

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBE 15 of 2014

BETWEEN : **GUANGZHOU HUITAO REAL ESTATE INVESTMENT**
COMPANY LIMITED

Petitioner

AND : **CENTURY HOLDINGS LIMITED**

Respondent

R U L I N G

INTRODUCTION

1. The issue has arisen in this case as to whether a company incorporated and registered in another jurisdiction, but not registered in Fiji, alleging to be a creditor, can present a petition in Fiji to wind up an alleged local debtor company.
2. Section 2 of the old Companies Act (Cap 247) defines “company” as meaning “a company formed and registered under this Act or an existing company”.
3. Section 18(1) of the old Act states that after the registration of the memorandum of a company under the Act, the Registrar shall then certify that the company is incorporated.
4. Section 18(2) states that from the date of incorporation, the company becomes a body corporate and is *inter alia* capable of suing and being sued and of exercising all the functions of an incorporated company.
5. It appears from a reading of these provisions that corporate status is conferred by registration. Only upon registration, did a company acquire corporate status.
6. A foreign company, of course, is not formed under Fiji’s Companies Act. Obviously then, the fact of its incorporation in a jurisdiction outside Fiji does not automatically guarantee its corporate status in Fiji which means that it will, amongst other things, not be able to sue. To have corporate

status in Fiji, a foreign company must re-register under Fiji's (old) Companies Act and comply with conditions in sections 366 to 368.

7. Section 366 and 367 provide that companies incorporated outside Fiji which establish a place of business within Fiji shall, within 30 days of the establishment of the place of business, deliver to the registrar for registration various particulars set out therein.
8. Once these particulars are registered, then section 368 comes into play in that the Registrar shall then give a certificate accordingly which shall then be conclusive evidence that the company is registered as a foreign company for the purposes of the Companies Act and, by section 368, can accordingly, hold land.
9. By implication, when read together with section 18, as I have said above, once these particulars are registered and the foreign company is registered under Fiji's old Companies Act, then, and only then, can that foreign company's corporate status be recognised in Fiji and accordingly, be entitled to do everything that local company can do *inter alia*, to sue.

BACKGROUND

10. The petitioner, Guangzhou Holdings Limited ("GHL") is a company duly registered in China. It is not registered in Fiji. On 20 August 2014, Messrs Patel & Sharma of Nadi, for and on behalf of GHL presented a petition for the Winding Up of Century Holdings Limited ("CHL"). CHL is a local company having its registered office at HLB Crosbie & Associates in Nadi. The petition is premised on an allegation that CHL is indebted to GHL in the sum of \$300,000 (three hundred thousand dollars).
11. It is not in dispute that GHL did give CHL the sum of \$300,000 at some point in time. Sunil Prasad Mishra, a director of CHL, swears by an affidavit dated 09 September 2014 as follows:

On ... 23rd day of December 2013, Mr Stanley arrived in Fiji with another group of people. During this visit, Mr Stanley told me that he wanted the 36 titles to be issued in the Project to be merged into one as per the framework agreement. After I explained that surveyors would have to be engaged in order to get this done, he gave me a personal Westpac cheque of \$300,000.00 so the surveyors could start working on one title and get a new lease. He also told me to clean up the site and repair the road. All this was done and a new development lease was issued on or about the 14th day of March 2014.

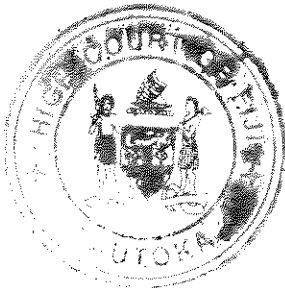
On or about the 23rd day of 2014, one Martin sent me an e-mail regarding the \$300,000.00 that had been given to me by Mr Stanley. A copy of the said e-mail is annexed hereto and marked SPM 9. After receiving the e-mail, I called Martin and told him that the money was not paid for the transfer of the shares to Mr Stanley but for the merging of the titles and that the reason that Mr Stanley had given me \$300,000.00 was that if the Petitioner breached the framework agreement, the balance could be used to put the project back into its original position.

