

IN THE HIGH COURT OF FIJI AT SUVA
IN THE CENTRAL DIVISION
CIVIL JURISDICTION

Companies Action No. 47 of 2023

IN THE MATTER OF R.B. RAHMATULLAH & SONS (FIJI) PTE LIMITED a private company incorporated in Fiji and having its registered office at Makoi, 8 Miles, Nasinu near Suva in Fiji

AND

IN THE MATTER of an application for Winding Up Order pursuant to section 176 and 177 of the Companies Act 2015.

BETWEEN: **MOHAMMED YASIN, MOHAMMED YUSUF, MOHAMMED NASEEM** aka **MOHAMMED WASIM, SONIA SHENAAZ BEGUM, FARISHA KAIYUM** and **NAZIA KHAIYUM** all of Nasinu in Fiji, all Shareholders.

APPLICANTS

AND: **R B RAHMATULLAH & SONS (FIJI) PTE LIMITED** a private company incorporated in Fiji and having its registered office at Makoi, 8 Miles, Nasinu near Suva in Fiji.

FIRST DEFENDANT

AND: **MOHAMMED AIYUB** Makoi, 8 miles, Nasinu near Suva in Fiji,
Company Director.

SECOND DEFENDANT

Date of Hearing : 16 December 2024

Counsel For Plaintiffs : Mr Nagin S.K.

Counsel for the Defendants : Mr Sharma D.

Date of Decision : 11 April 2025

Before : Waqainabete-Levaci S.L.T.T, J

JUDGEMENT

(APPLICATION FOR WINDING UP ON THE BASIS OF NON-COMPLIANCE WITH COURT ORDERS)

BACKGROUND AND AFFIDAVIT

1. The Plaintiff had filed a Summons seeking for the following orders in accordance with sections 176 and 177 of the Companies Act 2015:
 - (1) The First Respondent Company be wound up by this Honorable court under the provisions of the Companies Act 2015;
 - (2) The Second Respondent forthwith stop operating the business of the First Respondent;
 - (3) The Second Respondent do provide all accounts of the First Respondent to the Applicants;
 - (4) The Second Respondent do pay costs to the Applicants on an indemnity basis.
2. This Application stems from the Plaintiff's allegations that the Defendants have failed to comply and thus breached the consent orders of the Court.

3. On 11th of July 2024, the parties entered into terms of settlement with the Court entering Consent Orders as follows:
 - (i) That the Company Accountants to give all company accounts to 2023 to the Applicants;
 - (ii) That the Company shares be valued by PWC, as Chartered Accountants of Suva;
 - (iii) That the 2nd Respondent has option to purchase the Applicant's shares at the value amount and if he does not purchase then his shares in the Company to be then sold to the Applicants at valuation;
 - (iv) That monthly accounts effective from today to be provided to the Respondent to Counsel for the Applicants;
 - (v) That parties to be at liberty to apply generally.
 - (vi) Review of the matter on 13th September 2024.
4. On 11th November 2024 on review, the Plaintiff confirmed that the Defendants had still not complied with consent orders. The Plaintiff has deposed in their Affidavit that despite correspondences to the Defendant's Counsels twice, correspondences to PWC and to the Company's Accountant for Accounts up to 2023 in order to assist PWC in conducting its share valuation, no responses have been forthcoming.
5. They also depose and verily believe the Accountant, son of the Second Defendant, for the Company has not complied with the orders and that the Second Defendant continue to operate the company and divert funds to itself.
6. The Plaintiff sort for orders to wind up the company for failing to comply with court orders.
7. In response, the Second Defendant deposed that the Plaintiff's deceased father, a sibling and previous Director and Shareholder in equal shares, had taken cheque books, invoices and monies to his daughters requesting them to prepare accounts. On his demise, the family has not returned the same in order to assist in completing the Accounts up until 2023.
8. The Defendants allege in their Affidavit that Mohammed Yasin has failed to come to Court with clean hands and have refused to disclose information to enable the Company Accountant to finalize the Accounts.
9. The Defendant also argued that the threshold in section 176 of the Companies Act needed to be established in order for an Order under section 177 of the Companies Act can be granted.

