

The **St. Joseph Construction Company** by and thru Samira Y. Kashouh represented by her Attorney-In- Fact, Wahib Kashouh and **Farid Hykal** of the City of Monrovia, Liberia APPELLANT Versus **ARC Group. Inc.** by and thru its Manager, Nazih Nassereddine, Walid El-Bacha and Abraham Johnson Eldine all of the City of Monrovia, Liberia APPELLEES

LRSC 3

APPEAL

HEARD: NOVEMBER 23, 2009 DECIDED: JANUARY 21, 2010.

MR. JUSTICE KORKPOR delivered the opinion of the Court

On March 3, 2008, appellant, St. Joseph Construction Company, by and thru Samira Y. Kashouh, represented by her attorneys-in-fact, Wahib Kashouh and Farid Hykal, filed a petition to cancel the assignment of leasehold right executed by and between St. Joseph Construction Company, represented by Walid El -Bacha, attorney-in-fact for George Kashouh and ARC Group, Inc., by and thru its General Manager, Nazih Nassereddine, Walid El-Bacha and Abraham Johnson Eldine, appellees.

We quote the petition for cancellation:

"1.That the petitioners are attorneys-in-fact for Samira Y. Kashouh, who presently lives in London and is the widow/ surviving spouse of the late Youssif Kashouh. The petitioners' power of attorney is hereto attached and marked as petitioner's exhibit P/1 to form a part of this petition."

"2.That the petitioners petition and say that, after the death of Samira's husband, she became the sole owner of all properties in which he had interest, including the St. Joseph Construction Corporation (the "Company") in Liberia and elsewhere.

"3.That prior to the death of Youssef Kashouh, he did not issue any power of attorney to George Kashouh authorizing him to act as General Manager of the Company. Neither has Samira granted any authority to George Kashouh authorizing him to act as General Manager of the St. Joseph Construction Company."

"4.That on December 15, 2001, a lease agreement for the property owned by the International Bank (Liberia) Ltd. and known as Olmsted Acres, was entered into

between the said Bank, as lessor, and the St. Joseph Construction Company, as lessee. The said lease agreement was executed on behalf of the St Joseph Construction Company by George Kashouh who had no authority to cause the Company to enter into the said lease agreement and/or to execute same, and the said lease agreement was cancelled and terminated on July 20, 2004, because of the lack of such authority on the part of the said George Kashouh. Copies of the lease agreement and the cancellation agreement are hereto attached and marked exhibit P/2 and exhibit P/3, respectively.

"5. That on November 3, 2003, the St Joseph Construction Company, purportedly exercising its right to assign and/or sub-lease Olmsted Acres, under the aforesaid lease agreement of December 15, 2001, concluded and executed a memorandum of understanding between the Company and Nazih Nassereddine, pursuant to which the Company purportedly assigned 51% of its 100% leasehold interest in Olmsted Acres to Nazih Nassereddine. The purported memorandum of understanding was executed on behalf of the Company by Fadi Kashouh, acting as attorney-in-fact for George Kashouh; George Kashouh not having any authority to act as such and/or to assign away any rights or interests of the company, could not legally appoint Fadi Kashouh as his attorney-in-fact for the purpose of executing the memorandum of understanding on behalf of the St. Joseph Construction Company, and, therefore, the signing of the said memorandum of understanding is void and of no effect insofar as the St. Joseph Construction Company is concerned. A copy of the memorandum of understanding is hereto attached and marked exhibit P/4."

"6. That on December 15, 2003, co-respondent Walid El-Bacha with intent to defraud the Company did execute a purported assignment of leasehold rights on behalf of the St Joseph Construction Company, as assignor, in favour of ARC Group, Inc. as assignee, represented by its sole shareholders, Abraham Johnson Eldine wherein the St. Joseph Construction Company allegedly assigned all of its interests and rights in Olmsted Acres to the assignee. The purported assignment is null and void and not binding on the St. Joseph Construction Company because Walid El-Bacha is not an officer or shareholder of the Company, has no relationship whatsoever with the Company and has no authority to execute any document on behalf of the Company or assign its leasehold rights to anyone. A copy of the purported assignment is hereto attached and marked exhibit P/5.

"7. That ARC Group, Inc. the purported assignee, is not now and was not a registered Liberian corporate entity when it entered the purported assignment and has no legal authority to do business in Liberia as can be seen by a statement from the Ministry of

Commerce hereto attached and marked exhibit P/6."

"8. That Nazih Nassereddine, the purported General Manager of ARC Group, Inc., was part of this fraudulent transaction in that, aside from executing the purported assignment on behalf of the company that did not exist at the date of the assignment and at the time of the filing of this petition, he did not exercise any due diligence to ascertain whether co-respondent Walid El-Bacha had any authority to assign the leasehold rights of the St. Joseph Construction Corporation."

"9. That the entering into, and the execution of, the memorandum of understanding by Nazih Nassereddine was also a part of a grand design by the respondent to defraud the St. Joseph Construction Company and thus acquire its leasehold rights to the detriment of the Company."

