

**IN THE HIGH COURT OF FIJI AT SUVA  
COMPANIES JURISDICTION**

Companies Action No. HBE 30 of 2022

**IN THE MATTER** of the invalidity of their appointment as Receivers & Managers to Island Grace (Fiji) Limited dated 27 May 2022 **VAUGHAN STRAWBRIDGE AND DAVID MCGRATH** ("the First Defendants") against **SATORI HOLDINGS LIMITED** ("the Plaintiff").

**AND**

**IN THE MATTER** of an Application by the Plaintiff for an Order to set aside their appointment under Section 445 of the Companies Act 2015

**BETWEEN:** **SATORI HOLDINGS LIMITED** a foreign company registered in Fiji under the Section 367 of the Companies Act (Cap 247) having its registered office at Level 7 Pacific House, 1 Butt Street, Suva

**Plaintiff**

**AND:** **VAUGHAN STRAWBRIDGE AND DAVID MCGRATH** both of FTI Consulting (Australia) Pty Ltd, level 22 1 Macquarie Place, Sydney NSW 2000, Australia

**First Defendants**

**AND:** **ISLAND GRACE (FIJI) LIMITED** a limited liability company having its registered office Unit 016, Retail & Commercial Centre, Port Denarau, Nadi, Fiji

**Second Defendant**

**Counsel** : **Plaintiff: Mr Haniff. F**  
: **1<sup>st</sup> Defendants: Ms Lal. R**  
**Date of Hearing** : **24.11.2022**  
**Date of Judgment** : **16.12.2022**

## RULING

### INTRODUCTION

1. This Ruling relate only to the interlocutory decision as to which Law Firm should represent Plaintiff as two Law Firms (H, and N) could not resolve the issue amicably. Plaintiff is a foreign incorporated company **registered** in Fiji. Plaintiff filed this action by way of originating summons seeking orders regarding inter *alia* validity of appointment of first Defendants as liquidators and managers, pursuant to an order made by foreign country appointing an interim liquidator for an application to liquidate under New Zealand Companies Act 1993.
2. This action was filed by a Law Firm (H). Before Plaintiff's originating summons was heard, another Law Firm (N) had filed purported 'Notice of Appointment of Solicitors' for the Plaintiff upon instructions of the liquidator appointed pursuant to interim liquidator appointed in foreign jurisdiction.
3. Plaintiff is a Foreign Company registered in terms of Section 56 to 72 of Companies Act 2015(Companies Act). Section 62 (11)of Companies Act deals *inter alia* with regard to commencement of winding up of such a Foreign Company registered under Companies Act.
4. Section 62 (14) of Companies Act, deals with the situation where a foreign company has been wound up, dissolved or deregistered in its place of incorporation.
5. As this is an action filed primarily challenging the appointment of first Defendants as liquidators for Plaintiff, a solicitor appointed by such a liquidator cannot be considered as lawyers for the Plaintiff. Apart from that N's purported 'Notice of Appointment' is procedurally irregular in terms of Order 67 of High Court Rules 1988.

### FACTS

6. On 17.6.2022, H filed an originating summons supported by the affidavit of Mr Andrew Griffiths. H was the solicitors on the record.
7. Plaintiff is seeking inter *alia* to set aside the appointment of first Defendant as receivers and or liquidators pursuant to interim order made in foreign jurisdiction.
8. On 29.08.2022, first Defendants filed two summons, and they are Summons to strike out the Plaintiff's action or to convert the action for writ Action, and to set

aside or discharge this action.

9. This action was fixed for substantive hearing on 23.9.2022 along with interlocutory applications seeking strike out and setting aside of this action. This was done to save time considering the nature of the objections that could be dealt with the substantive hearing, rather than having to address such issues in abstract that can have an impact on case management.
10. On that day both H and N appeared in court and stated that both of them were appearing for the Plaintiff. The court allowed them to solve the issue amicably but they could not.
11. So the Court adjourned the substantive hearing, and preliminary hearing was held to determine the legal representation of Plaintiff.

