

A

IN RE PACIFIC TRANSPORT LIMITED

[SUPREME COURT—Madhoji J.—20 May 1983]

Civil Jurisdiction

B *Company Law—Petition for winding up—affairs of Company alleged to have been conducted in an oppressive manner—petitioner's shares offered for sale to other shareholders—price offered therefore said to have been unreasonable and below market value—petitioner entitled to sell elsewhere—no evidence that affairs of company conducted in a way oppressive to petitioner—abuse of process—petition struck out.*

C

H. Lateef for the Company

A. B. Ali for the Petitioner

Petition by the holder of 625 out of a total issue of 62,500 shares for the winding up of Pacific Transport Limited upon the ground that the affairs of the company were being conducted in an oppressive manner.

D

On 22 April 1982 it appeared that petitioner had offered to sell his 625 shares to the other shareholders. On 30 November 1982 the Chairman of Directors replied on behalf of other shareholders stating that they considered \$15 per share to be reasonable, and asked the petitioner to confirm this price so that the transfer could be effected. The petitioner had had the shares valued by a firm of chartered accountants. According to their valuation the fair market value of each such share was \$55.733 as at 31 December 1982. Further the petitioner alleged that the company had been conducting its affairs without informing him and without supplying him of financial statements. He had sought an order in a court action for the company to provide him with audited balance sheets and minutes of the company for the years 1978—1980 and 1982, which action had been withdrawn on his request having being complied with.

F

G

Petitioner's counsel contended that the main ground now upon which he relied was that the other shareholders offered only \$15 for each of his shares. The petitioner said therefore that in the circumstances it was just and equitable that the company be wound up.

H

In reply the Managing Director stated that the company was prosperous, had declared and paid good dividends and that the petition was an abuse of the process of the court not having been presented bona fide but merely to bring pressure on the other shareholders to purchase the petitioner's share for a totally unrealistic figure. He contended that the proceedings ought to be stopped before the petition was advertised and heard.

Held: The Court has power to stop proceedings where shown that the petition would fail and would be an abuse. **A**

The petitioner had shown no ground for the winding up of the company.

The other shareholders had no obligation to purchase the shares. If the price they offered did not appear reasonable to the petitioner he could sell them elsewhere provided he complied with the relevant provisions in the Articles. **B**

The conduct of the Company or its Directors was not shown to be in any way oppressive to the petitioner.

Petition struck out as an abuse of the process of the Court. **C**

Cases referred to:

Bryanston Finance Ltd. v. de Vries No. 2 (1976) Ch. 63
Charles Forte Investments Ltd. v. Amanda (1964) Ch. 240
re a Company (1894) 2 Ch. 349. **D**

MADHOL, Mr Justice.

Judgment

This is a petition for the winding up of Pacific Transport Limited, a private company limited by shares. Out of the 62,500 \$2 issued shares of the company the petitioner holds 625 shares only. **E**

The main ground on which the petition is based is contained in paragraphs 6, 9, 10 and 11 of the petition which show that on 22nd April, 1982 the petitioner offered to sell his 625 shares to the other shareholders. On the 30th November, 1982 the Chairman of directors of the company replied to the petitioner on behalf of the other shareholders and stated that the other shareholders considered \$15 per share to be reasonable and asked the petitioner to confirm this price so that the transfer of his shares could be effected. The petitioner had had shares valued by Kapadia, Singh & Company, a firm of Chartered Accountants and according to the valuation the fair market value of each such share was \$55.7333 as at 31st December, 1982. **F**

Therefore the petitioner says that the affairs of the company is being conducted in an oppressive manner in that the other shareholders are offering him a price for his shares which is unreasonable and below market value. **G**

The petitioner also alleged in paragraphs 7 and 8 of his petition that the company had been conducting its affairs without informing the petitioner nor supplying him with financial affairs of the company and that he was compelled to resort to Court action seeking an order that the company provide him with audited balance sheets and minutes of the company for the years 1978, 1979, 1980 and 1982. **H**

Petitioner's counsel admitted that this action was withdrawn by the petitioner on his request being complied with and that the main ground now is regarding the fact

A that the other shareholders are offering him only \$15 for each of his 625 shares. The petitioner says that in the circumstances it is just and equitable that the company be wound up.

B In reply to the petitioner's affidavit the managing director of the company, says that the company is prosperous and has declared and paid to the petitioner good dividends and that the petition is an abuse of the process of the Court in that the petition is not presented bona fide but merely to bring pressure on the other shareholders to purchase the petitioner's shares for a totally unrealistic figure and therefore these proceedings ought to be stopped at this stage before the petition is advertised and heard.

C The authorities show that the Court has power to stop the proceedings where it is shown that the petition would fail and would be an abuse of the process of the Court.

Bryanston Finance Ltd. v. de Vries No. 2 (1976) Ch. 63
Charles Forte Investments Ltd. v. Amanda (1964) Ch. 240
In re a Company (1894) 2 Ch. 349

In my view the petitioner has shown no sufficient grounds for the winding up of the company and that his petition would fail.

D The other shareholders of the company are under no obligation to purchase the petitioner's shares. They have in response to the petitioner's letter offered to buy them at \$15 a share. If this price does not appear reasonable to the petitioner he may sell them elsewhere provided he complies with the provisions in the articles with regard to the restriction on the sale of shares. I do not find the conduct of the company or its directors in any way oppressive to the petitioner. It is clear these shares are earning good dividends and the company is prosperous. There is no evidence of

E the company conducting its affairs in any way oppressive to the petitioner.

I therefore find the petition in this case would fail and is an abuse of the process of the Court and order it to be struck out as an abuse of the process of the Court.

Petition dismissed.