

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Company Case No. 15 of 2014

IN THE MATTER OF: LOPE LOPE ADVENTURE LODGE  
LIMITED

AND: THE COMPANIES ACT [CAP191]

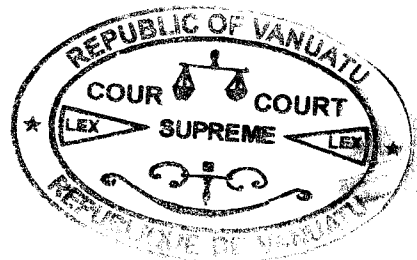
Coram: Justice Aru

Counsel: Mr. M. Hurley for the Petitioner  
Mr. D. Thornburgh for the Company

RULING

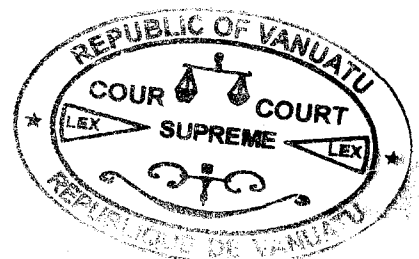
Introduction

1. On 23<sup>rd</sup> February 2015 the Court issued orders by consent appointing Mr. John Warmington provisional liquidator and the matter was stayed pending a further hearing on 16 March 2015. Following the aftermath of cyclone Pam, Mr. Warmington is unable to continue as provisional liquidator and has informed the Court of his resignation by filing a sworn statement to that effect on 25 May 2015.



Amended Notice of Motion

2. The Petitioner has since filed an amended Notice of Motion supported by sworn statement of Ben D Dali for the appointment of Mark Stafford and Adrian Sinclair of Barrett & Partners Chartered Accountants as provisional liquidators on the same terms as Mr. Warmington. This is confirmed by Mr. Dali at paragraph 6 of his sworn statement filed on 10 April 2015. Messrs Stafford and Sinclair have given their consents to be appointed. This annexed as exhibit "BDD3" to Mr. Dali's sworn statement filed on 10 December 2014.
  
3. The Company opposes the appointment of Messrs Stafford and Sinclair as provisional liquidators. The basis of these objections as submitted by Mr. Thornburgh are first, that Mr. Sinclair is not a fit and proper person to be appointed. He relies on what the Court of Appeal said in its 1998 decision in *Barrett & Sinclair v. McCormack [1999] VUCA 11*. Secondly, he submits that there is a conflict of interest as Mr. Lindsay Barrett who is the Managing Partner of Barrett & Partners is a Director on the Board of the National Bank of Vanuatu which is the Petitioner.
  
4. The Company has not filed any response to the amended Notice of Motion or any evidence in support of its objections.



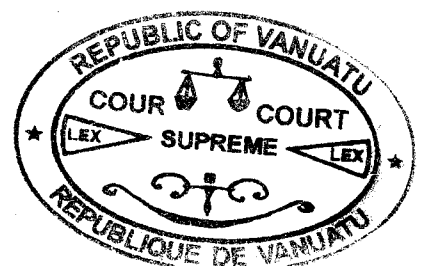
5. Section 240 (2) of the Companies Act [CAP 191] provides:-

*"The appointment of a provisional liquidator may be made at any time before the making of a winding up order, and either the official receiver or any other fit person may be appointed."*

6. Furthermore, section 243 (1) which provides for general provisions as to liquidators states:-

*"A liquidator appointed by the Court may resign or on cause shown be removed by the Court."*

7. In considering the Company's objections, there is no evidence placed before the Court that Mr. Sinclair is not a fit and proper person to be appointed a provisional liquidator. Secondly, there is also no evidence placed before the Court of any conflict of interest with the Managing Partner of Barrett & Partners being on the board of the National Bank of Vanuatu. In any event, nothing prevents the Company from applying to have Messrs Stafford and Sinclair removed at a later date if cause is shown pursuant to section 243 (1) of the Companies Act.



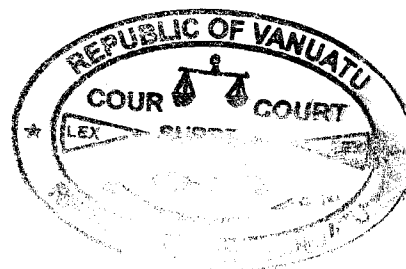
8. I therefore make the following orders:-

1. Adrian Sinclair and Mark Stafford of Barrett & Partners Chartered Accountants are appointed jointly as provisional liquidators of LOPE LOPE ADVENTURE LODGE LIMITED with power:-

- a) to take possession of, collect and protect assets of the company;
- b) to discharge rents, salaries, and other current expenses;
- c) to give notice to terminate the employment of any servants and agents of the Company;
- d) to carry on the business of the company until further order;
- e) for that purpose to open an account with the National Bank of Vanuatu Limited, Port Vila and to pay all moneys, bills, and notes received into such bank, and to draw on such account.

2. The Petitioner is granted leave to file and serve an amended Petition to seek the appointment of Adrian Sinclair and Mark Stafford as Liquidators following the expiry of their appointment as Provisional Liquidators; and

3. The matter is stood over for 6 weeks to enable Messrs Sinclair and Stafford to report to the Court as to the outcome of their findings as



Provisional Liquidators and for the hearing of the proposed amended  
Petition.

DATED at Port Vila, this 4 day of June, 2015

BY THE COURT

D. ARU

Judge

