

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) IN LAUTOKA
EXERCISING COMPANIES JURISDICTION**

WINDING UP ACTION NO. HBE 09 OF 2025

IN THE MATTER OF MARINE CONSTRUCTION (FIJI) PTE LIMITED,
a limited liability company having its registered office at Level 10,
BSP Suva Central, Ranwick Road, Suva, Fiji Islands

AND

IN THE MATTER of the Companies Act No. 3 of 2015

BETWEEN : **FINELINE HOLDINGS (PTE) LTD** **APPLICANT**

AND : **MARINE CONSTRUCTION (FIJI) PTE LTD** **RESPONDENT**

BEFORE : A. M. Mohamed Mackie, J

COUNSEL : Mr. Wainiqolo - for the Applicant Company.
Mr. J. R. Singh & Mr. Liganivai J. - for the Respondent Company
Counsel for the Supporting Creditor got herself excused.

DATE OF HEARING : 11th December 2025.

WRITTEN SUBMISSION: Filed by the Respondent on 11th December 2025.
Not filed by the Applicant.

DATE OF RULING : 26th February 2026.

RULING

A. INTRODUCTION:

1. This Application for Winding up was filed on 09th May 2025 by the Applicant Company, namely, FINELINE HOLDING (PTE) Limited to wind up the Respondent Company, namely, MARINE CONSTRUCTION (FIJI) PTE LTD (“Company”) on the ground that the Company is unable to pay its debts.
2. An affidavit verifying the Application for winding up was sworn on 5th May 2025 by Mr. BRENDAN HANNON, (“Hannon”) the Director of FINELINE HOLDINGS LTD and filed along with the Application. The Applicant is a creditor of the Respondent Company, as per the Application.
3. When the matter stood fixed for hearing on 14th July 2025, the Solicitors for the Respondent Company, on 7th July 2025, filed their Notice of Intention to Appear,

together with Summons for Leave to oppose Winding Up Application, seeking the following Orders;

1. *The Respondent (i.e. Marine Construction (Fiji) Pte Ltd) be given leave to oppose the winding up application against the Respondent on certain grounds;*
 2. *The Court extends the time for the Respondent to file a supplementary affidavit in opposition to 14 days after this application is determined by the Court;*
 3. *The Applicant (i.e. Fineline Holdings Pte Limited) pays the costs of this application on an indemnity basis; and*
 4. *Any further orders the Court deems just.*
4. The said Summons was supported by the Affidavit sworn on 4th July 2025 by one **Mr. Matthew James Blackburn Browning** – Director of the Respondent Company and filed along with annexures marked as “MB-1” to “MB-5”.
 5. At the hearing into the said timely Application (made within 7 days prior to the hearing of Winding up Application) by the Respondent company seeking leave to oppose the Application for winding up, the Solicitors for the Respondent Company, in addition to their oral submissions, filed their helpful written submissions as well, for which I thank them profusely.
 6. Pursuant to the said hearing, this Court on 21st August 2025, made the order granting leave for the Respondent Company to oppose the Application for winding up and permitted the Respondent to file a supplementary Affidavit within 14 days, leaving the Applicant at liberty to file the Affidavit in Response thereto within 14 days thereafter.
 7. Though, the Respondent on 4th September 2025 filed their Supplementary Affidavit sworn by one **Mr. Timothy Bryant** on 4th September 2025, together with further annexures marked as “TB-1” to “TB-8”, no Affidavit in Response thereto was filed by the Applicant Company.
 8. Accordingly, when the substantive matter came up for hearing on 11th December 2025, Counsel for the Applicant moved for an adjournment on the basis that he is not duly ready for the hearing. They had also not filed Affidavit in response to the Respondent’s supplementary Affidavit. As there were no new hearing dates available, the Court declined the Applicant’s oral Application for the adjournment and fixed the matter to be disposed by way of written submissions, by allowing the parties to file their written submissions prior to 25th January 2025.
 9. The Respondent’s Solicitors had duly filed their written submissions on 11th December 2025, while the Solicitors for the supporting Creditors got themselves excused from the proceedings.
 10. Hence, this Ruling is pronounced relying on the Applicant’s substantive Application, its Affidavit in Support, the Respondent’s Affidavit filed in support of seeking Leave to oppose, its supplementary Affidavit filed pursuant to granting of leave and the written submissions filed by the Respondent’s Solicitors on 11th December 2025. The Applicant

company did not file its Affidavit in response or the written submissions despite they were given ample time.

