

IN THE HIGH COURT OF FIJI
AT SUVA

Companies (Winding Up) Action No. HBE 46 of
2015

IN THE MATTER of AMERICAN
OUTLET LIMITED

A N D

IN THE MATTER of THE COMPANIES
ACT 1983, Section 221

BEFORE : Master Vishwa Datt Sharma

COUNSELS : Mr. Emmanuel Narayan : for the Petitioner
: Mr. Vasu Pillay : for the Respondent

Date of Hearing : 27th June, 2016

Date of Judgment: 09th August, 2016

RULING

[Preliminary Issue section 528 of the Companies Act 3 of 2015]

INTRODUCTION

1. The Petitioner, **Fiji Rugby Union** instituted this winding up proceedings against the debtor company, **American Outlet Limited** seeking the following orders inter alia;
 - i. That **American Outlet Limited** be wound up by the court under the provisions of the Companies Act.
 - ii. That the costs of the Petitioner be taxed and paid out of the assets of the Company.
 - iii. That the Official Receiver attached to the court be constituted Provisional Liquidator of the affairs of the Company.

- iv. *Alternatively that such other order may be made in the premises as shall be just.*
2. The Company opposes the petition on the basis that no money is owed.
3. The Counsel representing the Respondent Company raised a Preliminary objection that in terms of *section 528 of the Companies Act 3 of 2015* as follows-
- 'The section requires an action for a Company to be wound up in Insolvency, to be determined within 6 months after it is made. The current action was initiated on 24th September, 2015.'*
4. Both Counsels made submissions to the Court for the determination of the objection.

THE LAW

5. *Section 528 of the Companies Winding Up Act 3 of 2015 provides as follows-*
- (1) *An application for a Company to be wound up in Insolvency is to be determined within 6 months after it is made.*
- (2) *The Court may by order (on such conditions as it considers fit) extend the period within which an application must be determined, but only if—*
- (a) *the Court is satisfied that special circumstances justify the extension; and*
- (b) *the order is made within that period as prescribed by subsection (1), or as last extended under this subsection, as the case requires.*
- (3) *An application is, because of this subsection, dismissed if it is not determined as required by this section.*
6. *Section 749 of the Companies Winding Up Act 3 of 2015 states as follows-*

'If an Existing Company which is in the process of being wound up at the commencement date, is wound up in accordance with a Repealed Act within one year after the commencement date, the provisions of this Act are taken to have been complied with.'

7. *Section 750 of the Act* deals with Court proceedings and provides as follows-

(1) If a proceeding in relation to a provision of a repealed Act has not concluded or terminated before the commencement date, the proceeding remains on foot until concluded or terminated.

(2) If a proceeding in relation to a provision of a Repealed Act has concluded or terminated before the commencement date, a decision or order in that proceeding may be appealed against, or otherwise reviewed, as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

RESPONDENT'S OBJECTION

8. *Counsel referred Court to section 528 of the Companies winding up Act No. 3 of 2015 and submitted that the section requires an action for a Company to be wound up in Insolvency to be determined within 6 months after the application is made.*
9. *This matter was commenced on 24th September, 2015 and should have been concluded within a 6 month's time frame unless time was extended by the Court.*
10. *No time as such was extended to hear the matter outside the timeframe of 6 months and therefore the Petition has died a natural death and should be dismissed.*
11. *Counsel also referred Court to section 750 of the Act which he said was the transitional provision.*

PETITIONER'S RESPONSE

12. Counsel submitted that the New Company Law does not apply to this case but to the old Act.
13. New Law is not retrospective with the old Law.

ANALYSIS AND DETERMINATION

14. The answer to the Respondent's objection is very simple.
15. This matter was commenced by the Petitioner on 24th September, 2015 under the provisions of the old Companies Act, 1983 and not under the provisions of the New Act 3 of 2015.
16. I make reference to section 750 (1) of the New Act 3 of 2015 which clearly states that

'If a proceeding in relation to a provision of a repealed Act has not concluded or terminated before the commencement date, the proceeding remains on foot until concluded or terminated.'

17. In very simple language, this provision expresses that if a proceeding was commenced under the Old Companies Act and still remains pending, then the proceeding remains before the Court to be finished or completely determined.
18. The current case was filed under the Old Companies Act and is yet to be concluded.
19. Therefore, this Court needs to hear and determine the same under the provisions of the old Companies Act and deliver a ruling in order to conclude the same, or, unless the matter is withdrawn or terminated for one reason or the other accordingly.
20. In Conclusion, I make the following orders-

ORDERS

- (i) The Preliminary Objection raised by the Respondent's Counsel is hereby dismissed.
- (ii) The Respondent to pay summarily assessed costs of \$750.
- (iii) Costs to be paid within 14 days.

DATED AT SUVA THIS 09TH DAY OF AUGUST 2016



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VISHWA DATT SHARMA
Master of the High Court
Suva

cc: Patel Sharma Lawyers, Suva.
Gordon & Co., Lautoka.