

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

**GRENADA  
SUIT NO. GDAHCV2019/0521  
BETWEEN:**

**IN THE MATTER OF GRENADA CITIZENSHIP DEVELOPMENT LIMITED  
AND**

**IN THE MATTER OF THE COMPANIES ACT CAP 58A OF THE 2010  
EDITION OF THE REVISED LAWS OF GRENADA**

**AND**

**IN THE MATTER OF A PETITION BY ROGER KEITH VER**

**Appearances:**

Mr. Ruggles Ferguson for the Petitioner/ Respondent

Ms. Marion Suite with Keith Scotland for the Respondent/Applicant

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2020: March 3

July 17

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**DECISION**

- [1] **ACTIE, J.:** On the 19<sup>th</sup> November 2019, the respondent, Roger Keith Ver filed a winding-up petition against the applicant, Grenada Citizenship Development Limited. On 29<sup>th</sup> January 2020, the applicant, Grenada Citizenship Development Limited filed an application to strike out the winding-up petition. The application to strike out the winding up petition is dismissed for the reasons outlined in this judgment.

**Background**

- [2] The parties in a previous claim no. GDAHCV2017/0053 reached a Mediation agreement on 19<sup>th</sup> April 2017 which was made an order of the Court on 12<sup>th</sup> May 2018. In that order, Grenada Citizenship Development Limited agreed to pay Roger Keith Ver the sum of USD\$1,400,000.00 to of which the sum of USD\$1,000,000.00 was paid leaving an outstanding balance of USD\$400,000.00.

- [3] It is the outstanding balance that has now given rise to the filing of this extant petition for the winding up of the company, Grenada Citizenship Development Limited, for its inability to pay the remaining debt.

#### **The Application to Strike out**

- [4] Grenada Citizenship Development Limited application to strike out the winding-up petition is supported by affidavit evidence of Agnes Varga, Company Secretary of the Company. The grounds of the application are quite extensive, but can be summarised as follows:

- i. It is an abuse of process to present a winding-up petition based on a claim on which there is a bona fide dispute.
- ii. The respondent, Roger Ver, has also made a request to the Court for a writ of execution which has not been heard.
- iii. The Company disputed the debt claimed in the petition pursuant to **CLAIM NO. GDAHCV2017/0053** and the Mediation agreement dated 19<sup>th</sup> April 2017 which was later made into an order of the Court on 12<sup>th</sup> May 2018.
- iv. The Company has filed an application to set aside the mediation order.
- v. The respondent has not made a formal demand for payment nor served same on the Company prior to filing a winding-up petition in accordance with section 378 of the Companies Act.
- vi. The United Kingdom Company (Winding-up) Rules 1909 ("the Rules") provides at paragraph 12 that all petitions in a winding-up matter shall be sealed. However, in contravention of the Rules, a photocopy of the filed petition was served on the Company at its registered office.
- vii. Pursuant to paragraph 23 of the Rules, all notices must be served on the Company. However, the Company did not receive formal notice of the hearing date of the petition, in violation of the Rules.

- viii. The date of hearing ought to have been endorsed on the Petition and served on the Company on the same date that the petition was served at the registered office of the Company in accordance with paragraph 26 of the Rules
- ix. Paragraph 27 of the Rules provides that every petition shall be advertised seven clear days before the hearing. However, the Company has not been served with any advertisement or notice of same.
- x. In violation of paragraph 29 of the Rules, the affidavit in support of the Petition was sworn to before the filing of the petition and was served on the Company on the same day as service of the petition.
- xi. The respondent is not in compliance with Rule 32, in relation to the attendance of the respondent prior to the hearing of the petition before the Registrar.
- xii. The respondent having not placed, served or issued the advertisement seeks to place himself above and before any other creditor of the Company.
- xiii. The respondent has allegedly made the petition available to Counsel in another suit before this Court brought the Company and the details of the respondent are being utilised to support a counterclaim against the Company.
- xiv. The respondent has caused undue influence against the Company by filing the petition and sharing same with an opposing party in a separate suit.
- xv. The winding-up of the Company would unduly prejudice the Company's prevailing lawsuit wherein it seeks to recover monies paid to the Company by investors.

**The respondent's notice of opposition**

- [5] The respondent, Roger Ver, through counsel submits that the applicant's application for the winding-up petition be struck out be dismissed with costs.
- [6] The respondent denies that he has breached the Consent order as alleged by Applicant or at all.

