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IN THE FIJI COURT OF APPEAL .

Appellate Jurisdiction

Civil Appeal No. 75 of 1986IN THE MATTER of TOBERUA ISLAND
LIMITED

and

IN THE MATTER of the Companies
Act, 1983

Between:

TOBERUA ISLAND LIMITED

Appellant

and

CECILIA T. JIMINEZ

Respondent

Mr. J.A. Strahan, Q.C. and Miss V. Sugrim
for the Appellant

Mr. F.G. Keil for the Respondent

R U L I N G

This is an application by the appellant company for a stay, pending appeal, of a winding-up order made against it by Rooney J. on 20th November, 1986.

A similar application for stay was dismissed by the learned Judge.

It is not necessary to consider in detail numerous authorities cited relating to the power of this court to order a stay of a winding-up order. I accept,

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as did Rooney J., the appellant's submission that such power does exist and may, in certain circumstances, be exercised to prevent substantial injustice.

A great deal of argument was directed to the grounds of appeal relied upon by the appellant. I do not accept the respondent's contention that they are devoid of merit and designed mainly to delay the satisfaction of a genuine debt. They are effective, arguable grounds. Whether or not they eventually succeed is another matter, a matter for the full court and outside the powers of a single judge to consider.

The only issue for consideration here is that of a stay. Judging from local standards the applicant's is a substantial business involving international finance and operating reasonably smoothly. The winding-up order may have some effect on its operations but I find it difficult to accept the respondent's claim that the effect will be devastating, particularly if the appeal can be dealt with expeditiously.

Against that the Court must keep in mind the nature of the order which concerns the public interest and the pledging of the respondent's credit. In this regard the learned Judge was entitled, as he did, to find some features of the respondent's case somewhat disturbing. There was a set of the Company's accounts, prepared by the Company's accountants, which the respondent claimed not to be the Company's accounts. No other accounts would appear to have been shown to the court. There was an agreement signed on behalf of the Company by its managing director using the Company stamp, witnessed by a solicitor who has acted for the Company, which, the respondent claimed, was not a Company document. There was an open suggestion of serious conflict of interests between the respondent

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and its managing director who has complete charge of its day to day operations and would normally have the authority to pledge its credit.

Under the circumstances it would, in my view, be in the interest of the public, of the creditors and perhaps, of the respondent itself to have its affairs left in the hands of the liquidator under the supervision of the court until the appeal is disposed of.

Indications are for it to be listed for hearing during the February-March (1987) sitting of the Court.

The application is dismissed with the costs.

(G. Mishra)

Judge of Appeal.

12.12.86