

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**COMPANIES JURISDICTION**

**Action No. HBE 11 of 2023**

**In the matter of sections 176 and 177 of the Companies Act 2015**

**AND**

**In the matter of FAIRDEAL EARTHMOVING CONTRACTORS PTE LIMITED**  
**and WAILOALOA SEASCAPE HOTEL PTE LIMITED**

**BETWEEN**

**SANJAY KUMAR** of Vuda, Lautoka, Company Director and Businessman.

**PLAINTIFF**

**AND**

**PRAMOD KUMAR** of Namaka, Nadi and **SHEILENDRA KUMAR** of Votualevu,  
Nadi, both Company Directors and Businessman, respectively.

**DEFENDANTS**

**Counsel** : Mr. Charan R. with Ms. Bhavna J. for the Plaintiff.  
Mr. Dass E. with Ms. Begum S. for the Defendants.

**Date of Hearing** : 11<sup>th</sup> October 2013

**Date of Judgment** : 01<sup>st</sup> November 2023

## JUDGMENT

[1] The plaintiff filed this Originating Summons seeking the following orders:

1. That the company's existing Articles of Association including but not limited to:
  - a) Allow all three Directors to sign, draw, accept, endorse or otherwise execute a negotiable instrument.
  - b) Quorum of Directors' meeting shall be 3 Directors.
  - c) Decision on question arising at a meeting of Directors and passing of Directors' resolution are to be decided by all 3 directors with each Director having one vote.
2. To regulate the conduct of the company's affairs in the future such as but not limited to securing finances, apply for tender, accruing assets etc.
3. Such further or other relief the court deems appropriate.
4. Orders as to the costs of implanting any interim and final orders and the costs of this application.

[2] This Originating Summons was filed pursuant to section 176(1), 177 and 536 of the Companies Act 2015.

[3] Section 176 and 177 of the Companies Act Provide:

Section 176(1)-

(1) The Court may make an order under section 177 if—

(a) the conduct of a Company's Affairs;

(b) an actual or proposed act or omission by or on behalf of a Company;

or

(c) a resolution, or a proposed resolution, of Members or a Class of Members of a Company,

is either—

(i) contrary to the interests of the Members as a whole; or

(ii) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member or Members whether in that capacity or in any other capacity.

Section 177 -

(1) The Court can make any order under this section that it considers appropriate in relation to the Company, including an order—

(a) that the Company be wound up;

(b) that the Company's existing Articles of Association be amended or repealed;

(c) to regulate the conduct of the Company's Affairs in the future;

(d) for the purchase of any Shares by any Member or person to whom a Share in the Company has been transmitted by will or by operation of law;

(e) for the purchase of Shares with an appropriate reduction of the Company's share capital;

- (f) for the Company to institute, prosecute, defend or discontinue specified proceedings;
  - (g) authorising a Member, or a person to whom a Share in the Company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the Company;
  - (h) appointing a Receiver or Manager of any or all of the Company's Property;
  - (i) restraining a person from engaging in specified conduct or from doing a specified act; or
  - (j) requiring a person to do a specified act.
- (2) If an order that a Company be wound up is made under this section, the provisions of this Act relating to the winding up of Companies apply—
- (a) as if the order were made under Part 39; and
  - (b) with such changes as are necessary.
- (3) If an order made under this section repeals or modifies a Company's Articles of Association, or requires the Company to adopt Articles of Association, the Company does not have the power under section 46(6) to change or repeal the Articles of Association if that change or repeal would be inconsistent with the provisions of the order, unless—
- (a) the order states that the Company does have the power to make such a change or repeal; or
  - (b) the Company first obtains the leave of the Court.

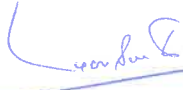
- [4] In the affidavit in support the plaintiff has averred various allegations against the defendants. One such allegation is that he was removed from the Vibe group of the company which the defendants deny and their position is that it was the plaintiff who removed him from the Viber group. It is the plaintiff's evidence against the defendants' evidence and no other proof that it was the defendants who removed the plaintiff from that group.
- [5] The plaintiff also states that all three directors are signatories to the bank account and only two Directors are required to sign the cheques. He states further that the last cheque he signed was on 21<sup>st</sup> June 2023. However, the defendants in paragraph 37 of the affidavit in opposition states that the plaintiff continued to sign cheques even after 21<sup>st</sup> June 2023 and have tendered copies of cheques signed by the plaintiff after 21<sup>st</sup> June 2023 and before the interim orders were made by this court. Interim orders were made by this court on 24<sup>th</sup> July 2023 and from the copies of the cheques tendered by the defendants show that the plaintiff has signed many cheques after 21<sup>st</sup> June 2023 and before 24<sup>th</sup> July 2023. In reply to this the plaintiff in his affidavit in reply states that he denies signing cheques after 21<sup>st</sup> June 2023 which is not correct.
- [6] Since the plaintiff has failed to substantiate the allegation that he was not allowed to sign Company cheques, the order sought that all three Directors should sign the cheques must fail.
- [7] Plaintiff also alleges that the defendants had changed the locks of the office doors and on 10<sup>th</sup> July 2023 he could not enter the office. In response to this allegation the defendants state that the gate was locked due to the fact that the company cheques were stolen and the plaintiff was given to keys. In fact the public notice (SLK11) about the stolen cheques had been signed by the plaintiff.
- [8] The plaintiff also seeks an order to amend the Articles of Association that the quorum of the Directors' meeting shall be all three Directors. There is no reason

for the court to make such an order. All the Directors have the right to participate in the Director Board meetings. If such an order is made by the court it will create hindrance to the management of the company. If one Director refuses to participate at the Board Meeting other two directors would not be able to conduct the meeting and the affairs of the company will come to a standstill.

[9] For the above reasons the court makes the following orders.

### **ORDERS**

1. The orders sought in the Originating Summons are refused.
2. There will be no order for costs.

  
Lyone Seneviratne

**JUDGE**



01<sup>st</sup> November 2023