

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV 2023/0466

**IN THE MATTER OF A PETITION BY THE CLAIMANT FOR WINDING-UP THE
COMPANY "GANE GRENADA LIMITED"**

and

**IN THE MATTER OF SECTIONS 377, 379, 380, 381 AND 382 OF THE COMPANIES
ACT, CAP. 58 A OF THE 2010 CONTINUOUS REVISED EDITION OF THE LAW OF
GRENADA**

BETWEEN:

GARVEY LOUISON

Claimant

and

GANE GRENADA LTD

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Benjamin Hood for the Claimant/Respondent

Ms. Zelica Haynes -Soo Hon with Ms. Keri-Ann Oliverie instructed by Ms. Dia
Forrester for the Defendant/Applicant

2023: December 14;
2024: January 11

JUDGMENT

- [1] **ACTIE, J.:** The defendant seeks an order to strike out the petitioner's claim on the ground that petitioner does not have locus standi to present a petition for the winding up of the defendant company. The application is refused for the reasons outlined below.

Background Facts

- [2] On 6th September 2007, the defendant company, Gane Grenada Company Ltd (hereinafter referred to as “The Company”), was incorporated by two brothers namely, Nelson Louison and Garvey Louison (hereinafter referred to as “the Brothers”). The Brothers were appointed as directors with Garvey Louison also appointed as secretary. The Company did not issue any shares. The Brothers were named as the beneficial owners in the company annual return filed on 16th August 2023 for the year ending 31st December 2022.
- [3] In a share certificate dated 3rd January 2023, the Brothers issued 2000 ordinary shares to Nelson Louison. On 16th August 2023, the company filed a certified extract of minutes of meeting of shareholders held on 10th August 2023 of a resolution removing Garvey Louison as director and secretary of the company.

Petition for Winding Up

- [4] The petitioner, Garvey Louison, in a fixed date claim filed on 22nd September 2023, seeks the following reliefs:
- a. A declaration that the Petitioner is the part beneficial owner of the Respondent and equally entitled to the assets of the Respondent as the other Part owner, Nelson Louison;
 - b. A declaration that the Petitioner is a Contributor to the Company within the meaning contemplated by the provisions of section 379 of the Companies Act and entitled to present a winding-up petition to the Court with respect to the Respondent;
 - c. An order that is just and reasonable that the Respondent be wound-up in pursuant to the provisions of the Companies Act;
 - d. An Order that a liquidator be appointed to oversee the Winding-up of the Respondent; and
 - e. An order that the Petitioner be awarded the equitable and lawful liquidated portion of the Respondent pursuant to the Winding-Up.
- [5] The Petitioner in affidavit in support alleges that all the purported documents filed on behalf of the company are patently fraudulent in nature and that his removal

as Director and Secretary was made contrary to the By-laws of the company and the Criminal Code. The Petitioner avers that the purported removal is an attempt to deny him access to the general business and decision making in the company.

The Application to strike out.

- [6] The defendant company in an application filed on 22nd November 2023 seeks an order to strike out the claim on the grounds that the petitioner lacks standing to bring the claim pursuant to Section 379 of the Companies Act¹. The defendant also contends that the petitioner has failed to establish his financial contribution to the defendant company, the purchase of the defendant's assets or that he is a part owner of the company.

Law and Analysis

Whether the petitioner has locus standi

- [7] The applicant contends that the petitioner has not presented any evidence that he falls within the categories of the persons allowed to present a petition to wind up pursuant to Section 379 of the Companies Act.
- [8] **Section 379 of the Companies Act** enables a winding up petition to be presented either by the company, a creditor or contributory. The section further states that a contributory is not entitled to present a winding-up petition unless the shares in respect of which he or she is a contributory, either were originally allotted or have been held and registered in his or her name, for at least six months during the eighteen months before the commencement of the winding-up.
- [9] A contributory is defined in **Section 373 of the Companies Act** as every person liable to contribute to the assets of a company in the event of it being wound-up, and for the purposes of all proceedings for determining, and all proceedings prior

