

**AGRICOM PTE LIMITED -V-. WAYNE FREDERICK MORRIS (As Administrator of Russell Islands Plantations Estates Limited under Scheme of Administration) AND RUSSEL ISLANDS ESTATES LIMITED (under Scheme of Administration)**

HIGH COURT OF SOLOMON ISLANDS  
(KABUI, J.).

Civil Case No. 027 of 2001

Date of Hearing: 22<sup>nd</sup> July 2003

Date of Ruling: 28<sup>th</sup> July 2003

*Mr J. Sullivan for the Applicant*

*Mr J. Apaniai for the 1<sup>st</sup> Respondent*

*Mr G. Suri for the 2<sup>nd</sup> Respondent*

**RULING**

**Kabui, J.** This is an application by Summons filed by the 1<sup>st</sup> Respondent on 22<sup>nd</sup> May 2003 seeking an order of the Court to strike out Mr. Wayne Frederick Morris as a party in the action commenced by the Amended Originating Summons filed by the Applicant on 5<sup>th</sup> May 2003. This application was obviously brought under Order 17, rule 12 of the High Court (Civil Procedure) Rules, 1964, 'the High Court Rules.'

**The Background.**

Mr. Wayne Frederick Morris was appointed by the High Court on 7<sup>th</sup> September 2001 as the Provisional Liquidator of Russell Islands Estates Limited. (RIPEL). International Comtrade and Shipping Limited (ICSL) is a creditor of RIPEL. ICSL had put forward a proposal for a scheme of arrangement as a compromise or arrangement under section 198 of the Companies Act (Cap. 175). At the meeting of creditors and members of RIPEL, the proposed scheme was duly approved. The Scheme of Arrangement was duly filed on 18<sup>th</sup> October 2002 and subsequently approved by the High Court on 23<sup>rd</sup> October 2002 for implementation. Under the Scheme of Arrangement, Mr. Wayne Frederick Morris of Price Waterhouse, City Centre Building, Mendana Avenue, Honiara, is the Scheme Administrator

**Striking out the name of Wayne Frederick Morris as the 1<sup>st</sup> Respondent.**

The Court does have the power under Order 17 rule 11 of the High Court Rules to strike out the name of any party whose name has been improperly joined as a party in a cause or matter. The Court has a discretionary power to do this or to decline to do it. It all depends upon the evidence that comes before it showing the need for the exercise of such power in favour of the applicant.

**The Evidence.**

The evidence for the applicant is by affidavit filed by Mr. Wayne Frederick Morris himself on 22<sup>nd</sup> May 2003. In this affidavit, he says this. When he was the provisional liquidator, he was able to establish that the amount of oil in the tanks at Yandina was in the amount of 134.683 metric tons. On 14<sup>th</sup> September 2001, the Applicant lodged its proof of debt in the sum of \$USD 187, 934. 86 being the claim for 770.08 metric tonnes awarded to the Applicant by Court order 13<sup>th</sup> August 2001. He has admitted this proof of debt as part of the claim to be considered and paid under the Scheme of Arrangement. He does not dispute the ownership of the 134 of oil held in the tanks at Yandina and being consistent with that

position, the Applicant is at liberty to remove the oil. By affidavit filed on 22<sup>nd</sup> July 2003, Mr. Wayne Frederick Morris has revealed that he had asked Mr. Wong as Chairman of the Board of Directors to defend this action on behalf of RIPEL. By affidavit filed on 17<sup>th</sup> July 2003, on behalf of Agricom, Mr. McGuire admits that there might have proof of debt and admission thereof for the purposes of voting but denies any proof of debt or admission of it for the purposes of admission to rank for dividend. In the affidavit filed on 15<sup>th</sup> July 2003, Mr. Wong says he is involved in the daily management of RIPEL as it is under the control of its Board of Directors of which he is the Chairman. He says the decision to sell any oil rests with the Board of Directors and not with the Scheme Administrator. He further says that the Applicant should be claiming only the value of the oil and not the oil as its debt being the value of the oil has been converted into a debt upon RIPEL failing to produce and supply the oil within 14 days under the Court order of 14<sup>th</sup> August 2001. He says that debt has been admitted for ranking as dividend.

