

**IN THE HIGH COURT OF FIJI**

**At Suva**

**Civil Jurisdiction**

**JUDICIAL REVIEW NO. 0020 OF 2007**

**Between : CARPENTERS FIJI LIMITED Applicant**

**And : PHARMACY & POISONS BOARD Respondent**

**Counsel : Mr. H. Lateef for the Applicant  
Mr. Tuilona for the Respondents**

**Date of Hearing : 23<sup>rd</sup> November 2007**

**Date of Judgment : 13<sup>th</sup> December 2007**

**JUDGMENT**

[1] Morris Hedstrom Limited (MHL) was operating a pharmacy from its Thomson Street premises prior to November 1968. It is not disputed that it was lawful for MHL to do so. In 1998 the Thomson Street premises burnt down and, with the consent of the Pharmacy and Poisons Board (the Board), the pharmacy business was relocated to "MH Station" at the corner of Renwick Road and Ellery Street. Certificates to this effect were issued the board.

- [2] The plaintiffs, Carpenters Fiji Ltd (Carpenters) have a new store known as MH Superfresh at premises in Tamavua. Carpenters Fiji Limited, described as trading as Morris Hedstrom, wish to operate the pharmacy business from those Tamavua premises.
- [3] To that end, they applied to the Pharmacy and Poisons Board to relocate the Morris Hedstrom pharmacy from MH Station, at the corner of Renwick Road and Ellery Street, to their Tamavua premises.
- [4] By a decision notified in their letter of 20<sup>th</sup> April 2007 the Board refused to allow that relocation. They stated that the approval was only given for the Renwick Road address on the understanding that the pharmacy would be moved back to its original location in Thomson Street once the premises were rebuilt. The Board took the view that it was not just the seller of the pharmaceutical products that had to be licensed but the premises registered and approved.
- [5] The applicants do not accept this and argue that the original pre 1968 approval enables them to operate a pharmacy anywhere in Fiji.
- [6] In their application for leave to apply for Judicial Review the applicants set out their grounds as,
- “(a) The respondent has erred in law in refusing to allow the applicant to relocate the Morris Hedstrom Pharmacy, as a original approval granted to the applicant was not in respect of a particular premises, but to the applicant as a company to operate a pharmacy anywhere in Fiji;
  - (b) The respondent has wrongly interpreted Section 31(1)(d) of the Pharmacy and Poisons Act, cap 115 in refusing to allow the applicant to operate a pharmacy anywhere else in the country;

- (c) That the respondent has misinterpreted the Pharmacy and Poisons Act in particular Section 31 which allows a body corporate to operate a pharmacy:
- (d) That the respondent has exceeded its jurisdiction in refusing to allow the applicant to relocate its pharmacy to any location in Fiji, as the original approval was for the operation of only one pharmacy anywhere in Fiji by the applicant. “

[7] I have before me the Notice of Motion filed on 16<sup>th</sup> July 2007, the Notice of Opposition filed on 28<sup>th</sup> of August. I also have the following affidavits, Kunaseelan Sabaratnam filed on 16<sup>th</sup> July 2007, Haroon Lateef filed on 18<sup>th</sup> July 2007, Selepa Eseta Tofinga filed on 8<sup>th</sup> November 2007 and the affidavits of Arab Khan filed on 4<sup>th</sup> October and 15<sup>th</sup> November 2007. I also have the submissions of the applicant and the submissions and further submissions of the respondent together with their cited authorities. I have heard oral argument from both counsel.

[8] Carpenters Fiji Limited rely for the application upon the fact that they are a body corporate which was on the 19<sup>th</sup> November 1968 lawfully carrying on a business which comprised the retail sale of medicines for the purposes of Section 31 of the Pharmacy and Poisons Act, cap 115. The respondent, as a preliminary point, took up the argument that Carpenters Fiji Limited do not have the locus standi to bring this action. The Board states that the body corporate which lawfully carried on the business of the retail sale of medicines for the purposes of Section 31(1) of the Act has long ceased to exist.

[9] Carpenters Fiji Limited rejected this argument. They say that the original MH Pharmacy business was operating prior to November 1968 and although there might have been ownership, organizational and structural

changes the business is still in operation and as such Carpenters is entitled to bring this proceeding.

[10] This question was taken as a preliminary point and affidavits and submissions directed to it. I will decide this question first. If the Board is correct then that is the end of the matter. If Carpenters Fiji Limited are correct then I must go on to consider the issues raised in the Judicial Review application.

[11] I first set out the provisions of Section 31 of the Pharmacy and Poisons Act,

“(1) Subject to the provisions of this section a body corporate *carrying on a business which comprises the retail sale of medicines* shall be an authorised seller of poisons within the meaning of this act if the following conditions are complied with:-

(a)-(c) (requirements concerning management, premises, certificate of registration and share capital)

(d) All the share capital of the body corporate is owned by registered pharmacists:

Provided that the provisions of this paragraph shall not apply to any body corporate which was, on 19<sup>th</sup> November 1968 lawfully carrying on business which comprised the retail sale of medicines for the purpose of this subsection.”