B. ANALYSIS:

11. My Ruling dated 21st August 2025, on granting leave, contains the detailed introduction and the background facts for this proceeding, which warrants no repetition.
12. In the said Ruling, I have also given all my reasons in justification of granting leave for the Respondent to oppose the Application for winding up. The averments in the subsequent supplementary Affidavit filed by the Respondent, supported by further documentary evidence marked from “TB-1” to “TB-8”, have not been challenged by the Applicant at all by filing an Affidavit in Response. They also failed to respond to the legal arguments advanced by the Respondent’s Counsel in their submissions, by filing an appropriate simultaneous or reply submissions thereto.
13. Primarily, as alluded to by the Respondent’s Solicitors in their submissions, I find that the Winding up Application by the Applicant Company is defective for number of reasons.
14. This Application purports to rely on the Demand dated 18th March 2025 indicating the alleged Debt as \$411,277.53, which sum was accordingly averred in paragraphs 5 and 6 of the Affidavit Verifying the Application for Winding Up. However, this Demand was not issued by the Applicant FINELINE HOLDINGS (PTE) LTD (“FHL”). It was issued by Messrs. Law Solutions acting on behalf of Mr. Brendan Hannon and not FHL and it was not signed by the FHL as averred in paragraph 6 of the Applicant’s verifying Affidavit.
15. If this Court is to recognize and act up on the said defective Demand letter dated 18th March 2025, it will go against the well – accepted doctrine in Company Law which states “*a company is a legal entity separate from the legal persons who became associated for its formation or who are now its members and directors*”.
16. The above doctrine was discussed in the case of ***Salomon v Salomon & Company Ltd [1897] AC 22***, where it was held at page 51 that;

“The Company is al Law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them”
17. The said princple is consistently recognized by our Courts in Fiji. Vide ***Amy Street Pharmacy Pte Limited v Suva Private Hospital Pte Limited & Or-*** Civil Action No-11 of 2021 delivered on 27th March 2025, wherein Justice D. Sharma held in paragraph 22 as follows.

“..... Companies are separate entities and the Plaintiff is not entitled to receive any documents from companies that are not party to these proceedings per se.”

18. The issuing of Statutory Demand is the first step under section 515 of the Company's Act. It is a proper and flawless Statutory Demand that, among other requirements, lays the solid foundation for a well-constituted Winding up proceedings. In ***Biju Investment Pte Ltd V Transfield Building Solutions (Fiji) Ltd [2024] FJCA 133***, the Court of Appeal held in paragraphs 35 and 38 as follows;

"35. The issue of a statutory demand (failure with which to comply creates a rebuttable presumption of insolvency on the part of the debtor) is the first step in initiating a collective insolvency proceeding. It is more than a contest between parties to secure payment of a debt payable by one to the other. That means that a decision on the application has a public interest dimension. In the vast majority of cases, winding up petitions are brought on the basis of non-compliance with a statutory demand. The collective insolvency process provides a public character to the dispute that justifies consideration of the issues notwithstanding that, otherwise, the dispute is moot...."

38. As I have said, the issue of a statutory demand is (generally) the first step to commence a creditor's proceeding to have the debtor company wound up, with all the consequences that flow from that..."

19. As alluded to above, this Court by its Ruling dated 21st August 2025, while granting the leave for the Respondent Company to oppose the Application for winding up, had also granted an opportunity to the Applicant to respond to the averments in the Respondent's Supplementary Affidavit filed on 4th September 2025 with additional evidence. The evidence adduced by the Respondent through the said Affidavit and the annexures thereto were found to be convincing. But the Applicant, for the reasons best-known to it, did not file any Affidavit in Response thereto.
20. The averments in the initial Affidavit of the Respondent sworn by **Mr. Mathew James Blackburn Browning** on 4th July 2025, the contents of the annexure marked thereto as "MB-1" to "MB-5", and those of the subsequent Affidavit sworn by **Mr. Timothy Bryant** and filed on 4th September 2025 along with "TB-1" to "TB-8" have amply demonstrated that the winding Up Application by the Applicant is also defective and cannot be proceeded with for the following reasons; **THAT**
- a. There is a genuine dispute regarding the debt claimed by the Applicant since the contract hereof is still ongoing and has not been terminated.
 - b. As averred in paragraphs 10 to 14 of the **Timothy Bryant's** Affidavit filed on 4th September 2025, there appears to be an unsettled invoice for a part-payment in a sum of FJ\$ 1,79,400.00 and this amount remains undisputed by the Applicant. No Affidavit in response filed refuting this claim.
 - c. There is no specific timeframe set for in the contract for the practical completion of the works and the contract is still ongoing. Thus, it was premature for a Demand Letter to be issued aimed at the Winding up in this manner.
 - d. The claim by the Respondent that there is an off-setting claim against the applicant has not been refuted by the Applicant.