"10. That co-respondent Abraham Johnson Eldine also acted in concert with co-respondents Walid El-Bacha and Nazih Nassereddine by purporting to be the sole shareholder of, and executing the assignment on behalf of the ARC Group, Inc., a company which up to the time of the filing of this petition was never in existence, thus defrauding the St. Joseph construction Corporation."

"11. That as a result of the fraudulent transactions engaged in and perpetrated by the respondents, the respondents have collected rents from tenants on the property which the St. Joseph Construction Company was entitled to receive."

"Wherefore, and in view of the foregoing, petitioners respectfully pray this Honourable Court to cancel the Memorandum of Understanding and the Assignment of Leasehold Rights which respondents fraudulently entered into with and perpetrated against St. Joseph Construction Corporation; that Your Honour will cause all rents due from tenants on the property to be placed in escrow in a reputable bank in Monrovia, Liberia pending final judgment in this case; and that Your Honour will grant unto petitioner such other and further relief as Your Honour might deem lawful and just."

On March 16, 2006, appellees, ARC Group, Inc., by and thru Nazih Nassereddine and Abraham Johnson Eldine filed 34-count returns to the petition for cancellation. We quote the summary of their returns culled from the brief they filed with this Court:

"1. That the caption of the case named St. Joseph Construction Company as the appellant, while counts 1 and 2 of the petition named Samira Y. Kashouh as the appellant; and for this inconsistency and contradiction, appellees prayed that the entire

case be denied and dismissed."

"2. That interest or ownership in a corporation is evidenced by share certificate; and the appellant not having attached a share certificate in the name of Youssef Kashouh, evidencing his equity or ownership share in St. Joseph construction Company, the said Youssef Kashouh did not have interest or share in St. Joseph Construction Company."

"3. That under the law, allegations are not proof. They must be supported by evidence. That appellant alleged that upon the death of Youssef Kashouh, she became the sole owner of St. Joseph Construction Company. However, she failed to attach documentary evidence to support her claim. Accordingly, and consistent with law, her claims to ownership of St. Joseph Construction Company should be denied and dismissed."

"4. That under the Associations Law of Liberia, the officers of a corporation are appointed by its board of directors. The Associations Law also provides that the board of directors of a corporation shall not be less than three (3). So, assuming that the late Youssef Kashouh was a member of the board of directors of St. Joseph Construction Company, he alone could not, under the law, appoint and constitute the officers of St. Joseph Construction Company."

"5. That George Kashouh openly and notoriously assumed the responsibility for, and took possession of the properties belonging to St. Joseph Construction Company, and also signed many checks and entered many contracts for and on behalf of St. Joseph Construction Company without any objections from the Board of Directors and/or shareholders of St. Joseph Construction Company. So, if George Kashouh did not have the authority to act for and on behalf of St. Joseph Construction Company, the said St. Joseph Construction Company should have objected and prevented said George Kashouh from assuming such position and authority in said corporation. Hence, St. Joseph Construction Company, its Board of Directors, and shareholders are estopped from denying the authority of George Kashouh to act for and on behalf of the Corporation."

"6. That on December 15, 2001, a lease agreement for the property, subject of the cancellation proceedings, known and referred to as the Olmsted Acres, was entered into by and between the International Bank (Liberia) Limited, as lessor, and St. Joseph Construction Company, as lessee; and that George Kashouh was General Manager of St. Joseph Construction Company and had the authority to enter into the agreement referred to herein."

"7. That St. Joseph Construction Company assigned its leasehold rights under the agreement of December 15, 2001, by and between the International Bank (Liberia) Limited and St. Joseph Construction Company to ARC Group on September 15, 2003. Accordingly, the said St. Joseph Construction Company could not have legally cancelled the agreement entered into by and between International Bank (Liberia) Limited and St. Joseph Construction Company, as the said St. Joseph Construction Company had no further interest and right in the lease agreement of December 15, 2001; and that under the law, a person cannot cancel an agreement in which he has no legal interest or right."

"8. That if the agreement of September 15, 2001, was terminated and cancelled, then St. Joseph Construction Company has no legal interest in the property as same reverted to International Bank (Liberia) Limited upon the execution of the cancellation agreement; and that any remedy in respect of the property, subject of the agreement of December 15, 2001, was now available to only International Bank (Liberia) Limited and not St. Joseph Construction Company; as the saying goes: "you cannot eat your cake and have it". Since St. Joseph Construction Company terminated and cancelled its leasehold right to the property, subject of the December 15, 2001, lease agreement, it therefore lacks the legal capacity to institute the cancellation proceedings."

"9. That on December 3, 2003, St. Joseph Construction Company exercised its right to assign or sublease the Olmsted Acres, under the lease agreement of December 15, 2001, pursuant to which the said St. Joseph Construction Company assigned twenty-one percent (21%) of its one hundred percent (100%) leasehold right in the said Olmsted Acre to ARC Group, Inc."