[12] The principal facts in this regard are deposed to in the affidavit of Selepa Eseta Tofinga. It is not disputed that the original licence was issued to Morris Hedstrom Limited. That was prior to 1968.

[13] Selepa Tofinga states that the applicant was formally known as W.R. Carpenter & Co (Fiji) Limited and was incorporated on 30<sup>th</sup> November

1922. In 1968 it changed its name to Carpenters Fiji Limited. W.R. Carpenter & Co (Fiji) Limited bought Morris Hedstrom Limited in 1955-6 and became its parent company. It remained the parent company until 1978.

[14] Selepa Tofinga continues that Carpenters Fiji Limited,

“5...bought out the merchandising arm of Morris Hedstrom Limited (including its pharmacy operation) with effect from 1<sup>st</sup> July 1978 and was permitted from that date to trade in Fiji under the name of Morris Hedstrom and the names Morris Hedstrom and MH. The names Morris Hedstrom and MH were registered under the registration of Business Names Act, cap 249 ...

“6. That the applicant was not only the parent company of Morris Hedstrom Limited from 1968 as deposed in paragraph 4 herein but the legal successor of Morris Hedstrom Limited’s merchandising operation (which included the pharmacy operation) in Fiji by virtue of the purchase deposed in paragraph 5 herein.

“7. No doubt it is clear from the Carpenters Group trading report of 1979 that all operations at Morris Hedstrom Limited, apart from its merchandising operation in Fiji, remained with Morris Hedstrom Limited after its shares were transferred by Carpenters Fiji Limited to WR Carpenter (*South Pacific Limited*)...”

[15] In argument counsel for Carpenters accepted that Morris Hedstrom Limited changed its name to Divisional Properties Limited and that it was subsequently wound up. In this regard at annexe AK2 of Arab Khan’s affidavit of 4<sup>th</sup> October 2007 there are exhibited the documents confirming the sequence of events. Finally there is the “return of final winding up



meeting in members voluntarily winding up" dated 30<sup>th</sup> of May 1997 (page 9 of AK2).

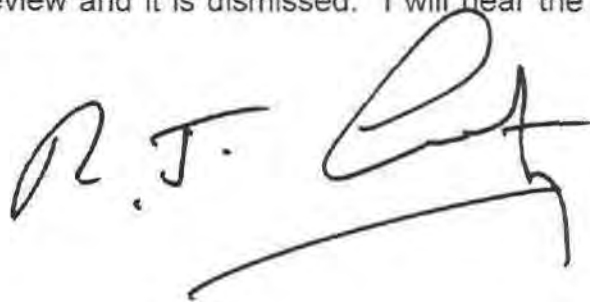
[16] The simple fact is that the legal person that was granted the licence prior to 1968 ceased to exist 10 years ago. I need not rule as to whether a fresh licence was required when the change of name was made from Morris Hedstrom Limited to Divisional Properties Limited.

[17] Counsel for the applicant pointed out that the Board had continued to issue permits over the years despite the changes. However, he properly did not seek to argue against the proposition that as a matter of law failures by the Board could not rectify the position.

[18] This very point was apparently raised in a letter from the Board dated the 27<sup>th</sup> of May 1994 where it was stated "the Board would also like to sight the registration of your business for which I would require a copy of your Registration Certificate approved by the Registrar of Companies to be tabled at the next Board meeting scheduled for 10<sup>th</sup>, June 1994 to ensure that all retail pharmacies are complying with Section 36 of Pharmacy and Poisons Board Act". There was a reminder letter of 2<sup>nd</sup> August 1994 with the threat of de-registration if there was failure to comply.

[19] The reply dated 12<sup>th</sup> August 1994 was written by Selepa Tofinga. This is a carefully crafted letter explaining the position of Carpenters Fiji Limited. It necessarily raises the question as to why Carpenters Fiji Limited were not alerted to the necessity to ensure that the corporate change of name, the way in which the pharmacy business was being run and any future changes complied with the Act. A large measure of responsibility must also go to the Board itself for failing to follow-up on its queries of 1994 and continuing to issue certificates after 1997 when Morris Hedstrom Limited no longer existed.

- [20] Accordingly, I must find that Carpenters Fiji Limited has no locus standi to bring this proceeding. The pre-November 1968 licence was issued to Morris Hedstrom Limited.
- [21] Morris Hedstrom Limited changed its name to Divisional Properties Limited and then ceased to exist in 1997. In this circumstance, there has been no existing legal person since then which could hold a permit under the act. The permit cannot be held by a trading name or the actual business stock itself.
- [22] The requirement for any legal person to hold a permit for the sale of medicines and poisons is statutory. This requirement cannot be circumnavigated even if the Board continues to issue licences, lawfully or erroneously.
- [23] Accordingly, I need not consider any of the other issues raised in this application for Judicial Review and it is dismissed. I will hear the parties on costs.

A handwritten signature in black ink, appearing to read 'R.J. Coventry', with a long horizontal line underneath.

(R.J. Coventry)

JUDGE