 60 million.
 - d) The defendant recently having been appointed to the board of the plaintiff company has made a claim in reconvention against the company and as such should not be director of this company as there is definite conflict of interest. In any event having filed the two cases referred to above he is disqualified and should not act as a director of the plaintiff company.
 - e) The defendant has suppressed the plaint filed by him in the DC Colombo case No.3155/Spl and also the fact that he was the Chief Financial Advisor to the plaintiff company. A copy of the said plaint is annexes hereto marked X10.
8. The plaintiff denies averment containing in paragraph 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the answer and state that the said averments are irrelevant and in any event is not entitled in law to the reliefs claimed therein. The plaintiff admits that Case No.10949/M and 12978/M are pending trial in the district court of Colombo. Further answering the plaintiff states that the defendants counsel who appeared in case number 3155/Spl, Mr. Kanag-Iswaran PC settled the plaint in the said Case number 10949/MR and due to conflict of interest, counsel had to be changed.

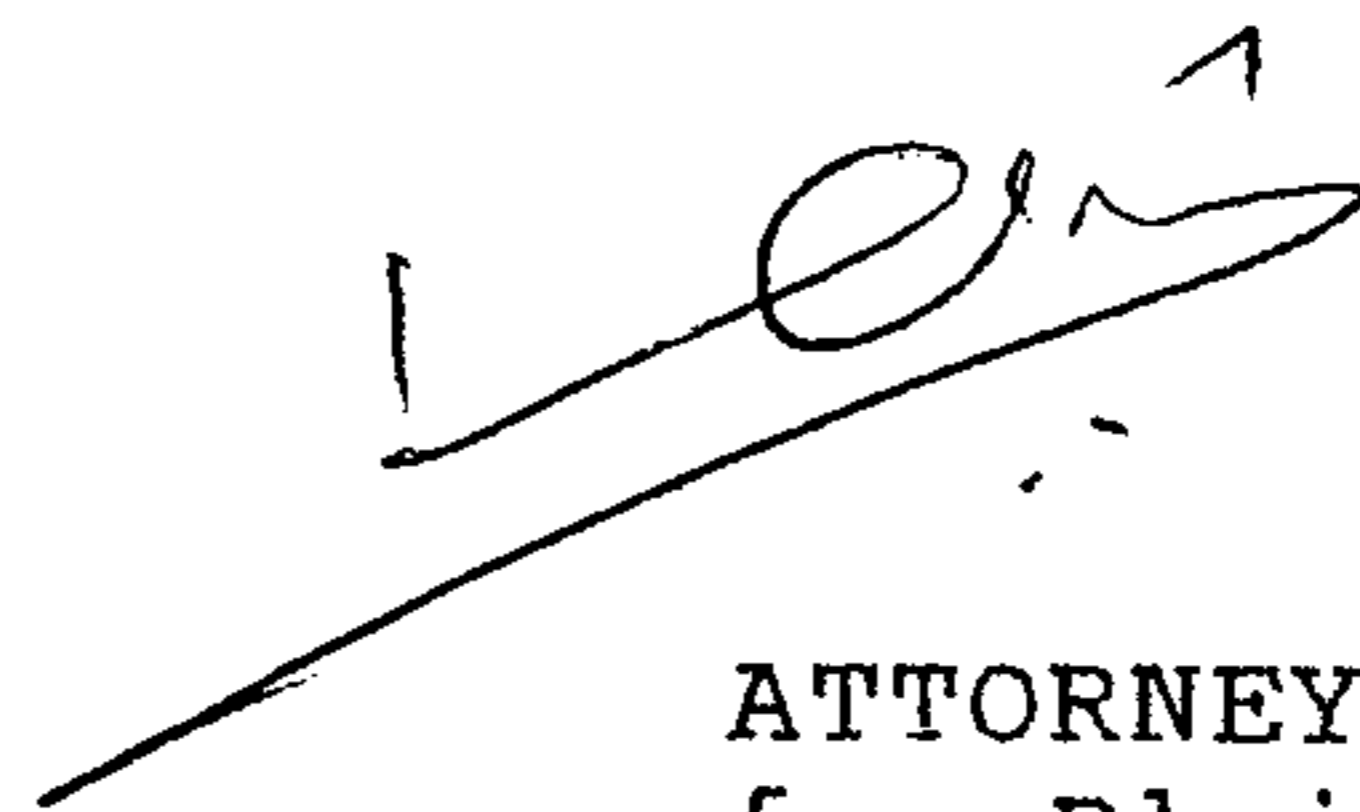
Wherefore the plaintiff prays that -

- (a) The alleged claim in reconvention to be dismissed
- (b) Judgement and decree be entered against the dependant as prayed for in the plaint.
- (c) For cost and
- (d) For such other and further relief and to this court may seem meet.

Settled by :-

Padma Bandara Esqer,
Ikram Mohamed Esqer,

Attorneys-at-Law



ATTORNEY-AT-LAW
for Plaintiff.