"10. That George Kashouh was General Manager of St. Joseph Construction Company, and the said George Kashouh appointed, constituted and designated Fadi Kashouh as his attorney-in-fact to act for and on his behalf in matters relating to and affecting St. Joseph Construction Company. Pursuant to said Power of Attorney, Fadi Kashouh, acting for and on behalf of St. Joseph Construction Company, assigned fifty percent (50%) of its one hundred percent (100%) leasehold right and interest in the said Olmsted Acres to Nazih Nassereddine."

"11. That Fadi Kashouh, who was designated and appointed by George Kashouh as his attorney-in-fact, to act for and on behalf of St. Joseph Construction Company, also appointed, constituted and designated Walid El-Bacha as his attorney-in-fact to act for and on his behalf in matters relating to St. Joseph Construction Company. Pursuant to

said authorization, Walid El-Bacha, for and on behalf of St. Joseph Construction Company, effected an assignment of St. Joseph Construction Company's leasehold rights to ARC Group, Inc. Accordingly, the assignment of the leasehold right was not fraudulently consummated and therefore binding on St. Joseph Construction Company."

"12. The ARC Group, Inc. was incorporated on September 17, 2003, as evidenced by its Articles of Incorporation and Business Registration Certificate issued by the Ministry of foreign Affairs and Ministry of Commerce & Industry, respectively."

"13. That it is inconsistent and contradictory for St. Joseph Construction Company to say that George Kashouh did not have the authority to enter into the agreement of December 15, 2001, for and on behalf of St. Joseph Construction Company, and at the same time maintain that Walid El-Bacha did not have the authority to assign the leasehold right of St. Joseph construction Company; and if George Kashouh did not have the authority to consummate said agreement for and on behalf of St. Joseph Construction Company, any such agreement confers no right upon and imposes no obligation on St. Joseph Construction Company."

"14. That it is inconsistent for appellant to aver that George Kashouh did not have the authority to execute the agreement of December 15, 2001, and that said agreement had been cancelled and terminated and at the same time aver that appellees have collected rent from tenants on the subject premises, which the said St. Joseph Construction Company is entitled to receive. If the lease agreement of December 15, 2001, was legally cancelled, then and in that case the party entitled to rent for the property in question is the International Bank (Liberia) Limited and not St. Joseph Construction Company."

"15. That ARC Group, Inc. was paying and International Bank (Liberia) Limited was receiving rental payment covering the property, subject of this proceeding and under the assignment from ARC Group, Inc."

Along with the returns, the appellees, ARC Group, Inc. by and thru Nazih Nassereddine and Abraham Johnson Eldine filed a motion to drop misjoined party. The motion was heard and denied.

On March 16, 2006, the Gbaintor & Associates Law Firm filed returns for and on behalf of co-appellee Walid El Bacha along with a motion to dismiss the petition for cancellation. The motion to dismiss was heard and denied.

After the disposition of all pre trial motions, the law issues were heard and the case was ruled to trial. At the trial, appellant introduced one witness, Wahid Kashouh. Here is the summary of his testimony: He testified that he was the attorney-in-fact for Samira Y. Kashouh, the wife of the late Youssef Kashouh who owned all the shares in the St. Joseph Construction Company; that after the death of Youssef Kashouh, his widow, Samaria Y. Kashouh became the sole owner of all his properties, including his interest in the St. Joseph Construction Company; He also testified that on December 15, 2001, the St. Joseph Construction Company entered into a lease agreement with International Bank (Liberia) Limited covering the property known as Olmsted Acres on the Tubman Boulevard and that the said lease agreement was signed by George Kashouh. He maintained that George Kashouh did not have the authority to act for and on behalf of the St. Joseph Construction Company.

The witness further testified that when George Kashouh decided to leave Liberia, he appointed his brother, Fadi Kashouh to manage his affairs and properties and not the affairs and properties of the St. Joseph Construction Company; that when Fadi Kashouh also decided to leave Liberia, he appointed Walid El-Bacha to manage his affairs and properties, and not the affairs and properties of the St. Joseph Construction Company. He said that, Fadi Kashouh, entered into a memorandum of understanding by which he transferred 51% of the original lease agreement between St. Joseph Construction Company and International Bank (Liberia) Limited to Nazih Nassereddine; that Walid El-Bacha, for and on behalf of St. Joseph Construction Company, signed an assignment of leasehold rights in which he assigned St. Joseph Construction Company's leasehold rights in the Olmsted Acres to ARC Group, Inc. He said that .in 2004, Youssef Kashouh died, leaving four children who gave him power of attorney to represent their interest in Liberia, and that the four children also authorized their mother to act on their behalf as Administratrix of the properties of their late father, Youssef Kashouh.

During cross-examination, the witness said that the lease agreement between St. Joseph Construction Company and International Bank was cancelled. He also said that in keeping with their Lebanese tradition when the father dies, the eldest son manages his property, but is not allowed to sell any of the properties, and that in the light of the Lebanese tradition, George Kashouh was authorized to manage the late Youssef Kashouh's property including the St. Joseph Construction Company. He referred to the St Joseph Construction Company as a family corporation. He said that because George Kashouh, Fadi Kashouh and Walid El-Bacha did not have the authority to assign, dispose of or in any way divest the St. Joseph Construction Company of its

properties, the petition for cancellation was filed to cancel the instruments they signed in the name of the St. Joseph Construction company. He also admitted during cross-examination that ARC Group, Inc. has, from the date of the execution of assignment of leasehold rights, paid and continues to pay rent to International Bank (Liberia) Limited."