10. The 2nd Defendant and the Applicants' deceased father ran the family business until his demise. During their term, deceased brother never complained of the 2nd Defendants work to run the business.
11. The Defendant argues that the Plaintiff had failed to establish his locus as a shareholder by providing documentary evidence.
12. Despite the Plaintiff deposing that the shares were transferred, the Defendants argued that there were no indications that the other shareholders had accepted the transfer and no document has been filed to confirm the registration of the new shareholders.
13. The Defendants depose that cheque books were removed by the Plaintiff's father whilst he was alive and given to his daughters to enter data. The documents were required in order to complete the 2022 Accounts. Only year- end financials are prepared and monthly VAT and EMS returns as well as FNPf returns. All company accounts for 2023 will mean additional work and invoicing separately. To date despite letters in response written to Counsel for the Plaintiff, the Plaintiff has failed to provide the necessary documents. These documents are necessary for the company's accounts to be finalized before it is sent to PWC.
14. Counsel for the Defendant offered to settle by offering to purchase the existing beneficiaries shares to be valued based on the documents available to PWC. This includes the other beneficiaries that make up the total 50% shares of the Estate and not just the Plaintiff Mohammed Yasin alone.
15. The Defendant finally argues that the First Defendant is not insolvent and currently is in operation run by the Second Defendant. The Defendant argues that the Plaintiff has no grounds to establish that there is a basis for which to Wind Up the company.

LAW AND ANALYSIS

16. The Plaintiff is now seeking the Court to proceed to winding up in accordance on the basis of Section 176 and 177 of the Companies Act on the grounds that the Defendants breached the terms of the consent order.
17. In Reddy -v- Reddy [2019] FJHC 440; HBC 252.2012 (17 May 2019) Justice Tuilevuka held that contumacious conduct is evident by a disobedience to non-preemptory orders enough to strike out defence to proceed to formal proof.

18. The disobedience arose from the failure of the Defendant to comply with consent orders for filing of accounts referring to the case of Caribbean General Insurance Ltd -v- Frizzel Insurance Brokers Ltd [1974] 2 Lloyd's Rep 32 here the Master made an order for specific discovery and two extensions were granted and judgment in default of compliance was entered by the Defendant with the unless order. At trial the Plaintiff applied to set aside and trial judge extended the time for the unless order. The Court of Appeal held that the judge was wrong in the exercise of his discretion and failed to ask himself the right question of law. Pre-emptory orders were made to be obeyed and only made by the Court when the party defaults and already failed to comply with the requirements of the rules or an order and the court was satisfied that the time already allowed had been sufficient and the failure of the party to comply with the order was inexcusable."
19. In this case the parties were alleged to have failed to comply with the orders on review in November 2024.
20. There were no extensions to the order granted and the Applicant opted to seek for winding up of oppressive matter. Parties have not made good the terms of the settlement. Therefore the breach continues.
21. Section 176 and 177 of the Companies Act are substantive rights and reliefs for individual shareholders suffering from oppressive conduct or discriminatory actions prejudicing their interests.
22. Where oppressive conduct is proven, the Court has the discretion to grant relief where the action or omission of the company is either oppressive, unfairly prejudicial or discriminatory against a member. The reliefs include:
 - (i) winding up;
 - (ii) amendment to the articles of association;
 - (iii) transfer of shares and reduction of share capital;
 - (iv) regulate company's affairs;
 - (v) company institute, defend or discontinue previous proceedings;
 - (vi) authorizing a member or person to whom a share has been transferred by Will or by law to institute, defend or discontinue proceedings on behalf of the company;
 - (vii) appointing a receiver or manager of the company;
 - (viii) restraining a person from a conduct or requiring a person to do a specified Act.
23. Section 178 of the Companies Act identifies those that can apply for winding up orders and includes a member whose shares were transmitted by Will or by operation of a law.