The respondent submits that the allegation of his breach of the Consent order is a red herring aimed at diverting the court from the true issue namely, the inability of the applicant to pay a debt owed to the respondent.

- [7] The respondent further states that the Consent Order laid out a formula for payment of the said USD\$1,400,000.00, of which the applicant promptly paid USD\$1,000,000.00 leaving a balance in the sum of USD\$400,000.00.
  
- [8] Counsel submits that even if the respondent breached the Consent Order, which is denied, that does not affect the existence of the debt of USD\$400,000.00. Counsel states that the applicant may have cause of action for breach of contract of the agreement in the Consent order, but the existence of its indebtedness is a separate issue.
  
- [9] Counsel submits that the applicant through its Director, Stephen Randall Oveson deposed, in an affidavit sworn on 28<sup>th</sup> November 2018 and filed on 5<sup>th</sup> December 2018 for an oral examination, that the total assets of the applicant company was USD\$30,000.00. Further, Counsel states that on 22<sup>nd</sup> May 2019, the said Stephen Randall Oveson was cross examined on his affidavit and repeated that the totals assets of the company were USD\$30,000.00 which comprised of cell phones, computers and an AC unit.
  
- [10] In relation to the applicant's argument that the respondent has not made a formal demand for the debt, Counsel states that the respondent has made several demands and has been engaged in enforcement proceedings in Court in the form of oral examination and a writ of execution in the effort to recover the debt.
  
- [11] Counsel further states that the making of a demand is only one method of proving inability to pay debts. Counsel states that section 378 (1) (c) of the Companies Act characterizes a company's failure to pay debts as they become due as an inability to pay its debts. Counsel submits that there is no substantial bona fide dispute of the existence of the indebtedness of the applicant to the respondent and there is no bona fide dispute of the inability of the applicant to pay its debts.

- [12] In addition to the above section, Counsel also relies on section 378(2) to further bolster the argument that a company is also deemed to be unable to pay its debts, if it is proven by the Court that its asset value is less than its liabilities. Counsel repeats that the applicant's debt of USD\$400,000.00 has been established before the Court and the applicant's in its own evidence states that its total assets are valued at USD\$30,000.00.
- [13] Counsel submits that the alleged breaches of the UK Company (Winding-Up) Rules 1909 by the respondent are minor in nature and also do not form part of the laws of Grenada.

### **Applicant's Reply to the respondent's Notice of Opposition**

- [14] Counsel for the applicant, Grenada Citizenship Development Limited, argues that the respondent has failed to file any affidavit in response to the matter set out in the affidavit of Agnes Varga and therefore admits to all the of the allegations contained therein. Counsel relies on the authority of **Dominica Agricultural and Industrial Development Bank v Mavis Williams**<sup>1</sup> as authority to support her argument. Counsel submits that it is a general rule that when a fact is pleaded and it is not denied, it is deemed to be admitted. Therefore, the respondent's failure to deny the said affidavit, the evidence therein stands uncontroverted before the Court.
- [15] In relation to the respondent's denial that UK Winding-up rules form part of the applicable law in Grenada, Counsel submits that since the Companies Act does not speak to any winding-up procedure rules, then the UK Winding-up Rules are applicable. Counsel relies on the consolidated authority of **Patrick Thomas, Patsy Thomas et al v Thomas Real Estate Company et al**<sup>2</sup> where the Court acknowledged the UK Winding-up Rules 1909 as the relevant Rules. Counsel submits that the Eastern Caribbean Supreme Court Act provides that where no special procedures are made within the jurisdiction of Grenada, the law and practice administered for the time being in the High Court of England, will take precedence. Therefore, Counsel for the applicant submits that the decisions in **Angel Group v British Gas**<sup>3</sup> and **Re A Company (No 5245 of 2017)**<sup>4</sup> show that the Court takes a cautious approach when considering whether to grant winding-up petitions given its draconian effect.