When the appellant rested evidence, the appellees filed a sixteen-count motion for judgment during trial on the ground that the appellant did not establish its standing to institute the cancellation proceedings. The trial court heard and denied the motion. The appellees filed a writ of certiorari in the Chambers of this Court against the ruling of the trial court denying the motion for judgment during trial. The Chambers Justice declined to issue the alternative writ of certiorari prayed for and ordered the trial court to resume jurisdiction over the case and proceed in keeping with law.

On resumption of the case before the trial court, the appellant filed a petition for receivership which was heard and granted. Mr. Tony Hage was appointed temporary receiver; he was later replaced by Mr. Benjamin O. Solanke. The appellees, once again, filed another remedial writ, this time a petition for the writ of prohibition against the appointment of the temporary receiver. Again the Justice presiding in Chambers declined to issue the alternative writ of prohibition and informed the trial court to resume jurisdiction over the case and give priority to its hearing.

At the time the mandate of the Chambers Justice was received, the term of the Sixth Judicial Circuit, Civil Law Court had expired. By stipulation of the lawyers representing the parties, a request for extension was made and it appears that the Chief Justice granted said request and assigned His Honour, Yussif Kaba, over the Civil Law Court to continue the hearing of the case during the succeeding term.

Two witnesses, Abraham Johnson Eldine and Patrick Usar, testified for the appellees. The summary of their combined testimonies is as follows:

They testified that Fadi Kashouh and Walid El-Bacha had the legal authority to act for and on behalf of the St. Joseph Construction Company and that based upon their authorities, these two individuals by series of actions, assigned the leasehold rights of the St. Joseph Construction Company in the Olmsted Acres to ARC Group, Inc.

They also testified that on December 15, 2001, the International Bank (Liberia) Limited and St. Joseph Construction Company entered into a lease agreement for the property known as Olmsted Acres located within the Fish Market area. The lease agreement

with the International Bank was signed by George Kashouh on behalf of St. Joseph Construction Company. Later, George Kashouh decided to leave Liberia and so he appointed his brother, Fadi Kashouh, as his attorney-in-fact to handle all matters relating to St. Joseph Construction Company. Like George Kashouh, when Fadi Kashouh also decided to leave Liberia permanently, he appointed Walid El- Bacha to handle all matters relating to St. Joseph Construction Company.

The witnesses further testified that ARC Group, Inc. was incorporated on September 17, 2003; and on November 11, 2003, ARC Group, Inc. and the St. Joseph Construction Company entered an assignment of leasehold rights agreement under which St. Joseph Construction Company assigned its leasehold rights to ARC Group, Inc. which assignment was acknowledged and accepted by International Bank (Liberia) Limited by the receipt by said Bank of the payment of rent by ARC Group, Inc. They said that in addition to payment of rent to International Bank, ARC Group Inc. has constructed additional units on said premises at the cost of US\$63,000.00; that ARC Group, Inc. has also renovated the five original buildings on the premises, paid debts owed by St. Joseph Construction Company to third parties to the value of US\$77,000.00 and that the aggregate amount spent by ARC Group Inc. for the construction and renovation works, payment of debt owned by St. Joseph Construction-Company, which was a consideration for the assignment of the leasehold rights, amounts to Nine Hundred and Forty Thousand United States Dollars (US\$940,000.00).

The witnesses further said that after Wahid Kashouh filed this action, Oldman Elie Abi Jaoudi decided to mediate between the parties as a means of amicably resolving this matter out of court. Several meetings were held during which ARC Group Inc. represented by Nazih Nassereddine, maintained the willingness of ARC Group Inc. to surrender the property to International Bank or the St. Joseph Construction Company upon the payment of money spent for the construction of one unit and renovation work carried out on said premises plus money spent to settle St. Joseph Construction Company's obligations to third parties, but Wahid Kashouh refused ARC Group's proposition. They said that ARC Group Inc. maintains even today that were St. Joseph Construction Company to pay its expenses, ARC Group Inc. will surrender possession of the property to St. Joseph Construction Company or the International Bank (Liberia) Limited.

Both sides rested evidence, argued and submitted the case for final ruling. On November 12, 2008, the trial judge entered final ruling dismissing the petition for cancellation. The trial judge held that George Kashouh, by tradition of the Lebanese

people, became the General Manager of St. Joseph Construction Company upon the death of his father. He further held that George Kashouh, in his capacity as General Manager of St. Joseph Construction Company, issued a valid power of attorney to his brother, Fadi Kashouh, to among other things, administer the affairs of the St. Joseph Construction Company. He further held that the power of attorney issued by Fadi Kashouh to Walid El-Bacha was also valid and legal.