- e. No plausible explanation given by the Applicant for the discrepancy appeared between the sum of **\$383,730.07** demanded with 10% interest in the Demand letter dated 10th March 2025 and the sum of **\$411,277.53** demanded with 8% interest as per the Demand Letter dated 18th March 2025.
- f. Failure of the Applicant to resort to the dispute resolution Mechanism embodied in the Contract, which stipulated that any dispute to be resolved pursuant to the **“Building and Construction Industry Payment Act”** and under the Australian Law.

21. For the reasons adumbrated above, I stand convinced that the Applicant could not have commenced these proceedings for Winding up the Respondent Company and the Application for Winding up has to necessarily fail.

C. COSTS

22. In the case of ***Prasad v Divisional Engineer Northern (No 2) [2008] FJHC 234; HBJ03.2007 (25 September 2008)***, the principles on indemnity costs enunciated in various authorities were summarized.

a. *‘A court has ‘absolute and unfettered’ discretion vis-à-vis the award of costs but discretion ‘must be exercised judicially’: Trade Practices Commission v. Nicholas Enterprises (1979) 28 ALR 201, at 207*

b. *A party against whom indemnity costs are sought ‘is entitled to notice of the order sought’: Huntsman Chemical Company Australia Limited v. International Cools Australia Ltd (1995) NSWLR 242*

c. *That such notice is required as ‘a principle of elementary justice’ applying to both civil and criminal cases: Sayed Mukhtar Shah v. Elizabeth Rice and Ors (Crim Appeal No. AAU0007 of 1997S, High Court Crim Action No. HAA002 of 1997, 12 November 1999), at 5, per Sir Moti Tikaram, P. Casey and Barker, JJA*

‘...neither considerations of hardship to the successful party nor the over-optimism of an unsuccessful opponent would by themselves justify an award beyond party and party costs. But additional costs may be called for if there has been reprehensible conduct by the party liable’: State v. The Police Service Commission; Ex parte Beniamino Naviveli (Judicial Review 29/94; CA Appeal No. 52/95, 19 August 1996), at 6

d. *Usually, party/party costs are awarded, with indemnity costs awarded only ‘where there are exceptional reasons for doing so’: Colgate-Palmolive Co. v. Cussons Pty Ltd at 232-34; Bowen Jones v. Bowen Jones [1986] 3 All ER 163; Re Malley SM; Ex parte Gardner [] 2001] WASCA 83; SDS Corporation Ltd v. Pasonnay Pty Ltd & Anor [2004] WASC 26 (S2) (23 July 2004), at 16, per Roberts-Smith, J.*

e. *Indemnity costs can be ordered as and when the justice of the case so requires: Lee v. Mavaddat [2005] WASC 68 (25 April 2005), per Roberts-Smith, J.*

f. *‘...it has been suggested that the order of costs on a solicitor and client basis should be reserved to a case where the conduct of a party or its representatives is so unsatisfactory as to call out for a special order. Thus, if it represents an abuse of process of the Court the conduct may attract such an order’: Dillon and Ors v. Baltic Shipping Co. (‘The Mikhail Lermontov’) (1991) 2 Lloyds Rep 155, at 176, per Kirby, P.*

- g. *Solicitor/client or indemnity costs can be considered appropriately 'whenever it appears that an action has been commenced or continued in circumstances where the applicant, properly advised, should have known ... he had no chance of success': Fountain Selected Meats (Sales) Pty Ltd v. International Produce Merchants Ltd & Ors [1988] FCA 202; (1998) 81 ALR 397, at 401, per Woodward, J.*
- h. *'... where a party has by its conduct unnecessarily increased the cost of litigation, it is appropriate that the party so acting should bear that increased cost. Persisting in a case which can only be characterized as "hopeless" ... may lead the court to [determine] that the party whose conduct gave rise to the costs should bear them in full': Quancorp Pty Ltd & Anor v. MacDonald & Ors [1999] WASC 101, at paras [6]-[7], per Wheeler, J.*

23. In this matter, the record shows that the Applicant Company was put on adequate notice by the Respondent's Solicitors that the Respondent would seek costs on an indemnity basis in the event the statutory demand is not withdrawn. The Applicant and its Solicitors knew very well or ought to have known that they could not have commenced and proceeded with this Application for a successful outcome.
24. The Applicant had filed this Application for Winding up, when the Applicant was not entitled to do so in the light of several flaws highlighted above, but have proceeded with the aim of recovering an amount, which had not become due at the time material.
25. The Applicant at least, after the pronouncement of the Ruling on 21st August 2025 granting leave for the Respondent to oppose the Application, could have had their second thought not to proceed with this Application, particularly, when they had not filed the Affidavit in response to the Applicant's Affidavit with overwhelming evidence against the Applicant's move. Thus, I find that the Respondent is entitled for costs on indemnity basis.

