

IN THE HIGH COURT OF FIJI
AT SUVA
COMPANIES JURISDICTION

Winding Up Action No. HBE 26 of 2019

IN THE MATTER OF JIMS SERVICE
STATION LIMITED a limited liability
company having its registered office at P O
Box 4252, Labasa, Batanikama, Labasa.

AND

IN THE MATTER OF THE COMPANIES ACT
& [the WINDING UP] RULES 2015

BEFORE: Hon. Mr. Justice Vishwa Datt Sharma

COUNSEL: Ms. Low P. : For the Applicant - HFC Bank
Mr. O'Driscoll G. : For the Respondent

DATE OF DECISION: 11th October, 2021 @ 10am

DECISION

*[Summons seeking for Stay Pending Appeal pursuant to the Order 45 Rule 10 of the High Court Rules and the
Inherent Jurisdiction of the High Court]*

INTRODUCTION

- [1] The current **Summons for Stay** has been filed by Jims Service Station Limited on 29th April 2020 and sought for the following Orders-
- i. That the Order made by Master Lal on 02nd day of April 2020 in these proceedings be stayed pending Appeal at Court of Appeal;
 - ii. That the costs of this application be costs in the cause; and
 - iii. Such further and/or other reliefs as this Honourable Court may deem just and expedient

Upon the grounds contained in the affidavit deposited by Nazim Shah.

- [2] This application is made pursuant to **Order 45 Rule 10 of the High Court Rules 1988 and the Inherent Jurisdiction of this Honourable Court.**
- [3] It is hereby noted that the initial Appeal filed in the High Court has now been uplifted and filed at the Court of Appeal as per the directives of the Honourable Chief Justice dated 08th May 2020.
- [4] Pacific Energy (South West Pacific Ltd) has filed an Affidavit deposited by the Manager Credit and Customer Care, Jone Waqasokolala, opposing Jims Service Station Limited's Stay Application.

BACKGROUND FACTS

- [5] On 02nd April 2020, the Master of the High Court made the following Orders-
- a. That the company Jims Service Station Limited is hereby wound up pursuant to Section 513(c) of the Companies Act 2015
 - b. The Official Receiver is appointed as the Provisional Liquidator of the Company
 - c. The Applicant is entitled to cost summarily assessed at \$2,000
- [6] Jims Service Station Limited initially filed an Appeal in the High Court. However, subsequent to the filing, and upon the Chief Justice's directives, the Appeal was filed at the Court of Appeal.
- [7] The Company, Jims Service Station Limited contention is that he has meritorious grounds of Appeal which is likely to succeed because the Master's decision was a nullity as it did not comply with **Section 528 of the Companies Act 2015.**
- [8] The Company also sought an Order for Stay of the Orders made by the Master of the High Court on 02nd April 2020 pending Appeal at the Court of Appeal.

LAW

- [9] The provisions of Order 45 Rule 10 of the High Court Rules 1988 and Section 528 of the Companies Act 3 of 2015 provides as follows-

Matters occurring after judgment, stay of execution etc (O 45, R 10)

Without prejudice to Order 47, Rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order and the Court may by order grant such relief, and on such terms, as it thinks just.

Period within which application must be determined

528.—(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.*

DETERMINATION

- [10] The only issue for this Court to determine at this stage of the proceedings is “**whether the Order made by Master Lal on 02nd day of April 2020 in these proceedings be stayed pending Appeal at the Court of Appeal together with costs?**”
- [11] Stay pending Appeal coupled with the Notice and Grounds of Appeal was initially filed at the High Court Civil Registry in Suva on 29th April 2020.
- [12] However, upon the Honourable Chief Justice's directives of 08th May 2020, the Registry was directed that the Counsel for the Appellant should uplift the documents from the High Court Registry and file a fresh Appeal in the Court of Appeal.
- [13] The Appellant subsequently adhered to the directives hereinabove and filed the Appeal at the Court of Appeal.
- [14] For some reason or the other, the Stay Application was remitted to me upon the Honourable Chief Justice's directive.
- [15] It should be noted that the Stay Application has got nexus with the Appeal application already filed afresh at the Court of Appeal.
- [16] The Application for Stay was heard by the Court on 05th November 2020.
- [17] However, the Summons for Stay Application was subsequently heard by the High Court in Suva.
- [18] Contrary to **Section 572 of the Companies Act 3 of 2015**, the Application seeking for winding up was heard and determined by the Master of the High Court on 02nd April 2020. The Appeals from the Master were remitted and heard by the High Court Judges.
- [19] In fact, taking into consideration the contents of the provision of **Section 572 of the Companies Act**, the High Court did not have the Jurisdiction to hear and determine the Appeals from the Master. However, any winding up matters that were heard and determined by a High Court Judge on Appeal will be remitted to the Court of Appeal.
- [20] **Section 572 of the Companies Act** provides as follows-

Appeals

572. Subject to this Act, an appeal must lie to the Court of Appeal from any

decision or order given or made by the Court in the exercise of the jurisdiction conferred upon it by this Part.

- [21] The question herein is whether the High Court Judge has the power to grant Stay now when a fresh Appeal has already been filed at the Court of Appeal?
- [22] There is no specific provision in the Companies (Winding Up) Rules that I can lay my hands on upon an exhaustive perusal and search.
- [23] I refer to the case of *Sky Glory Pte Limited v. Bhawna Ben Civil Appeal No. ABU 18 of 2020*.

The Hon. Justice Almeida Guneratne referred to the "maxims ***Generalia Specialibus Non Derogant***" and ***Generalius Specilia Derogant***". The Honourable Judge stated that the first maxim means (General provisions do not override special ones) and the second means (special provisions override general ones). Very much the two sides of the same coin the essence of which is to say a general statute must yield to those of a special one. This is also referred to as **the Rule of Implied Exception in Statutory Interpretation**.

CONCLUSION

- [24] The *High Court Rules 1988* lays down procedure in general with regards to pending civil matters. On the other hand, the *Companies Act 3 of 2015* mandates a special procedure.
- [25] The current Application is made pursuant to *Order 45 Rule 10 of the High Court Rules 1988 and the Inherent Jurisdiction of this Honourable Court*. It will be noted that the current Application is filed by the use of the provisions of the *High Court Rules 1988* and not the *Companies act 3 of 2015*.
- [26] Consequently, the provisions of the *Companies Act 3 of 2015* prevails over the *High Court Act and the Rules 1988*.
- [27] I reiterate, that there is no provision in the *Companies (Winding Up) Rules* whereby an Order for Stay may be sought.
- [28] For the aforesaid rationale, the Application for Stay fails and I have no alternative but to strike out the Summons for Stay accordingly.

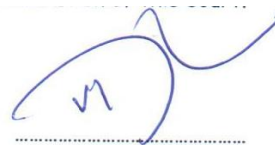
ORDERS

- i. The Respondent's Summons seeking for an Order for Stay pending Appeal at the Court of Appeal is struck out.
- ii. There will be no Order as to costs at the discretion of this Court.

Dated at Suva this 11th Day of October, 2021



cc: Maqbool and Company, Labasa
Howards Lawyers, Suva


Vishwa Datt Sharma
Judge