

IN THE HIGH COURT OF FIJI AT SUVA

Action No. HBE 24 of 2016

IN THE MATTER OF WESTERN WRECKERS LIMITED a limited liability company
having its registered office at 34 Belo Street, Samabula and P.O. Box 4096
Samabula, Suva in the Republic of Fiji.

AND

IN THE MATTER OF THE COMPANIES ACT 2015.

Counsel : Mr G. O'Driscoll for the Appellant.
Ms U. Kunatuba for the Respondent.

Date of Hearing : 30th August, 2017

Date of Ruling : 29th September, 2017

RULING

(On the application for stay pending appeal)

- [1] The respondent, Bank of South Pacific instituted these proceedings before the learned Master of the High Court seeking an order of winding up of the appellant company. The learned Master in his ruling dated 28th June, 2017 made the following orders:
- (i) That Western Wreckers Limited is hereby wound up under the provisions of Companies Act No. 3 of 2015;

- (ii) That the Official Receiver is appointed as the liquidator to the conduct of the Winding Up herein; and
 - (iii) That there will be an order for costs against the respondent Western Wreckers Limited summarily assessed at \$1,500 to be paid within 14 days timeframe.
 - (iv) Special circumstances justified the extension to the delivery of Judgment to 28th June, 2017
- [2] On 05th July, 2017 the appellant Western Wreckers Limited filed notice and grounds of appeal seeking to challenge the findings of the learned Master on the following grounds:
- (i) The application for winding up filed on 11th November, 2016 had not been determined prior to 11th May, 2017. The Master of the High Court erred in law having not disposed the matter on or before 11th May 2017 and in granting an extension beyond that date without application having been made acted in breach of the provisions of the Companies Act 2015.
 - (ii) The Master of the High court erred in law and in fact in failing to consider the argument put forward by the company that the Petitioner had made arrangements with other security donors in respect of the same debt to the detriment of the company and thereby should have ordered that the matter be filed in the civil jurisdiction so that such issues could be made rather than making summary orders.
- [3] In this application the petitioner is seeking and order staying the enforcement of the orders of the learned Master until the final determination of the appeal.
- [4] If the appellant company can successfully argue the above grounds of appeal at the hearing of the appeal as secure a judgment in its favour it is nothing but reasonable for this court to stay the operation of the winding up order made by the learned Master for the reason that if the company is wound up pending the hearing of the appeal, a judgment in favour of the company will be made nugatory because there will be no company alive to enjoy the fruits of the judgment.
- [5] At the commencement of the hearing the learned counsel for the bank took an objection to the maintainability of this application for stay pending the decision of the

appeal on the ground that in terms of section 553 of the Companies Act 2015 the appellant company has no *locus standi* to prefer this appeal.

[6] Section 553(1) of the Companies Act 2015 provides:

(1) The Court may, at any time after an order for winding up, on the application either of the liquidator or the Official Receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

[7] The stay referred to in Section 553(1) is deferent to that of the stay execution of the orders pending the operation of decision of the appeal. This section does not have the effect of taking away the right of the company which was ordered to be wound up, to appeal against the decision of the court. Therefore, the objection taken by the bank that the company sought to be wound up has no *locus standi* to prefer this appeal is without merit.

[8] Section 528 of the Companies Act 2015 provides that an application for a Company to be wound up in Insolvency is to be determined within 6 months after it is made.

[9] The proceedings in this matter were initiated on 11th November, 2016 and in terms of section 528(1) of the Companies Act 2015 the application should have been determined on or before 11th May, 2017. The ruling of the learned Master was given on 28th June, 2017.

[10] Section 528(2) of the Companies Act provides that the Court may by order (on such conditions as it considers fit) extend the period within which an application must be determined, but only if—

(a) the Court is satisfied that special circumstances justify the extension; and

(b) the order is made within that period as prescribed by subsection (1), or as last extended under this subsection, as the case requires.

[11] In these proceedings I do not see any extension of time given by the learned Master. In paragraph 38 of the ruling the learned Master states as follows;

The Court is satisfied that the application after heard was adjourned for preparation of the Judgment to be delivered in this case and therefore this very special circumstances justified the extension till today (28th June, 2017).

[12] Some important questions arise from the above findings of the learned Master for consideration of the court at the hearing of the appeal. They are:

Whether there must be an application for the extension of time under Section 528(2) of the Companies Act.

Whether the court must make an order extending the time before the period of six months expired or an extension can be given in the final decision after the period prescribed by law expired, as was done in this case.

[13] Section 528(3) of the Companies Act 2015 provides that an application is, because of this subsection, dismissed if it is not determined as required by this section. The other question arise in this matter, in view of the provisions of section 528(3) of the Companies Act 2015, is whether the application for winding up was liable to be dismissed under these provisions, in the event court decides that there was no extension of time as required by law.

[14] The grounds stated above, in my view, compel the court to grant a stay pending the appeal.

[15] Accordingly, the court makes the following orders:

(1) The enforcement of the orders made by the learned Master on 28th June, 2017 is stayed until the final determination of the appeal.

(2) Costs in the cause.



29th September, 2017


Lyone Seneviratne

JUDGE