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<sup>11</sup> DOMHCVAP2005/0020

<sup>2</sup> GDAHCV2001/0652

<sup>3</sup> [2012] EWHC 2702 per Norris J

<sup>4</sup> [2018] EWHC 275 Chancery Division

- [16] Counsel submits that after the applicant paid the USD\$1,000,000.00 and fulfilled all of its undertaking and had abided by the terms of the court order. However, Counsel submits that it is the respondent who has failed to comply with the terms of the order, specifically the obligation to publish the notice in the newspaper.
- [17] Further, Counsel states that since the respondent has breached the said Order, this act invalidates the remaining USD\$400,000.00 and the validity of its payment is in dispute. Counsel submits that the said USD\$400,000.00 which forms the basis of the winding-up petition is genuinely disputed and questions whether it is in fact owed. Therefore, Counsel submits that in light of the above circumstances, a winding-up petition is not the appropriate forum for this matter. Counsel relies on the authority of **Montgomery v Wanda Modes Ltd**<sup>5</sup> in support of her submission.
- [18] Counsel submits that it is against the principles of fairness and justice for the respondent to rely on its own breach of said Order and to circumvent his obligation therein by using the guise of winding-up proceedings to assist in such actions. Counsel states that this act is wholly unacceptable and it is unconscionable for the respondent to rely on his misdeed to invoke the jurisdiction of this Court to institute winding-up proceedings. Counsel relies on the English authority of **Breyer Group PLC v RBK Engineering Limited**<sup>6</sup> in support of her submission.
- [19] Counsel submits that in relation to the respondent's request for a Writ of execution in order to recover the USD\$400,000.00, the respondent ought to have disclosed this to the Court. Counsel submits that this failure to disclose amounts to a material non-disclosure. Counsel states that this material non-disclosure, in the circumstances, is an abuse of process of the Court and on that basis alone, the Court ought to strike out the respondent's petition.
- [20] In relation to the respondent's alleged procedural defects, Counsel submits that the cumulative breaches of the mandatory winding-up rules are prejudicial to the respondent's application for the petition and should therefore result in the striking out of the said petition.

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<sup>5</sup> [2003] BPIR 457 per Parker J at paragraph 8

<sup>6</sup> [2017] EWHC 1206 (Ch)

## **Issues**

- [21] The issues to be determined by this Court are:
- i. Whether the 1909 United Kingdom Companies (Winding-up Rules) are applicable to Grenada.
  - ii. Whether the alleged debt in issue is genuinely disputed on substantial grounds.
  - iii. Whether the respondent's alleged procedural breaches, abuse of process and material non-disclosure are sufficient grounds to strike out the winding-up petition.

### **Whether the 1909 United Kingdom Companies (Winding-up Rules) are applicable to Grenada.**

- [22] **The Companies Act**<sup>7</sup> came into effect on 18<sup>th</sup> November, 1994. However, no subsidiary legislation governing the practice and procedure for winding-up petitions was ever enacted. Therefore, the Companies Act is “silent” on the procedure governing winding-up petitions.

- [23] The main issue to be determined is whether the reception provision under **Section 11 (1) of the West Indies Associated States Supreme Court (Grenada) Act**<sup>8</sup> (“the Supreme Court Act”) received the United Kingdom Companies (Winding-up) Rules 1909 and as such, is the applicable law and procedure for winding-up petitions in the State of Grenada.

- [24] The scope of **Section 11 (1) of the Supreme Court Act** has been discussed at length in this jurisdiction in relation to the reception of the United Kingdom law, practice and procedure. **Section 11(1) of the Supreme Court Act** provides:

#### **“11. Practice in civil proceedings and in probate, divorce and matrimonial causes**

**(1) The jurisdiction vested in the High Court in civil proceedings, and in probate, divorce and matrimonial causes, shall be exercised in accordance with the provisions of this Act and any other law in operation in Grenada and rules of court, and where no special provision is therein contained such jurisdiction shall be**

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<sup>7</sup> Cap 58A of the 2010 Continuous Revised Edition of the Laws of Grenada

<sup>8</sup> Cap 336 of the 2010 Continuous Revised Edition of the Laws of Grenada

**exercised as nearly as may be in conformity with the law and practice for the time being in force in the High Court of Justice in England.”**

[25] In the Court of Appeal decision in **Allen Chastanet v Ernest Hilaire**<sup>9</sup> Webster JA (Ag) in relation to Section 11 of the Supreme Court Act stated:

“This section, and its equivalent in the other states and territories, has been interpreted consistently by this Court as importing only the practice and procedure, and not the substantive law of England”

[26] The Court of Appeal in **Veda Doyle v Agnes Deane**<sup>10</sup> was tasked with interpreting the said section 11 (1) in relation to applicability of The United Kingdom Judgments Act 1838 in awarding post-judgment interest on debts in Grenada. The Court of Appeal held as follows:

**“The English law intended to be imported by section 11(1) of the Supreme Court Act is the procedural law administered in the High Court of Justice in England and not English substantive law, nor English procedural law which is adjectival and purely ancillary to English substantive law. The wording of section 11(1) indicates that the focus on the importation of any law, rule or practice from England is in respect of the exercise of the jurisdiction as distinct from the importation of English law so as to give jurisdiction.”**

[27] The Court of Appeal followed and adopted the interpretation of the identical section 11 of the Eastern Caribbean Supreme Court Act of (St. Vincent and the Grenadines) in the case of **Panacom International Inc. v Sunset Investments Ltd. and Another**<sup>11</sup> where Sir Vincent Floissac enunciated as follows:

**“Section 11 of the Supreme Court Act relates solely to the manner of the exercise of the jurisdiction of the High Court. It is therefore an intrinsically procedural provision. The words ‘provisions’, ‘law’ and ‘law and practice’ appearing in section 11 are evidently intended to be references to procedural (as distinct from substantive) law. “The English law intended to be imported by section 11 is the**

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<sup>9</sup> SLUHC VAP2019/0005

<sup>10</sup> GDAHC VAP2011/020

<sup>11</sup> (1994) 47 WIR 139



procedural law administered in the High Court of Justice in England. In enacting section 11, the legislature of St Vincent and the Grenadines could not have intended to import English substantive law nor English procedural law which is adjectival and purely ancillary to English substantive law.”

[28] Her Ladyship the Hon. Dame Janice M. Pereira, Justice of Appeal, as she then was, in delivering the judgment of the Court in **Veda**<sup>12</sup> stated as follows:

“In my view, this pronouncement of the scope of section 11 of the Supreme Court Act (which is a provision found in the Supreme Court Acts of all Member States and Territories making up the jurisdiction of the Eastern Caribbean States Supreme Court) is an accurate and as clear and succinct a statement on section 11 as there could be. Furthermore, the notion that all Member States are subject to the importation of English substantive law by virtue of section 11 would leave much to be desired in any sovereign State not to mention the state of uncertainty as to what laws a citizen of the State may be subject at any given point in time and without regard to its own parliament which is charged with the making of laws for the State as it may deem necessary for that State’s good governance. Section 11 certainly could not have been intended to have this effect. The emphasized words in the section 9 indicate that the focus on the importation of any law, rule or practice is in respect of the exercise of the jurisdiction as distinct from the importation of English law so as to give jurisdiction.”

[29] The authorities have all established that **Section 11 of the Eastern Caribbean Supreme Court Act** is a procedural empowering provision. The relevant winding-up rules immediately before the passage of the Supreme Court (Grenada) Act in 1971 were the 1909 and the 1949 UK Companies (Winding-up) Rules as amended. The said rules were passed as subsidiary legislation under the 1928 and 1948 UK Companies Act. **The Companies Ordinance of Cap 47 of the 1934 Revised Law of Grenada** was already in force in Grenada, however, no subsidiary legislation in relation to winding up of companies were enacted.

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<sup>12</sup> Ibid 1 at paragraph 9

[30] **Section 216 of the said Companies Ordinance of Grenada** as amended provided as follows:

“Subject to the provisions of this Ordinance with respect to rules and fees in relation to the winding up of companies, the Chief Justice may, with the approval of the Governor-in-Council, make rules of procedure for the purposes of this Ordinance, including rules as to costs and fees: but, ***until such rules are made*** and so far as the same do not extend, ***the general orders, rules, and forms of the Chancery Division of the High Court of Justice in England in force at the commencement of this Ordinance shall***, so far as the same are applicable to local circumstances and not inconsistent with this Ordinance or with such rules as aforesaid, ***apply to all proceedings for winding up a company***. (Emphasis added).

[31] This above provision under the former Companies Ordinance states clearly that where no rules are made the rules of the High Court of Justice in England in force at the commencement of the Ordinance shall apply. Given that the Ordinance was originally enacted in 1926 and subsequently revised in 1934, the only applicable rules in relation to the winding up of a company were the 1909 UK Companies (Winding-up) Rules.

[32] **Section 544 of the Companies Act** <sup>13</sup>provided as follows:

**544. Repeal and savings**

(1) Subject to subsection (3), the former Act is repealed.

(2) Notwithstanding subsection (1) the provisions of the former Act continue to apply so far as is necessary to enable a former Act company lawfully to function until it is continued under this Act or wound-up.