On the question of the lease agreement between St. Joseph Construction Company and the International Bank (Liberia) Limited, the judge held that the lease agreement was legally cancelled by the parties thereto.

The appellant has appealed to this Court for review of the trial court's ruling dismissing its petition for cancellation on a bill of exceptions containing seven counts.

The basic contentions in the bill of exceptions are: a) that by ruling that the testimony of witness Wahib Kashouh was "very instructive and reliable, when he testified that St. Joseph Construction Company was a family corporation and therefore was operated based on the tradition and practices of its owners, the trial judge committed a reversible error; b) that by ruling that George Kashouh became general Manager of St. Joseph Construction Company upon the death of his father, Youssif Kashouh, based on the tradition and practices of the Lebanese people, the trial judge committed a reversible error; c) that by ruling that the power of attorney from George Kashouh to Fadi Kashouh conferred authority on the latter to assign and transfer the rights and interest of St. Joseph Construction Company to Nazih Nassereddine, the trial judge committed reversible error; d) that by ruling that George Kashouh was the de facto general manager of the St. Joseph Construction Company, the trial judge committed a reversible error; e) that by ruling that the power of attorney from Fadi Kashouh to Walid El-Bacha conferred authority on the latter to assign the leasehold right of St. Joseph Construction to ARC Group, Inc. the trial judge committed a reversible error; and f) that by ruling that the lease agreement between St. Joseph Construction Company and the International Bank was cancelled and therefore the St. Joseph Construction Company had no interest in the instrument it sought to cancel, the trial judge committed a reversible error.

For the determination of this case, we will consider five salient issues.

1. Whether George Kashouh was General Manager of the St. Joseph Construction Company and as the General Manager he legally represented the St. Joseph Construction Company when he signed the lease agreement with the International

Bank covering the property known as the Olmsted Acres?

2. Whether the power of attorney from George Kashouh to Fadi Kashouh conferred authority on the latter to assign and transfer the interest of St. Joseph Construction Company to Nazih Nassereddine?

3. Whether the power of attorney from Fadi Kashouh to Walid El-Bacha conferred authority upon the latter to assign the leasehold right of St. Joseph Construction Company to ARC Group, Inc?

4. Whether Samira Y. Kashouh, the purported wife of the late Youssif Kashouh "owns" St. Joseph Construction Company and can therefore institute an action in the name of St. Joseph Construction Company?

5. Whether the lease agreement of December 15, 2001 between St. Joseph Construction Company and the International Bank was legally terminated?

We will consider the issues in the same order as presented.

The first issue is whether George Kashouh was General Manager of the St. Joseph Construction Company and as the General Manager he legally represented the St. Joseph Construction Company when he signed the lease agreement with the International Bank covering the property known as the Olmsted Acres?

The appellees maintained that George Kashouh openly and notoriously assumed the responsibility for, and took possession of the properties belonging to St. Joseph Construction Company, and also signed many checks and entered many contracts for and on behalf of St. Joseph Construction Company without any objections from the Board of Directors and/or shareholders of St. Joseph Construction Company. They argued that if George Kashouh did not have the authority to act for and on behalf of St. Joseph Construction Company, the St. Joseph Construction Company should have objected and prevented him from assuming such position and authority. Not having done so, according to appellees, the St. Joseph Construction Company, its Board of Directors, and shareholders are estopped from denying the authority of George Kashouh to act for and on behalf of the Corporation.

The appellant, on the other hand, contended that George Kashouh did not have the authority to act for and on behalf of St. Joseph Construction Company. We quote the position of the appellant as contained in counts 3 and 4 of its petition for cancellation:

Count 3. "That prior to the death of Youssif Kashouh, he did not issue any power of attorney to George Kashouh authorizing him to act as General Manager of the Company. Neither has Samira Y. Kashouh granted any authority to George Kashouh authorizing him to act as General Manager of the St. Joseph Construction Company."

Count 4. "That on December 15, 2001, a lease agreement for the property owned by the International Bank and known as Olmsted Acres, was entered into between the said Bank, as lessor, and the St. Joseph Construction Company, as lessee. The said lease agreement was executed on behalf of the Company by George Kashouh who had no authority to cause the Company to enter into the said lease agreement and/or to execute same, and the said lease agreement was cancelled and terminated on July 20, 2004, because of the lack of such authority on the part of the said George Kashouh..."

We are taken aback by the position of the appellant because, the very appellant appears to have conceded the point that George Kashouh was general manager of the St. Joseph Construction Company. In the third paragraph of count 1 of the bill of exceptions filed with this Court, the appellant said: ".... It should be noted that George Kashouh served as general manager of St. Joseph Construction Company during the lifetime of his father Youssif Kashouh; and that George Kashouh continued to serve as General Manager of St. Joseph Construction Company after the death of Youssif Kashouh..." Then, in paragraph 3, page 2 of its brief, the appellant said that Youssif Kashouh "became ill and travelled to Lebanon for medical treatment leaving his oldest son, George Kashouh, to manage the affairs of the St. Joseph Construction Company."

