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IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

MISC 47/2014

IN THE MATTER OF the Companies Act 1955 (NZ) as
 applied in the Cook Islands and in
 the Companies Act 1970-71

BETWEEN **JACQUELINE RONGO and**
 TEINA RONGO

Petitioners

AND **RAVENGA DIGITAL COOK**
 ISLANDS LIMITED

Respondent

Hearing: 29 November 2014

Decision: 5 December 2014

Counsel: Mr Arnold for the Applicant

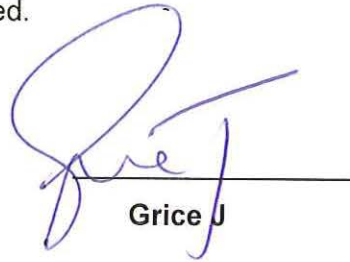
DECISION OF GRICE J

1. This is an application for a winding up order against Ravenga Digital Cook Islands Limited ("the Company"). The petition is based on failure to repay monies advanced by the petitioners to the company.
2. A notice of non-appearance of third parties was filed by Mr Arnold. The matter was called at 9am and a check was made of the foyer but no one appeared.
3. Mr Arnold proposed that David Wright be appointed liquidator. He filed an affidavit setting out the qualifications and standing of Mr Wright to undertake this job. I accept Mr Wright is an appropriate liquidator.
4. Mrs Rongo gave oral evidence. She and her husband had gone into business with a Mr Paul Shedden to produce digital signs.
5. Mrs Rongo advanced money to set up the business. Mr Shedden was to contribute his skills.
6. Twenty five percent of shares were owned by each Mr and Mrs Rongo and the balance 50% were owned by Mr Shedden. The share capital of the company is \$100 divided into 100 ordinary shares of \$1.00 each. The applicant's \$50 share capital is paid up. A copy of the memorandum of association of the company was produced by Mrs Rongo.
7. Matters soured. Mr Shedden appointed himself governing director which put him in control of the company.
8. Mrs Rongo acted as the main liaison with Mr Shedden and she arranged for a total amount of \$16,000.00 to be deposited into the respondent company account. This included two deposits of \$500.00 on 17 June 2014 and one of \$15,000.00 on 27 June 2014. Mrs Rongo produced bank statements detailing those advances. The statements also showed some income which was sales generated by the company.
9. The Rongos were paid \$2,000.00 by the company. They also advanced further monies to the company for purchase of a domain name \$21.04 (US\$17.98) and \$115.00 for the registration of the company.
10. The office of the company is at Mr Shedden's home at Tupapa. It became clear that the business was not going successfully and Mr and Mrs Rongo were unhappy with the management of the company. They complained to Mr Shedden, who was running the company. There was a large Telecom bill in the first month and various other payments, made but little income.
11. Emails and texts were sent between the parties culminating in Paul Shedden texting and saying that the parties could go their separate ways.

He suggested that they look at how they part and deal with the "pay back" of the investment.

12. Various meetings were held between the applicants and Mr Shedden on a "without prejudice" basis. Paul Shedden appointed his brother Jerome Shedden his agent for negotiations in the matter. The discussions failed and the last contact was on 26 August. Mr Rongo subsequently filed an affidavit attaching correspondence relating to the negotiations.
13. Since 26 August there have been no further correspondence or discussions between the parties.
14. The Rongos therefore seek a return of the advances they made to the company.
15. Mr Arnold submitted that these were shareholders advances which were due on demand. He indicated the applicants had not followed the standard notice procedure for establishing the grounds for windup under section 218 of the Companies Act due to ongoing negotiations.
16. I am not satisfied that the debt is due. The evidence produced indicates that the applicants made an investment in a business venture which has not worked. They negotiated for repayment from the other director/shareholder but the evidence does not show any admission of a debt due by the company to the applicants. These negotiations have been unsuccessful.
17. As I have said I am not satisfied that the debt is due and owing by the company, but even if I were satisfied that would not be enough. I must be satisfied that the company is unable to pay its debts. Evidence may be provided using the s.218 notice procedure, proof of an unsatisfied execution or other method such as proof of dishonoured cheques or admission of insolvency.
18. I am aware that the applicants are anxious to have this matter brought to a head and have been working to achieve this. However I am unable to come to any other conclusion than that the application must fail. The implications of a company winding up can be significant for not only the shareholders and directors, but also creditors. Mr Arnold suggested an adjournment might enable some response by Mr Shedden. I do not consider that would remedy the matter.

19. I have no option but to dismiss the petition. The application for an order winding up the Respondent is dismissed.



Grice J