### **Procedural Irregularity**

12. On 20.9.2022, N filed purported 'Notice of Appointment of Solicitor'. This is the only document that is filed by N apart from written submissions filed for interlocutory hearing.
13. The filing of purported 'Notice of Appointment of Solicitor' by N is irregular. A Notice of Appointment of Solicitor, can be filed when a party, after having sued and/or defended *in person*, appoints a solicitor to act in the matter in terms of Order 67 Rule (3) of the High Court Rules, 1988.
14. As the Plaintiff is a legal person it cannot legally appear *in person* and would have been clear to N and cannot proceed to file a Notice of Appointment of Solicitor.
15. They were also aware of the pending action by H, who had represented Plaintiff, as this action was fixed for hearing by 20.9.2022.
16. Order 67, Rule 1 (1) of the High Court Rules, 1988 makes it clear that until a Notice of Change of Solicitors has been filed, the solicitors on the record for the party continue to act for the party until final conclusion of the matter.
17. Order 67, Rule 1(1) of High Court Rules 1988 states,

67 (1) A party to any cause or matter who sues or defends by a barrister and solicitor may change his or her barrister and solicitor without an order for that purpose but, **unless and**

**until notice of the change is filed and copies of the notice are served in accordance with this Rule** the former barrister and solicitor shall, subject to Rule 5 and 6, **be considered the barrister and solicitor of the party until the final conclusion** of the cause or matter, whether in the High Court or the Court of Appeal.(emphasis added)

18. N had not followed above provision, hence cannot be considered as legal representative of Plaintiff, but this is a procedural irregularity which may be rectified.
19. At the hearing I requested counsel for N to make submissions on this but she could not and that shows that N had not followed mandatory procedural requirement. So for this originating summons H is to be considered as barrister and solicitor of Plaintiff on the material made available to me at this moment. This may change if N followed proper procedure, and or change of circumstances, but I cannot anticipate or reject such an outcome. So I do not base my decision solely on the procedural irregularity of N for obvious reasons.
20. So I am not adopting the path of least resistance to reject N as legal representatives of Plaintiff, though it is also an additional reason.

#### **Legal Consequence of Winding Up of Foreign Company Registered under Companies Act**

21. Plaintiff is a special category of a company, “**Registered**” in terms of Companies Act, but **incorporated** in New Zealand. As Plaintiff is not a locally incorporated company there are distinct provisions that apply to it and not identical to a company incorporated locally. It makes Plaintiff a special category of a legal entity, and provisions relating to such an entity needs to be examined.
22. The contention that New Zealand incorporated company and orders made regarding it including interim liquidation has no place in Fiji cannot be accepted for obvious reasons. Though Plaintiff is a legal entity it is not incorporated in Fiji in terms of Companies Act, but had gain legal personality as a Foreign Company ‘Registered’ in terms of Companies Act.
23. At the hearing of this action, neither party submitted any legal provision under Companies Act that deals with **interim orders** of a country of incorporation of the foreign country. There are specific provisions regarding commencement of winding up of foreign company incorporated in another jurisdiction, which is dealt later.

### **Winding up of Foreign Company registered under Companies Act.**

24. The Plaintiff is a company incorporated in New Zealand. The Plaintiff is registered as a foreign company under Section 367 of Companies Act that was repealed.(see paragraph 15 of written submissions)
25. Section 724(f) of Companies Act deals with transitional provisions under Part 46. Accordingly Plaintiff is deemed 'registered' under Companies Act.
26. H was appointed by the Plaintiff, (Satori Holdings Limited), whereas N act on instructions of first Defendant (Mr Mark McDonald and Mr Ray Cox of Grant Thornton, who were appointed as interim liquidators of in New Zealand, the country of incorporation of foreign company.)
27. A company registered as a Foreign Company under the Companies Act has competence to act as a legal person in Fiji but its incorporation is in another jurisdiction hence cannot be identical to a local Company incorporated under the Laws of Fiji for certain matters.
28. Hence the contention of H that Plaintiff should be considered as locally incorporated company cannot be accepted.
29. Section 58(2) of the Companies Act which provides the general powers of competency to the Foreign Company in Fiji. It is capable of suing and being sued and there is no qualm on that character, and that is how H instituted this action. There is no issue regarding legal personality of Plaintiff.
30. The crux of the matter is the legal consequence of interim liquidation order or winding up proceedings in the country of its incorporation. These orders were made on 21.6.2022 by High Court of New Zealand and annexed to affidavit filed by first Defendants in support of their motion filed on 21.9.2022 as 'VNS 3'.
31. The liquidation of a company in the place of incorporation cannot be ignored by local branch and specific provisions relating to this are found in Section 62(11) of Companies Act.
32. Accordingly, Plaintiff which is only a Foreign Company "Registered" under Companies Act, is not immune from orders made in New Zealand regarding winding up of its New Zealand incorporated entity in terms of Section 62(11) of Companies Act.