With the foregoing statements conceding the point of contention, we cannot understand why the appellant would still maintain that George Kashouh was not general manager of the St. Joseph Construction Company.

The law is that all admissions made by a party himself or by his agent acting within the scope of his authority are admissible. § 25.8(1), 1 LCLR, Civil Procedure Law. This Court has applied this statutory provision in many cases: *Nyumah & Freeman v. Kontoe*, 40 LLR 14 (2000). *Liberia Industrial Development Corporation v. Weseh*, 35 LLR, 467 (1999). Based on these authorities, we hold that the appellant's own admission that Youssif Kashouh, the lone shareholder in St. Joseph Construction Company, while alive, permitted and authorized his son, George Kashouh, to manage the St. Joseph Construction Company, and when he became ill and travelled to Lebanon, he left George Kashouh in charge of the company, operates against the appellant.

The law presumes one who holds himself openly as an executive of a corporate entity, acting in the name of the entity without objection from anyone, especially the shareholders, to be the true and legal representative of the entity. Thus, even if Youssif Kashouh did not specifically authorize his son, George Kashouh, to manage the St. Joseph Construction company, the fact that George Kashouh operated St. Joseph Construction Company openly and continuously without any objection from Youssif Kashouh or any other person, in the contemplation of the law, made George Kashouh a de facto officer of the company.

It has been held that to constitute one a de facto officer, one must hold office under some degree of notoriety or colour of title — the mere assumption of title to office on one occasion cannot clothe a person with the title of a de facto officer; the office holder must continuously exercise the functions of the office and he must appear to hold an actual office. This is exactly what happened in this case; George Kashouh openly and continuously managed St. the Joseph Construction Company while his father was alive and he continued to do so after his demise.

The de facto officer doctrine has been held to apply to third parties if they deal with the corporation and are unaware of the de facto officer's true status. The public policy promoted by the doctrine is to protect the third persons relying on apparent authority, because it would be impracticable for third persons to deal with corporations at all, if one must investigate the legality of the title of each corporate officer as a condition precedent to a business transaction. 18B AM Jur 2d, § 1229, Generally, who are de facto officers or directors.

We hold, therefore, that George Kashouh was, at the time he signed the lease agreement with International Bank, de facto officer of St. Joseph Construction Company and had the authority to enter into said lease agreement on behalf of the St. Joseph Construction Company. In fact, there is no showing that George Kashouh has been removed as the corporate officer of the St. Joseph Construction Company. So, for all intents and purposes he remains the corporate officer of the St. Joseph Construction Company. Our decision is based on the facts of this case as well as the controlling laws cited above, and not on the traditions and practices of the Lebanese people as was held in the ruling of the trial judge. Foreign customs, traditions and practices cannot override or supercede the requirement of the Associations Law of Liberia with respect to the management of a Liberian corporate entity.

The second issue is whether the power of attorney from George Kashouh to Fadi

Kashouh conferred authority on the latter to assign and transfer the interest of St. Joseph Construction Company to Nazih Nassereddine?

A power of attorney is an instrument in writing by which one person, as principal, appoints another as his/her agent and confers upon the agent the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney. The power of attorney must be reasonably certain and plain where it purports to authorize a conveyance of a real estate..." 3 AM Jur 2d, § 23, Form and certainty of instrument.

A power of attorney must be strictly construed. The instrument will be held to grant only those powers which are specified and the act done must be legally identical with that authorized to be done. Ibid, ,* 28, Rule of strict construction.

We must therefore examine the power of attorney issued by George Kashouh to his brother, Fadi Kashouh and see what authority was conferred by the principal, vis-a-vis the action that was carried out by the agent.

The relevant portion of the power of attorney issued by George Kashouh to Fadi Kashouh reads:

"KNOW ALL MEN BY THESE PRESENTS: that I, George Y. Kashouh, hereby make, nominate, constitute, and appoint Fadi Kashouh, my true and lawful attorney-in-fact for and in my name, place and stead ... to oversee and handle the affairs of all my properties in the Republic of Liberia, including but not limited to my interests and rights in and to St. Joseph Construction Company and any other business entities..."

With the foregoing authority, Fadi Kashouh assigned the interest of St. Joseph Construction Company in a real property, the Olmsted Acres, to Nazih Nassereddine. Firstly, it is clear on its face that the power of attorney did not authorize Fadi Kashouh to assign or otherwise convey the real property in question. As stated above, the language of a power of attorney must be certain and plain, where it purports to authorize a conveyance of a real estate. But this is not the case here.

Moreover, under the law in this jurisdiction a sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, shall be authorized only by the board. The board shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of the shareholders. Associations Law,

§ 10.6(1). Needless to say, no board authorization was obtained before the assets of the St. Joseph Construction Company were assigned.