¹ CAP 58A

to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

- [10] The petitioner alleges that the combined effect of **Sections 105 and 371(1) of the Companies Act** confers the locus standing to bring the claim.
- [11] **Section 105** of the Act defines a shareholder to include a person who is a member of the company under section 371(3).
- [12] **Section 371 of the Companies Act** refers to the liability of members in the event of a company being wound-up. The section provides that every present or past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding-up, and the adjustment of the rights of the members and past members among themselves.
- [13] **Section 371(3) of the Companies Act** defines a “Member” for the purposes of liquidation to include an incorporator of the company and any other person who agrees to become a member of the company and whose name is entered in the company’s register of members.
- [14] **Section 4 of the Companies Act** mandates that the name of every incorporator be entered in the company’s register of members as soon after the company’s registration. The court is of the view that The Brothers, as incorporators and directors are the registered owners and therefore deemed to be members of the company for the purpose of liquidation proceedings.
- [15] The applicant further contends that the grounds upon which that the petitioner seeks the winding up of the company are disputes that are to be first resolved through alternative means rather than by a petition for winding up.
- [16] The applicant relies on the authority **In re J.N. 2 LTD²** where there was a dispute as to whether the entry of the petitioner’s name on the company’s return was due to a misunderstanding by the company’s accountant as the petitioner’s name did

² [1978] 1 WLR 183

not appear on the company register of members. On a preliminary point as to whether the petitioner had locus standing, the court in dismissing the petition for winding up, first held that the petitioner as an allottee, being liable to contribute to the assets of a company in the event of a winding up, was a contributory within the definition in section 213 of the Companies Act and had locus standi to present a winding up petition without his name being recorded on the register. However, the court ruled that there was a bona fide dispute concerning the original allotment, the petitioner had first to establish that she was a shareholder before petitioning for the winding up of the company.

- [17] The case **In re J.N. 2 LTD** further stated that there seems to be no doubt that an entry on the register is an essential qualification for a contributory who desires to present a petition. It was held that the dispute is not between the company and a person claiming against the company, but between a shareholder and a person claiming to be a shareholder. The court held that the dispute had to be settled first before the company is brought on to the scene by the presentation of a petition. In dismissing the petition, the court held that it was not driving a litigant from the judgment seat or doing any injustice to him but was merely requiring him to establish his right to present a petition before he is permitted to take a step which has such an immediate and potentially damaging effect on the company.
- [18] This court is of the view that the facts of **In re J.N. 2 LTD** are distinguishable from the facts in the extant case. **In re J.N. 2 LTD** established that it is an abuse of process to petition for the winding up of a company where there is a bona fide disputed debt, as a winding up petition is not a legitimate means to enforce payment of a bona fide disputed debt.
- [19] The petitioner in the extant case as an incorporator and beneficial owner is deemed to be a registered member of the company for the purposes of liquidation and falls within the definition of a contributory. The petitioner's right to bring the petition is fortified by the company's annual return filed for the year ending 31st December 2022, where it is clearly stated that "The Brothers" are the beneficial owners of the company.

- [20] Further, the petitioner's claim in the extant case is not grounded on the enforcement of a disputed debt. The petitioner's claim for the winding up of the company suggests a lack of probity in the actions of his brother, Nelson Louison, in , falsifying the petitioner's signature on a share certificate for the issuance of 2000 shares, conducting an illegal shareholders meeting and the petitioner's expulsion from the company. The petitioner alleges that all the purported changes were made in breach of the Company's Bye Laws and the Criminal Code. It is the petitioner's evidence that the matters have been reported to the Financial Investigation Unit (FIU) for investigation.
- [21] The Applicant contends that the petitioner should pursue an alternative remedy to determine the dispute in relation to his expulsion as director/secretary of the company.
- [22] The court in **Re a Company (No 001363 of 1988), exp S-P³** states that the availability of an alternative relief does not of itself make it plainly unreasonable to seek a winding up order so as to justify striking out the petition.
- [23] Our Court of Appeal in **Wang Zhongyong v Union Zone Management Limited⁴**, Fararra JA (Ag) on the law of just and equitable winding up stated:

“[47] The Insolvency Act contains no guidance as to what constitutes ‘just and equitable’ for the purpose of an order appointing liquidators of a company. There is nothing unusual about this. Equitable principles can only be stated in general terms, as they are to be applied to the varying and particular circumstances of each case⁵. It would be impossible to conceive of the plethora of circumstances, and most undesirable to limit the categories, to which these equitable principles may be applied. A court must look to the common law for the types of circumstances which have been found to give rise to the application of the ‘just and equitable’ principle, as it relates to the winding up of companies, when exercising its discretionary powers and remedies under sections 162 and 167 of the Insolvency Act.