Costs against the Solicitors /Counsel.

26. The Applicant's Solicitors/ Counsel, being the officers of this Court, could very well have played a pivotal and a progressive role to avoid the unnecessary costs, which were not warranted in the light of the facts and circumstances in this matter.
27. I am mindful of the professional obligation on the part of the Applicant's Solicitors/ Counsel to act in the best interest of the Applicant's rights, and advance the best available arguments in order to pursue the reliefs that the Applicant is legally entitled to. At the same time, they also have to be mindful as to the propriety of the exercise they engage in and the extent of its adverse effects on the opposing party and on the system at large.
28. Order 62 Rule 11 (1) of the High court rules 1988 states;

Personal liability of legal representative for costs (O 62, R 11)

11 (1) Subject to the following provisions of this Rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may—

(a) order—

(i) *the legal representative whom it considers to be responsible (whether personally, or through a servant or agent) to repay to his or her client costs which the client has been ordered to pay to any other party to the proceedings; or*

(ii) *the legal representative personally to indemnify such other parties against costs payable by them; and*

29. Counsel for the Respondent has drawn my attention towards number of case Law authorities in this regard that sanctions the ordering of costs personally payable by the solicitors/ counsel.

30. In case of ***In re Pacific Fishing Company Ltd [2013] FJHC 336***, Justice Amarathunga, as he then was, awarded an indemnity costs of \$3,000.00 against the Petitioner's Solicitor because the Respondent had incurred costs unreasonably and improperly. The Winding up action was instigated on the instructions of a former member of the PACFO Employee union, who did not have the Union's permission to do so. In imposing costs against the petitioner's Solicitor, his Lordship held at paragraph 10;

"When a client seeks legal advice from a practitioner it is his duty to instruct the client properly and not to be a rubber stamp of what the client seeks..."

31. On 6th June 2025, the Respondent Company through its Solicitors wrote to the Applicant company requesting that the Winding Up application be withdrawn in an effort to save costs for the parties, which would have saved the time and resources of the Court as well. The Applicant company and its solicitors were put on notice as to costs, if the winding up Application was not withdrawn and this letter was not even responded by the Applicant's solicitors.

32. The Applicant's Solicitors were provided with the necessary documents which indicated that the winding up Application was defective. The Ruling pronounced by this Court on 21st August 2025, granting leave to oppose, should have alerted the Applicant's Solicitors. They failed to respond to the Respondent's Affidavits and also failed withdraw at that belated stage even. This caused the Respondent to incur the unnecessary costs.


33. Under these circumstances, it is justifiable to impose the costs against the Applicant Company on indemnity basis, which in my view should be in a higher scale. However, considering the fact that the contract in question still remains in force without being subjected to an early determination, and the work is said to be still in progress, with the view of preserving the sound relationship between the parties, I decide to impose a costs only in a sum of FJ \$6,000.00 (Six Thousand Fijian Dollars).

34. Since the Court has formed a view that the Solicitors / Counsel for the Applicant also should bear the brunt of the Costs ordered hereof, they should pay out of their personal fund a sum of \$2, 000.00 (Two Thousand Dollars) from and out of the total costs ordered in a sum of \$6,000 (Six thousand Dollars).

D. ORDERS:

1. The Application for winding up the Respondent Company fails.
2. The Application filed on 09th May 2025 seeking to wind up the Respondent Company -MARINE CONSTRUCTION (FIJI) LTD- is hereby dismissed.
3. The Respondent Company is entitled for a sum of \$6,000.00 (Six thousand Dollars), being the indemnity costs on account of the whole proceedings.
4. The Applicant Company shall pay \$4,000.00 out of the said sum, while the Solicitors for the Applicant pay the balance sum of \$2,000.00, within 14 days from today.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 26th day of February, 2026.

SOLICITORS:

For the Applicant
For the Respondent
For the Supporting Creditor

Messrs. Law Solutions –Barristers & Solicitors
Messrs. Munro Leys- Barristers & Solicitors
Messrs. Haniff Tuitoga - Barristers & Solicitors –
Excused from this hearing.