(3) Notwithstanding subsection (1) ***subsidiary legislation regarding any particular matter made under the former Act and in force at the commencement of this Act shall continue to apply until and unless subsidiary legislation needed to be prescribed under this Act*** regarding such particular matter is prescribed, ***but such existing subsidiary legislation shall be read with such adaptations, modifications,***

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<sup>13</sup> Cap 58A of the 2010 Continuous Revised Edition of the Laws of Grenada

***qualifications and exceptions as may be necessary to bring it into conformity with this Act.***

- [33] This provision under the section 544 of the Companies Act saved the subsidiary legislation of the former Act, being the Companies Ordinance Cap 47 of the 1934 Revised Laws of Grenada. The provision states that even though the former Act is repealed the relevant subsidiary legislation shall continue to apply. Therefore, the 1909 UK Companies (Winding-up) Rules are still in force but may be modified for inconsistencies in relation to the winding up of a company in Grenada.

**Whether the alleged debt in issue is genuinely disputed on substantial grounds.**

- [34] One of the main contentious issues before this court is whether the alleged debt of USD\$400,000.00 which emanates from a Mediation agreement and subsequent Court order is a genuinely disputed debt. The Court of Appeal in **Sparkasse Bregenz Bank AG v In the Matter of Associated Capital Corporation**<sup>14</sup> laid down the following test and principles when the Court is tasked with determining what constitutes genuinely disputed debt:

**“The law governing the making of winding up orders is well settled and could easily be set out at this stage. The Court will order a winding up for failure to pay a due and undisputed debt over the statutory limit, without other evidence of insolvency. If the debt is disputed, the reason given must be substantial and it is not enough for a thoroughly bad reason to be put forward honestly. But if the dispute is simply as to the amount of the debt and there is evidence of insolvency the company could be wound up. To fall within the principle, the dispute must be genuine in both a subjective and objective sense. That means that the reason for not paying the debt must be honestly believed to exist and must be based on substantial or reasonable grounds. Substantial means having substance and not frivolous, which disputes the Court should ignore. There must be so much doubt and question about the liability to pay the debt that the Court sees that there is a question to be decided. The onus is on the company to bring forward a prima facie case which satisfies the Court that there is something which ought to be tried.”**

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<sup>14</sup> BVIHCV2002/0010

[35] The Court of Appeal in the authority of **Unicorn Worldwide Holdings Limited v Bluestone Securities Limited**<sup>15</sup> enunciated as follows:

**“The legal principle was expressed as follows by Richards JA in the English Court of Appeal in the case of Tallington Lakes Ltd et al v Ancasta International Boat Sales Limited,<sup>1</sup> “If the company can demonstrate that the alleged debt on which the petition is founded is genuinely disputed on substantial grounds, the court will strike out the petition.”<sup>2</sup> The petition being referred to is a petition to wind up a company on the basis of an unpaid debt due by the company to the applicant.”<sup>16</sup>**

[36] Counsel for the applicant submits that the alleged debt of USD\$400,000.00 is genuinely disputed. Counsel for the applicant submits because the respondent has breached the said Court order by not fulfilling an obligation to publish a notice in the newspaper, the validity of the said debt and its validity of payment are in dispute.

[37] It is also was brought to the Court’s attention in the affidavit of Agnes Varga filed 29<sup>th</sup> January 2020, that the applicant filed proceedings on 24<sup>th</sup> January 2020, in a separate application, seeking to set aside the mediation agreement on the basis of the respondent’s breach of the said Court order. While this application is not before me, it is interesting to note that the applicant is relying on an alleged fundamental breach of the same mediation agreement it now seeks to set aside.

[38] It is not necessary for me for the purposes of this application to comment on the claim disputing the mediation agreement between the parties which was made an order of the court as this goes to the pith and substance of the application for the winding up order. However, it is sufficient to say that the mediation agreement which became an order of the court merged and crystalized into a judgment of the court. Unless set aside, the successful party may engage any of the procedures for the enforcement of the judgment.

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<sup>15</sup> BVIHCMAP2014/0021

<sup>16</sup> Ibid 3 at paragraph 6

**Whether the respondent's alleged procedural breaches, abuse of process and material non-disclosure are sufficient grounds to strike out the winding-up petition.**

[39] Counsel for the applicant spent much time outlining the respondent's alleged procedural breaches of the UK Companies (Winding-up) Rules 1909. The 1909 Rules require that the Registrar inscribe a date for the hearing of the Petition which the applicant states has not been complied with. The Rule also requires the service of the motion on every party that an order is sought against, not less than 2 clear days before the hearing date. The Rule also requires personal service and the advertisement of the petitions within 7 clear days before the hearing.