[48] In this regard, several categories giving rise to the application of the just and equitable principle have emerged from the cases. **These include expulsion or exclusion from the management of the**

³ [1989] BCLC 579

⁴ BVIHCMAP2013/0024

⁵ See Hollington on Shareholders' Rights 7th Ed para 3-04.

company in circumstances of a Quasi partnership, loss of substratum and deadlock. The various categories are by no means exhaustive of the circumstances in which these equitable principles are to be applied. Furthermore, in the exercise of the court's statutory powers, it is important to keep in mind the range of powers and remedies available to a court under section 167(1), including but not limited to appointing a liquidator. In particular, a court may dismiss an application for appointment of liquidators over a company, even where a ground upon which the court could appoint a liquidator has been proved to its satisfaction (section 167(1)(b))." [Emphasis added]

- [24] The Brothers as contributories and beneficial owners in the case of a winding up of the company would be liable to contribute toward the assets of the company in case the assets fell short for the payment of the company's debts, liabilities and the cost of liquidation; or in case where money was required for the adjustment of the rights of contributories as between themselves.
- [25] The Act provides that where the petition is presented by members of the company as contributories, the court can order a winding up notwithstanding that there is an alternative remedy, unless the petitioner is acting unreasonably in not pursuing the alternative⁶.
- [26] **Section 380 of the Companies Act** confers a discretion on the court on the hearing of a petition on the ground that it is just and equitable that the company should be wound-up, if it is of the opinion—
- (a) that the petitioners are entitled to relief either by winding-up the company or by some other means; and
 - (b) that in the absence of any other remedy it would be just and equitable that the company should be wound-up, shall make a winding-up order, unless it is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound-up instead of pursuing that other remedy.
- [27] The right to present a winding up petition is a right conferred by statute and the petitioner should not be restrained from exercising such right except on clear and persuasive grounds.

⁶ Re a Company (No 002567 of 1982) does not make plainly unreasonable to seek out a winding order so as to justify striking out the petition.

[28] A contributory or a member may present a petition for the winding up of the company if default has been committed by the company. It is not necessary for the petitioner to have a tangible interest in the assets of the company to present a petition for winding up.

Conclusion

[29] The court finds that the applicant has failed to prove that the petitioner lacks locus standing to bring the petition for the winding up of the company. The issues pleaded in the petition are to be determined on the hearing of the petition. It is for the company to prove that the issuance of shares, shareholders meeting and the expulsion of the petitioner were done in compliance with its Bye Laws and the Companies Act. The purported changes in the company if proved to be unlawful as pleaded by the petitioner will revert the company to its status quo as at 31st December 2022. The court would then make a determination as to whether it is just and equitable that the family- owned company be wound up having regard to the character and the conduct of the parties since the incorporation. Accordingly, the application to strike out the claim stands dismissed.

[30] The applicant in the alternative to striking out the petition seeks an extension of time to file a reply and it is accordingly granted so that the matter can proceed.

[31] The court acknowledges the separate legal entity personality of the defendant company and the rules governing liquidation proceedings. However, “The Brothers” as the original incorporators are encouraged to attempt an amicable resolution of the disputes and to report to the court if the matter is resolved prior to the adjourned date.

ORDER

For the foregoing reasons, it is ordered and directed as follows:

- (1) The petitioner falls within the definition of a contributory and is declared to have locus standing to petition for the winding up of the company.

- (2) The application to strike out of the petitioner's claim for the winding up of the company stands dismissed.
- (3) The defendant shall file an affidavit in defence within fourteen (14) days of today's date.
- (4) The petitioner may file a response within fourteen (14) days of service.
- (5) The parties shall file and serve skeleton arguments with authorities at least ten (10) days prior to the hearing date.
- (6) The hearing of the petition for the winding up is scheduled for hearing on
- (7) Liberty to file a consent order.
- (8) Costs to the petitioner in the sum of \$2,500.00 to be paid within fourteen (14) days of today's date. The court takes into consideration that the matter came on for hearing on two occasions.

Agnes Actie
High Court Judge

By the Court

Registrar