Mohammed Yasin Locus to bring the action

24. The First and Second Defendants have argued that the Plaintiff, Mohammed Yasin has no locus to represent the other beneficiaries as a shareholder of the company as there is no authority given by the other siblings to appoint him as their representative in this proceedings.
25. Furthermore the First and Second Defendants argue that the Executor and Trustee of the Estate of Abdul Quyyum has not provided a written sign notice electing himself as the holder of shares or giving a completed transfer from transferring shares of the Estate to the nominated person.
26. Thirdly, there is no resolution by the minor shareholders or a conduct or act of the company which depicts that they have acted oppressively.
27. The Company First Defendant had four initial shareholders, Haji Mohammed Ismail and Sahmim Akhtar, Abdul Qayyum and Mohmmmed Aiyub who all had one share each. Over time Haji Mohammed Ismail and Sahmim Akhtar passed away and their shares were transferred to the remaining shareholders who were also their children.
28. Abdul Qayyum had passed away, and by Will, appointed his daughter Farisha Kaiyum as Executrix and Trustee over his Estate. The Will bequeathed his taxi registration to his two sons, Mohammed Naseem and Mohammed Wasim and divided 80% of his shares in the Company in equal shares to 4 of his children, one of which was the Plaintiff and the rest divided equally to his two daughters.
29. From his Will, it is clear that the intentions of the Testator, as the shareholder and director of the First Defendant, was to transfer his shares to his children.
30. The Plaintiff Counsel have served documents appointing the Executrix and Trustee, Farisha as the holder of the shares of the Estate of Abdul Quyyum. However the Defendants argue that there are no completed transfer documents filed with the Company transferring shares to the 6 children of the late Abdul Quyyum.
31. The Plaintiff argued that by entering into consent orders, the Defendant had admitted that the 6 children were shareholders of the Company.
32. Where the Court is inclined to move towards a hearing, parties must still establish their claim in order for the Court to assess and make a decision.

33. By virtue of Section 178 of the Companies Act, shareholders by Will are entitled to seek reliefs for oppressive behaviour.
34. There is no evidence to suggest from the Affidavits that the shares held by the Executrix had been transferred to the Applicants.
35. Furthermore there is no evidence to establish that, the deponent, Mohammed Yasin, was authorized to depose his affidavit on behalf of the beneficiaries including the Executrix and Trustee and holder of shares of the Estate of Quyyum.
36. The deponent, Mr Mohammed Yasin is therefore not authorized under section 178 of the Companies Act to bring this action because the transfer of shares has not been registered to him as well as the other beneficiaries.
37. I therefore find that that apart from Ms Farisha Khaiyum, no other Plaintiff is entitled to pursue this matter, not even Mr Mohammed Yasin.

Claim for oppressive behavior

38. The Plaintiff, Ms Farisha Khaiyum has claimed that there was oppressive behavior from the Second Defendant as the Managing and sole Director and major Shareholder of the Company. She claimed that the Second Defendant was:
 - (i) Refusing to disclose and render available accounts to 2023 in order to enable the independent valuer to value the company shares;
 - (ii) Failing therefore to conclude the settlement by enabling the valuation and ultimately the purchase of shares.
 - (iii) Refusing to appoint a sibling as a company director;
 - (iv) Wrongly terminating the siblings employment and their salaries and benefits;
 - (v) Fraudulently paying himself \$500,000 in dividends;
 - (vi) Appointing his son as the financial controller
39. In the Affidavit supporting their application, the Second Defendant argued that its conduct was in no way oppressive against the Plaintiffs. He cites the case of In the

Matter of Lifestyle Pacific (Fiji) Pte Ltd -v- Antonia Catanzariti ABU No 117 of 2019 where the Justices of Appeal, Judge Maitaitoga, Judge Clark and Judge Andrews determined at para 44 and 46:

“[44]The deterioration in the relationship between the two parties is not a ground for a winding up. There is no application before the court relating to the company solvency. Neither was there an application relating to the company’s commencement or suspension of its business in terms of Section 513 (b) above. Indeed exhibits annexed to Wallis affidavit namely the Investment Fiji Approval, Foreign Investment Registration Certificate and VAT Registration indicate that the company had commenced business. Further the appellant had constructed mobile display homes as disclosed by the Respondent in his affidavit.

[46] Although the Appellant and Wallis may have been in default of their Investment approval this is not a ground for winding up.”