[40] The short response to this ground lies in the applicant's own admission that the court office has failed to endorse a hearing date on the summons, which is clearly an administrative breach. The requirement for personal service at least 2 clear days and for advertisement 7 clear days, prior to the hearing is of no moment as the court has not complied with the requirements for the endorsement of the date for hearing and the sealing of the notice to give effect to the Rule. It is to be assumed that the application has not been set down for hearing and therefore there is no breach.

[41] Counsel for the applicant submits that there has been a material non-disclosure by the respondent. Counsel submits that by reason of the respondent's filing a Writ of Execution before the court in a separate claim over the alleged debt amounts to material non-disclosure. Further, Counsel submits that the effect of this material non-disclosure in the face of a winding-up petition is abuse of process of the Court.

[42] **The Companies Act**<sup>17</sup> under sections 377 and 378 respectively deal with the liquidation of Companies over alleged debt or inability to satisfy debts.

[43] **Sections 377 and 378 of the Companies Act** provide as follows:

**"377. Circumstances in which company may be wound-up by court**

**A company may be wound-up by the Court if—**

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<sup>17</sup> Supra

- (a) the company has by special resolution resolved that the company be wound-up by the Court;
- (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (c) the company is unable to pay its debts;
- (d) an inspector appointed under Part XXVII has reported that he or she is of the opinion—
  - (i) that the company cannot pay its debts and should be wound-up, or
  - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound-up; or
- (d) the Court is of the opinion that it is just and equitable that the company should be wound-up”

**“378. Definition of inability to pay debts**

**(1) A company is deemed to be unable to pay its debts if—**

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five thousand dollars then due, has served on the company, by leaving it at the registered office of the company, a demand under his or her hand or under the hand of his or her agent lawfully authorised requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgement decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

**(c) it is proved to the satisfaction of the court that the company is unable to pay its debts as they become due.**

**(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities."**

[44] I agree with the Counsel for the applicant that the petition for winding up should have been served and a disclosure to the Court of Writ of Execution ought to have been forthcoming by the respondent. However, I am of the view that this non-disclosure in and of itself is not sufficient to amount to an abuse of process. A judgment creditor has various means of redress available to realize the fruits of its judgment. A writ of execution has a separate procedure for enforcement of judgment debt. The liquidation of a company does not necessarily mean that a debt will be paid to a Creditor. A writ of execution also does not necessarily mean that a litigant will recover the amount of debt owed to it. Although I am of the view that while disclosure of the Writ of execution ought to have been disclosed, it does not mean that the respondent is barred or cannot avail himself of other civil remedies for the enforcement of the Judgment debt.

#### **Should the petition be struck out**

[45] Striking out a claim has been described as draconian and should only be employed in clear and obvious instances. The application to strike out is predominantly based on procedural points in relation to the winding up petition filed by the claimant. As indicated earlier, the procedural error commenced from the court office in failing to endorse the date on the summons to comply with the requirements for personal service and advertisement.

[46] An error of procedure without more does not invalidate a claim unless it goes to the pith and substance of the claim. The claimant having obtained judgment against the defendant is seeking to use the winding up process as one of its many options to realize its judgment debt. The winding up application has been brought to attention of the defendant, albeit not in strict compliance with the 1909 Rules. The applicant has not shown any prejudice resulting from the procedural defect as he has since filed a claim disputing the debt and seeking to set aside the order.

[47] It is in the interest of justice that the matters be determined before utilizing the nuclear arsenal of striking out. The issues in this application when viewed against the background of the administrative procedural defects along with the other issues do not in my view warrant the draconian action of striking out the petition. For the foregoing reasons, the application to strike out the winding up petition is refused.

**ORDER**

[48] I make the following orders and directions:

- a. That the notice of application by the Company to strike out the winding-up petition of Roger Keith Ver, is refused.
- b. The Winding-up petition by Roger Keith Ver shall be listed for case management conference on a date to be arranged and notified by the court office.
- c. Costs to the respondent in the sum of \$750.00

[49] I thank all Counsel for their helpful submissions in this matter.

**Agnes Actie**  
High Court Judge

By the Court

Registrar