Secondly, the power of attorney, as we see it, is personal in nature. It was not issued by George Kashouh in his capacity as general manager/corporate officer of the St. Joseph Construction Company; it was issued in his personal capacity. It did not authorize Fadi Kashouh to manage the affairs of the St. Joseph construction Company. It authorized Fadi Kashouh to oversee and handle the affairs of all George Kashouh's properties in the Republic of Liberia, including but not limited to his interests and rights in and to St. Joseph Construction Company and other business entities. The question is, as General Manager, what rights and interests does George Kashouh have in the St. Joseph Construction Company? He is not a shareholder in the company, like his late father. Under Liberian laws, even a shareholder does not own the assets and properties of a corporation. In accordance with § 2.5, Associations Law, a corporation is a legal entity, considered in law a fictional person distinct from its shareholders or members with separate rights and liabilities. This Court has held that as a distinct legal entity, a corporation takes and holds the title to its property. *Haider v. Scott*, 37 LLR 466 (1994).

So, what rights and interests did George Kashouh have in the St. Joseph Construction Company that the power of attorney he issued to Fadi Kashouh sought to protect? And did the protection of such rights and interest, if any, require the assignment of the interest of St. Joseph Construction Company to a third party? Our answer is no!

The next issue is, whether the power of attorney from Fadi Kashouh to Walid El-Bacha conferred authority on the latter to assign the leasehold rights of St. Joseph Construction Company to ARC Group, Inc. Fadi Kashouh could not and did not confer any authority on Walid El-Bacha to assign the leasehold rights of St. Joseph Construction Company to ARC Group, Inc. It is elementary law that one cannot give what he/she does not have. As we have said, no authority was conferred on Fadi Kashouh to act on behalf of St. Joseph Construction Company. So, without authority, he could not issue a valid power of attorney authorizing Walid El-Bacha or anyone to act in respect of the leasehold rights of St. Joseph Construction Company.

Even if Fadi Kashouh had valid power of attorney to act for the St. Joseph Construction Company, he still could not issue power of attorney to Walid El-Bacha. This is because under the law of agency, an agent cannot appoint another agent, barring express authority from his principal for him to do so.

We address next, the issue whether Samira Y. Kashouh, the purported wife of the late

Youssif Kashouh "owns" the St. Joseph Construction Company and can therefore institute an action in the name of the St. Joseph Construction Company.

The appellant maintained that after the death of Youssif Kashouh, his widow, Samira Y. Kashouh became the sole owner of all properties in which the late Youssif Kashouh had interest, including the St. Joseph Construction Company. But the appellant has not provided any scintilla of proof of the averment that Samira Y. Kashouh became the "owner" of the St. Joseph Construction Company after the death of Youssif Kashouh and she therefore had the authority to institute these cancellation proceedings through duly appointed attorneys-in-fact. No stock certificate shows that Samira Y. Kashouh owns the entire share in the St. Joseph Construction Company as was the case with the late Youssif Kashouh. And no other legal instrument of ownership was introduced showing title in Samira Y. Kashouh.

Under the Associations Law of Liberia and in keeping with corporate laws the world over, ownership in a corporation is determined generally by shareholding, and not through inheritance upon the death of a spouse. This Court has held that the assets of a corporation do not form part of the decedent estate. *R.L. v. Zoe & Haider* 37 LLR 891 (1994). The question then is how did Samira Y. Kashouh become owner of the entire shares in the St. Joseph Construction Company as alleged by the appellant?

He who alleges must prove, and allegation though pleaded, does not amount to proof. This Court has held that the basic function of pleadings is to give notice of facts which the pleader intends to prove at the trial. *Richardson et al. v. Gbassic & Hunter*, 15 LLR 50 (1952).

We see in the records before us an instrument in foreign language which the appellant pleaded in count 1 of its petition for cancellation. The instrument which appears to be in Arabic is said to be the power of attorney from Samira Y. Kashouh to Wahib Kashouh and Farid Hykal. The translated version of the instrument into English reads:

"I the undersigned Samira Y. Kashouh born in Bmakine, in 1947, register No. 16, widow of Youssef G. Kashouh and the owner of his properties and interests in Liberia, including St. Joseph Construction Corporation in Monrovia, Liberia, hereby designate, appoint and constitute Wahib Kashouh and Farid Hykal as my true and lawful attorneys-in-fact to act on my behalf and do all the things for my benefit and interest with respect to any matters covering the property of my late husband. I also declare that at no time, in the past, did I authorize or appoint any person to act in my stead."

From the quoted instrument, it appears that Samira Y. Kashouh's claim of ownership to the St. Joseph Construction Company is based solely on her marriage to the late Youssif Kashouh who owned all the shares in the St. Joseph Construction Company.