12. On 09 September 2014, Reddy Nandan Lawyers filed a Notice of Motion for and on behalf of CHL seeking the following Orders:
 1. That the Petitioner either by itself or by its agent, directors and/or solicitors and/or howsoever be restrained from taking any steps with regard to winding up the Century Holdings Limited including until further order of the Court.
 2. Any other or further relief that the Court deems just.
13. The above application is supported by an affidavit sworn by Mishra on 09 September 2014. CHL's main grievance is that the Winding Up Notice and the Petition were served at a former address of its accountant agents which was its nominated registered office. However, at the time of service, CHL's accountant agents had long shifted office. Also, CHL asserts that it owes no debt to the petitioner.
14. On 20 September 2014, Deng Weimin, a director of Guangzhou, swore an affidavit by which he insists that service was proper and that CHL was indebted to Guangzhou.
15. On 09 October 2014, Mishra filed a Summons To Fix Security For Costs. His supporting affidavit deposes as follows:
 1. I am the director of the Century Holdings Limited and am duly authorised by the company to make this affidavit on its behalf.
 2. Matters deposed herein are from within the realm of my personal knowledge or save as where stated to be on information and belief and where so stated, I believed the same to be true.
 3. I have been advised by my solicitors and verily believe that the Petitioner does not have any reasonable chance of obtaining the orders sought in the Petition.
 4. That I have been further advised by my solicitors and verily believe that:
 - (a) My solicitors have conducted a search for the Petitioner at the Companies' office in Suva and there is no record of the Petitioner at the said office.
 - (b) I believe that the Petitioner is ordinarily a resident outside the jurisdiction of the court.
 5. I annex hereto and mark A, a copy of a pro-forma Bill of Costs that I requested from my solicitors.
 6. For the reasons aforesaid, I pray to the Honourable Court for the Order sought in the Ex-parte Notice of Motion filed herein.

16. Qian Xuequan swore an affidavit on 26 January 2015 which he filed on the same day. He deposes as follows:
1. That I am one of the Directors of the Petitioner company and am also known as Stanley.
 2. That in so far as the content of this affidavit is within my personal knowledge it is true, in so far as it is not within my personal knowledge, it is true to the best of my knowledge and information and belief.
 3. That I do not agree with paragraph 3 of the said affidavit and say that the Petitioner has a good and high chance of success in this matter as the Respondent Company confirms and agrees that the Respondent had taken from the Petitioner the sum of \$300,000.00 (Three Hundred Thousand Dollars).
 4. That I seek leave of this Honourable Court to read in reply to the said affidavit the affidavit of Deng Weimin sworn on the 20 of September 2014 and filed herein on the 23 of September 2014 in terms of the strength of the Petitioners cause against the Respondent.
 5. That I admit that the Petitioner is not registered in Fiji as a corporation but in China and the monies were given to the Respondent for the project and dealing in Fiji.
 6. That as to paragraph 5 of the said affidavit I say that the bill of costs attached is exorbitant and am advised that seems to have been made on indemnity basis and am also advised that the Courts in Fiji order indemnity costs in exceptional circumstances.
 7. That I verily believe that the costs will not be ordered on indemnity basis in this matter against the Petitioner in the event the Petitioner is unsuccessful.
17. The hearing before me was conducted on 05 June 2015. At the hearing, both counsel argued on both of the Respondent's application for injunction against the winding up petition as well as on the summons for security for costs.

DETERMINATION

18. A foreign company not registered in Fiji under the relevant provisions of the local Companies Act has no locus to institute proceedings in Fiji.
19. Accordingly, I dismiss the petition.
20. I am inclined to grant costs against the petitioner in favour of the defendant. However, I cannot grant costs against an entity that does not exist.



A handwritten signature in black ink, appearing to be "Anare Tuilevuka", written over a horizontal dotted line.

Anare Tuilevuka
JUDGE
29 June 2017.