[47] Although generally the Court has a wide discretion under section 513 (d) of the Act, in answer to the second substantive issue, I consider that in the circumstances of the case, the Judge exercised his discretion wrongly in ordering that the company be wound up on the basis of the evidence in the affidavits before him. This was to use the Judges words ‘drastic step’ particularly when the Respondent had in the application firstly sought a purchase of shares by Wallis and the Hudge had the power to grant the remedy under section 177 (1) (d) of the Act. The Winding Up Order should therefore be set aside.”

40. What then would oppressive conduct be for the Court to consider?

41. In the Matter of Lifestyle Pacific (Fiji) Pte Ltd -v- Antonia Catanzariti (Supra) the Court cited the High Court decision and what it cited correctly as oppressive conduct:

- (a) Misappropriation of company funds or assets;*
- (b) Running the company in a party’s own interest to the exclusion of (and indifference to) the interests of other shareholders;*
- (c) Denial of access to company information or unfair exclusion from participation in the company’s management;*
- (d) Payment of excessive remuneration to company officers, possibly at the expense of paying dividends;*
- (e) Improper diversion of company business to other entities/individuals;*

(f) An improper issue of shares which might include, for example, one that is calculated to achieve a decisive majority shareholding or voting right; in that entity (or, conversely, dilute another party's).

42. In support of their denial of oppressive behavior, the Second Defendant made submissions that correspondences were sent to the Plaintiff seeking for clarification over the cheques that were taken by their father, the late Abdul Quyyum in 2022 which could not be accounted for. That without these cheques or their documents, the Company was unable to forward accounts for 2022 to 2023 to PWC for valuation.
43. The Second Defendant argued that the Plaintiffs had failed to respond to the enquiries and so in haste, had sort to seek winding up as a remedy in order to defeat the intentions of the Defendants to continue to operate the business successfully.
44. There are admissions by the Second Defendant receiving payments. When I perused the Accounts for 2020 and 2021 in which both the Second Defendant and Abdul Quyyum had signed as shareholders (2020 and 2021) and the 2022 unsigned accounts there were monies released as shareholders advances, whilst dividends on paid up share capital remained the same throughout from 2021 until 2022 showing that there was no reduction in price or reduction in shares at all. It showed that there was no direct bearings or losses at all sustained by the Company from their earned profits throughout those years.
45. There are allegations of mismanagement against some of the Plaintiffs who were employed in the company. They allowed others to use the company vehicles, threatening employees and increasing company costs etc. Their attitude and their lack of work ethics caused the Second Defendant to terminate their employment. Initially one of the Plaintiffs was appointed as a Director of the company, however he later resigned.
46. The plaintiff is now insisting on allowing the previous employees, their siblings, to become Directors in the company, which the Second Defendant refuses to allow.
47. Having considered allegations by the Plaintiffs, the Court finds that the conduct of the Second Defendant is not in any way oppressive but is that of a prudent manager. Share dividends are an entitlement of the company shareholders if the company is capable of sharing dividends. There were no evidences to clearly establish the monies or share dividends taken by the Second Defendant caused losses to the company.

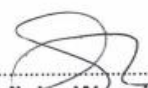
48. There were allegations of misappropriation of funds for personal use against the 2nd Defendant. Again these allegations are serious, there was no evidence to support or establish this.
49. The Court finds that the inability of the Second Defendant to provide Accounts to 2023 was because the parties failed to properly communicate about the missing documents.
50. I find that there is no evidence sufficient to establish that it is just and equitable to wind up the company. There is no oppressive behaviour and the Company remains solvent.
51. The Plaintiff alleges that continuous correspondences will allow time for the Second Defendant to continue operating the affairs of the company for his personal gain.
52. I have perused the signed Accounts for 2021 for the 1st Defendant and the unsigned Accounts for 2022. I find that the company has been running profitably and does not see anything to suggest that the 2nd Defendant has benefitted personally.
53. I find that the Second Defendant has attempted in all honesty to prepare the Accounts, barring the missing account documentations and details which is alleged to have been held by the Plaintiff.
54. The Court will therefore order that the application for winding up be dismissed.

ORDERS

55. The Court will Order as follows:

- (1) That application for Winding Up be dismissed.
- (2) Costs of \$2000 awarded to the Defendant and payable by the Plaintiff in 60 days.




Senileba Waqainabete-Levaci
Puisne Judge of High Court