

J. Row

SC 747

IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.
Friday,

29th June, 1973.

IN THE MATTER of the Companies Ordinance
1963-1968

AND IN THE MATTER of an Application by
Raymond William Mullins pursuant to
Section 122.

1973

June 26
and 29.

PORT
MORESBY

Prentice
J.

The applicant was convicted at the Boroko District Court on 17th October, 1969, of larceny of plumber's supplies to the value of \$109.52. He was at that time a director and chairman of M. & E. Plumbing Pty. Ltd. He was sentenced to, and served, one month's imprisonment at Bomana, and thereupon resumed duties as a director. He has had no other convictions.

On 11th March, 1970 M. & E. Plumbing Pty. Ltd. was advised that the Companies Registry records indicated the applicant was still acting as a director in apparent contravention of Sec. 122 of the Companies Ordinance. The applicant then resigned as a director from the 17th April, since when the company has been directed by the applicant's wife and father. The company is clearly doing well. It has been accepted as a guarantor for a \$65,000 loan from the Commonwealth Trading Bank to Ravan Pty. Ltd., a company in which it owns a 50 per cent interest. It holds a one-third interest in Valley Squash Pty. Ltd. The applicant desires to become the director of Ravan, and Valley Squash, as well as to be reinstated to the board of M. & E. Plumbing.

The application is supported by affidavits of directors of three companies. A Mr. Van Hass directs Ravan Pty. Ltd. and desires the applicant's participation in its board's activities. (One might expect this to be a concomitant of the plumbing company's guarantee of Ravan's loan.) A Mr. Fitzhenry directs Judan Pty. Ltd. and Valley Squash Pty. Ltd., and owns 50 per cent of Judan's capital. Judan owns another one-third of Valley Squash Pty. Ltd. The third deponent, a Mr. Hall is the director of Ronhall Pty. Ltd. which holds the remaining one-third interest in Valley Squash Pty. Ltd.

1973

M.P. 72
of 1973
(P).

Prentice
J.

Mr. Wood for the applicant, has asked me to regard the conviction as of doubtful propriety, on the basis that an intention permanently to deprive the owner of possession of the goods, did not appear from the statement of facts and the record of interview to be found in the District Court papers. The applicant was represented in the District Court, after adjournment by Mr. Eric Pratt. He pleaded guilty. He did not appeal from the conviction and sentence. It is sufficient to say that I consider the conviction appears plainly justified on the record of the District Court. Indeed one matter put in the statement of facts, and acknowledged by the applicant, would indicate that that larcenous conduct by him was not the first of its kind. I am satisfied, as was the learned magistrate, that his conduct was deliberate if not premeditated.

Counsel for the Secretary for Law appeared under Sec. 122(3) of the Ordinance, to oppose the application. He tendered various documents from the Companies Registry which he says establish that the applicant has been playing a leading role in the formation of Valley Squash Pty. Ltd., and through his wife may be in a position to dominate the affairs of Valley Squash Pty. Ltd.

In an application of a similar kind, under a similar section to the Bankruptcy Act, Street J. (as he then was) of the New South Wales Supreme Court, enunciated in regard to that section - " ... an applicant who comes to the Court seeking leave must bear the onus of establishing that the general policy of the Legislature laid down in this section ought to be made the subject of an exception in his case. It should be borne in mind that the section is not in any sense a punishment of the bankrupt. Nor should a refusal to grant leave under that section be regarded as punitive. The prohibition is entirely protective, and the power of the Court to grant leave is to be exercised with this consideration in the forefront." (Re Altim Pty. Ltd. (1)).

Street J. considered that a similar approach should be made to Sec. 122, Companies Act 1961 (New

(1) (1968) 2 N.S.W.R. 762 at p. 764

South Wales) - a section for practical purposes identical with that of the Papua New Guinea Ordinance. See Re Ferrari Furniture Co. Pty. Ltd. (2). I am unable to see that any differing approach to the Papua New Guinea Ordinance is called for.

No question has been raised as to the applicant's honesty in general. And I treat his application in the light of one offence only, that of the larceny described, standing in the Sec. 122 scales against him. On perusal of the documentary material tendered by the Secretary for Law and having regard to the fact that the applicant's father William Mullins resides in Australia, I find myself with more than a suspicion that the applicant has been concerned either directly or indirectly with the promotion and management of companies, since he received the warning in March, 1970 as to the illegality of his directorship of M. & E. Plumbing Pty. Ltd. I note that the affidavits in his support are from directors of companies with which he and M. & E. Plumbing Pty. Ltd. are associated, and that the companies of which he now seeks to be appointed director all have dealings with the public. There is nothing disclosed in the affairs of any of the three companies or of the applicant personally, which suggests any kind of necessity that the applicant be freed from his statutory fetters (to use Street J.'s phrase).

The legislative policy is clear, and this Court should not lightly set aside the Sec. 122 disentitlement. Having regard to all the circumstances, I consider the applicant has not discharged the onus of establishing a sufficient case to permit of my working an exception to the clear legislative policy for protection of the public. I dismiss the application and I propose to order that the applicant should pay the respondent Secretary's costs in the application.

Solicitor for the Applicant: Messrs. McCubbery Train Love & Thomas.