We must say that it is not in dispute that the late Youssif Kashouh owned the entire shares in the St. Joseph Construction Company. The records show that the Kashouh brothers, Youssif and Wahib Kashouh and their nephew, Farid Hykal established the St. Joseph Group of Companies comprising the St. Joseph Construction Company, St. Joseph Realty & Investment Corporation, and the Maha Industries, Inc. Initially, Youssif Kashouh owned thirty-five percent (35%) shares, Wahib Kashouh also owned thirty-five percent (35%) shares, while Farid Hykal owned thirty percent (30%) of the shares in the St. Joseph Construction Company. However, as a result of a shareholders' agreement executed on March 7, 2000, Wahib Kashouh and Farid Hykal transferred all of their shares in the St. Joseph Construction Company to Youssif Kashouh, thereby making him the owner of all shares in the St. Joseph Construction Company. In count seven (7) of its reply to the petition for cancellation the appellant maintained that a share certificate was issued to the late Youssif Kashouh. We have given this brief historical background to the formation of the St. Joseph Construction Company to make the point that if the original owners of shares in the Company who were also family members saw it fit to execute legal documents transferring shares to the late Youssif Kashouh, there is no reason why Samira Y. Kashouh cannot similarly be vested with appropriate legal documents to support her claim of ownership to the St. Joseph Construction Company. This would give her the standing to appoint agents to act in her behalf.

Standing is defined as the party's right to make a legal claim or seek judicial enforcement of a duty or right. The purpose of the law on standing is to protect against improper parties. The question whether a party has standing to participate in a judicial proceeding is therefore not simply a procedural technicality, but rather involves the remedial rights affecting the whole of the proceeding. 59 AM Jur 2d, Standing, § 30.

Several questions linger on our minds. Did the late Youssif Kashouh leave a will and if he did, did he bequeath the shares of the St. Joseph Construction Company to his wife, or to someone else? Did he die without a will, and if so what legal instrument has been issued in favour of his spouse and/or surviving heirs? Did he, prior to his death, sell all or some of his shares in the St. Joseph Construction Company? To lay to rest these lingering questions Samira Y. Kashouh must produce proper legal instrument(s) in support of the claim that she owns the St. Joseph Construction Company. Until then, we are not convinced that she owns the Company. To decide in her favour based merely

on the ground that she is a widow of the late Youssif Kashouh would be a complete deviation from the well founded rule laid down in the R. L. vs. Zoe & Haider case cited above.

Because the ownership in St. Joseph Construction Company could not and did not devolve upon Samira Y. Kashouh by virtue of her being the widow of the late Youssif Kashouh, she was not vested with the authority to appoint Wahib Kashouh and Farid Hykal as her attorneys-in-fact to institute these cancellation proceedings. This answers, also, the question of the validity of the mutual cancellation of the lease agreement of December 15, 2001 between the St. Joseph Construction Company and the International Bank. Wahib Kashouh was not legally constituted as an attorney —in-fact for the Joseph Construction Company by Samira Y. Kashouh. Therefore, he could not legally enter a mutual cancellation agreement with the International Bank. That agreement, for all intents and purposes, remains in full force and effect, as it can only be cancelled by the proper parties who executed the said agreement or their duly constituted representatives.

In summary, it is our opinion as follows:

- a. That George Kashouh, at the time he signed the lease agreement with the International Bank dated December 15, 2001, was the General Manager/ Corporate Officer of the St. Joseph Construction Company and legally executed the said lease agreement on behalf of the St. Joseph Construction Company.
- b. That the power of attorney from George Kashouh to Fadi Kashouh did not confer valid authority on the latter to assign and transfer the interest of St. Joseph Construction Company to Nazih Nassereddine.
- c. That Fadi Kashouh did not confer any valid authority on Walid El-Bacha to assign the leasehold rights of St. Joseph Construction Company to ARC Group, Inc.
- d. Notwithstanding our opinion that George Kashouh did not confer valid authority on Fadi Kashouh to transfer the interest of the St. Joseph Construction Company, and that Fadi Kashouh, also, did not confer valid authority on Walid El-Bacha to assign the rights of St. Joseph Construction Company, we will not grant this petition for cancellation. This is because the ownership in the St. Joseph Construction Company could not and did not devolve upon Samira Y. Kashouh by virtue of her being the widow of the late Youssif Kashouh, in the absence of appropriate legal instrument(s). Therefore, she lacks standing and is not vested with the authority to appoint Wahib

Kashouh and Farid Hykal as her attorneys-in-fact to institute these cancellation proceedings. If and when she procures the appropriate legal instrument(s), Samira Y. Kashouh may file suit for and on behalf of the St. Joseph Construction Company. Alternatively, George Kashouh, who we have determined is still the general manager/corporate officer of the St. Joseph Construction Company, may file suit on behalf of the Company.

e. That Wahib Kashouh was not legally constituted as an attorney-in-fact for the St. Joseph Construction Company by Samira Y. Kashouh. Therefore, he could not legally enter a valid mutual cancellation agreement with the International Bank to cancel the lease agreement of December 15, 2001. That agreement, for all intents and purposes, remains in full force and effect, as it can only be cancelled by the proper parties who executed the agreement, or their duly constituted representatives.

WHEREFORE, the appellant's appeal is denied. The ruling of the trial court dismissing the petition for cancellation is confirmed with modification that the dismissal is without prejudice. The Clerk of this Court is ordered to send a mandate to the trial court to give effect to this ruling. Costs against the appellant. IT IS SO ORDERED.

Appeal denied.

Cooper W. Kruah and Stephen B. Dunbar, Jr. for the appellant. G. Moses Paegar and Johnny Momoh for the appellees.