**The issue in dispute.**

The issue in dispute between the Scheme Administrator and Mr. Wong, the Chairman of RIPEL is their disagreement over ownership of 134 metric tonnes of oil in the tanks at Yandina. Whilst the Scheme Administrator admits that the 134 metric tonnes of the said oil is the property of the Applicant and may be removed by the Applicant, Mr. Wong disagrees for his own reasons. One of the reasons advanced by Mr. Wong is that as far as dealing with the said oil is concerned, it is a management function under the Board of Directors and not a matter for the Scheme Administrator to deal with under the Scheme of Arrangement. Clause 7 of the Scheme of Arrangement describes the Scheme Administrator as the agent of RIPEL. Clause 8 stipulates the powers of the Scheme Administrator. The demarcation of the powers of the Board of Directors and the Scheme Administrator is set out in clause 8 (c) in these terms-

**“...The Company and the Scheme Administrator agree that the Scheme Administrator shall have the power-**

- (a) -----;
- (b) -----;
- (c) **to the exclusion of the powers and authorities of the Directors of the Company and in their stead, to exercise all the rights, powers, privileges, authorities and discretions conferred on the Company by the Articles of Association or at law generally save to the extent necessary for the Directors to discharge any obligations to them by law...**“
- (d) -----;
- (e) **without derogating from or limiting the generality of this Clause or any other provision of this Scheme to appoint solicitors, accountants, managers or agents or any other qualified person to assist him in his duties;**
  - (ii) **to bring or defend any action or other legal proceedings in the name of the Company and without limiting the generality of the foregoing to apply for the winding up of the Company...**”

The Articles of Association of RIPEL was not placed in evidence and so I am unable to say what the articles say. However, the term ‘at law generally’ seems to suggest that anything that is lawful, the Scheme Administrator may be able to do save to the extent necessary for the Directors to discharge any obligations to them by law. Clearly, the proviso to clause 8 prohibits the Scheme Administrator from being involved in the management, operation or control of RIPEL or any of its business or undertakings,

except as expressly provided above. This proviso clearly preserves the management, operation or control or any of its business or undertakings in the hands of the Board of Directors except as provided in clause 8 of the Scheme of Arrangement. Is deciding the ownership of the said 134 metric tones of oil in the tanks at Yandina a matter for the Board of Directors or the Scheme Administrator? In fact, the Ruling I delivered on 12<sup>th</sup> March 2001 in **Agricom Pte Limited v. Russell Islands Plantation Estates Limited**, Civil Case No. 027 of 2001, shows that the Applicant had paid USD 600,000.00 for oil in advance to be supplied by RIPEL. By an agreement signed on 3<sup>rd</sup> November 2000, RIPEL agreed to supply 2,600 metric tones of oil. By letter dated 22<sup>nd</sup> November 2000, Messrs Ilala and Notere confirmed to the Applicant that the oil in stock in that amount at Yandina as on 15<sup>th</sup> November 2000 belonged to the Applicant. Mr. Ilala again confirmed the same position in my judgment delivered in the same case on 11<sup>th</sup> April 2001. So, the 134 tonnes of the said oil being the remaining part of the original 2,600 metric tonnes of oil cannot be regarded as part of the assets of RIPEL. I do not think the Scheme Administrator is interested in that oil for his purpose under the Scheme of Arrangement and so he is not interested in defending this action for that reason. He has made his position clear on this point to Mr. Wong in his letter dated 19<sup>th</sup> May 2003. It is unnecessary for him to defend this action. He cannot keep someone else's property by defending this action. The Scheme Administrator would have invoked clause 17 (a) of the Scheme of Arrangement and defended this action if the said oil is part of assets of RIPEL and there is an attempt to dispose of the oil. For this reason, I would agree that Mr. Wayne Frederick Morris should not be joined as a party in this action. The application is granted. I direct that his name be struck out from this action. I further direct that Russell Islands Plantation Estates Limited become the Respondent in this action. The parties will meet their own costs.

**F.O. Kabui**  
**Judge**