33. Section 62 (11) of Companies Act deals *inter alia* with regard to commencement of winding up of such a Foreign Company registered under Companies Act.

It reads,

“(11) Where a registered Foreign Company commences to be wound up, or is dissolved or deregistered, **in its place of incorporation or formation**—

(a) each person who, on the day when the winding up proceedings began, was a Local Agent of the Foreign Company must, within the period of 28 days after that day or within that period as extended by the Registrar in special circumstances, Lodge or cause to be Lodged notice of that fact and, when a liquidator is appointed, notice of the appointment; and

(b) the Court must, on application by the person who is the liquidator for the Foreign Company's place of incorporation or formation, or by the Registrar, appoint a liquidator of the Foreign Company.”(emphasis added)

34. According to Section 62(11)(b) of Companies Act, the court must appoint a liquidator for the Foreign Company, upon an application made by ‘person who is the liquidator for the foreign company’s place of incorporation or formation, or by the Registrar’

35. The process of such liquidation is found in Section 62(12) of Companies Act, which states

“(12) A liquidator of a registered Foreign Company who is appointed by the Court-

(a) **must, before any distribution of the Foreign Company's Property is made**, by advertisement in a daily newspaper circulating generally in Fiji, invite all creditors to make their claims against the Foreign Company within a reasonable time before the distribution;

(b) **must not, without obtaining an order of the Court, pay out a creditor** of the Foreign Company to the exclusion of another creditor of the Foreign Company; and

(c) **must, unless the Court otherwise orders, recover and realise the Property of the Foreign Company in this jurisdiction** and must pay the net amount so recovered and realised to the liquidator of the Foreign Company for its place of incorporation or formation.”(emphasis added)

36. The above provision applies when the **commencement** of winding up or liquidation in its place of incorporation, and in this case New Zealand. This is yet to happen and only an interim liquidator is appointed with some specific scope, in an *ex parte* application on 21.6.2022. There is no evidence of variation of such orders though minutes of 6.9.2022 of

New Zealand proceedings indicate that both parties to said action were legally resented in the court.

37. In this action Plaintiff is challenging the actions taken by interim liquidators appointed by New Zealand court including and not limited to the said appointment of receivers. So one cannot assume that such appointment as correct position of Plaintiff's disputed receivership and allow Plaintiff to be represented by said interim liquidators appointed in New Zealand.
38. I am not going to decide the validity of such appointment at this stage as this is the issue for final judgment. So the issue of Reciprocal Enforcement of Judgment Act can be dealt in abstract, and is a matter for final hearing.
39. So, in my judgment Plaintiff is represented by H as its barrister and solicitor, till that is legally changed.

#### CONCLUSION

40. Plaintiff is challenging the appointment of interim liquidators hence Plaintiff cannot be represented by solicitors for the liquidators that would create a clear conflict in this action. Apart from that for the change of barrister of solicitor needs to in terms of Order 67 of High Court Rules 1988.

#### FINAL ORDER

- a. Plaintiff is represented by solicitors on record and this is not changed by subsequent filing of purported Notice of Appointment of Solicitors on 20.9.2022.
- b. No order as to the costs.

Dated at Suva this 16<sup>th</sup> day of December, 2022.



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**Justice Deepthi Amaratunga**  
**High Court, Suva**