**IN THE FIJI COURT OF APPEAL, FIJI**

**[On Appeal from the High Court]**

**CIVIL APPEAL NO. ABU 117 of 2020**

**[HBM 32 of 2018Lautoka]**

| | | |
|---|---|---|
| **BETWEEN** | **:** | **IN THE MATTER OF LIFESTYLE PACIFIC (FIJI) PTE LTD** |
| | | *Appellant* |
| **AND** | **:** | **ANTONIA CATANZARITI** |
| | | *Respondent* |
| **Coram** | **:** | **Mataitoga, RJA** |
| | **:** | **Morgan, JA** |
| | **:** | **Clark, JA** |
| **Counsel** | **:** | **Mr. A. S. Singh and Ms. P. D. Prasad for the Appellant** |
| | **:** | **Mr. E. Sailo for the Respondent** |
| **Date of Hearing** | **:** | **3 November 2023** |
| **Date of Judgment** | **:** | **30 November 2023** |

# JUDGMENT

**Mataitoga, RJA**

1. I have read in final draft the judgment prepared by Morgan, JA. I agree with the reasons and conclusion therein.

**Morgan, JA**

**Introduction**

2. This is an appeal against a decision of Justice M. H. Mohammed Ajmeer in the High Court at Lautoka dated 25 November, 2020 ordering the Winding Up of the Appellant Company, the appointment of the Official Receiver as liquidator and costs against the Appellant company.

3. The decision arose from an application *("the application")* filed in the High Court at Lautoka, Companies Jurisdiction, by the Respondent as a shareholder of the Appellant for relief from oppression under Section 177 of the Companies Act 2015 ("the Act") wherein the Respondent sought the following orders:-

    a. that Alick George Richard Wallis ("Wallis") a shareholder of the Appellant company purchase all the shares held by the Respondent in the company at a price of $10.00 per share or at another price the court determines; or

    b. that the Company be wound up; and

    c. such further or other relief as may be just and costs.

4. The form of the application was pursuant to Rule 8 of the Companies (Winding Up) Rules 2015 and was addressed to Wallis and to the Appellant Company. Wallis was therefore a party to the proceedings to which this appeal relates.

5. At the hearing in the High Court, counsel representing both parties informed the Court that they relied on their respective affidavits and written submissions. There was no oral hearing.

6. Being dissatisfied with that decision the Appellant filed a notice of appeal to this Court on 31 December, 2020 for orders that the said decision of Justice M. H. Mohammed Ajmeer be set aside, for costs of this appeal and such further orders that this Court deems just.

7. The notice of appeal relies on the following grounds of appeal:-

    *"1. The Learned Trial Judge erred in law and in fact in making the winding up Order purely on assertions in the Affidavit of the Respondent, without any*

*documentary evidence to substantiate the assertions, thereby causing a miscarriage of justice.*

2. *The Learned Trial Judge erred in law in holding that the Respondent had invested money in the Appellant when the evidence disclosed that the Respondent had invested money in an Australian company, over which the Court had no jurisdiction and further the financial arrangements were between individuals and not the Appellant Company.*

3. *The Learned Trial Judge erred in law and in fact by rejecting the original prayer of the Respondent that the shares be sold at a price of $10.00 or at another price that the Court determines but erroneously instead made a harsh and crushing decision to wind up the Company which would be detrimental to both parties as the Company had not made any profits yet.*

4. *The Learned Trial Judge erred in law in holding that the Appellant had not complied with Fijian law and erroneously relied on the assertions of the Respondent, thereby misdirecting himself on the facts and law applicable.*

5. *The Learned Trial Judge erroneously misinterpreted the statements that the Company was not operating from 2016 to mean that the Company had ceased operation, when what was clear was that company had not made any profit from 2016, to require financials to be presented, thus causing a grave miscarriage of justice.*

6. *The Learned Trial Judge erred in holding that there was oppression when in fact the Company had not made any profit on its investment and the display homes were incapable of being sold, as it was on the property of another, thereby causing a grave miscarriage of justice.*

7. *The Learned Trial Judge erroneously regarded personal transactions as Company transactions and failed to regard the Company as a separate legal entity, from its officers and in the absence of fraud, the corporate veil could not be lifted, he thereby caused a miscarriage of justice.*

8. *The Learned Trial Judge erroneously assumed that the Company had breached Fijian requirement, when there was no evidence from any source to substantiate this thereby causing a grave miscarriage of justice.*

9. *The Learned Trial Judge failed to acknowledge that the Form D2 refers to a Company by the name of Coral Lifestyle Pacific (Fiji) Pte Limited which is a different company from the Appellant Company.*

10. *The Learned Trial Judge's Order for winding up was excessively harsh and punitive as such he caused the judicial discretion to miscarry as his decision was based on hearsay evidence as opposed to documentary evidence, thereby causing a miscarriage of justice.*

**Background**

8. The Judge noted the background in his judgment as follows:-

> "5. *Lifestyle Pacific (Fiji) Pte Ltd, the respondent (the "company" or the "respondent") is registered company in Fiji. It was incorporated on 6 December 2016.*
>
> *6. Antonio Catanzariti, the applicant (the "applicant") is a member/shareholder of the company by virtue of 10,000 shares in the company. The applicant alleges that it was agreed between the respondent and him (applicant) that the applicant will have 50% share in the company.*
>
> *7 The other member of the company is Alick George Richard Wallis who holds 90,000 shares in the company (the "respondent").*
>
> *8 The applicant alleges that the respondent's conduct in operating the company is oppressive or unfairly prejudicial or contrary to the interest of the applicant. On that basis the applicant seeks relief from the court."*

**Statutory Authority**

9. The statutory provisions applicable to the application and this appeal are Sections 176 and 177 of the Act which provide:-

> *"176(1) the court may make an order under section 177 if —*
>
> *(a) the conduct of a company's affairs;*
>
> *(b) an actual or proposed act or omission by or on behalf of a company; or*
>
> *(c) a resolution, or a proposed resolution, of members or a class of members of a company,*
>
> *is either—*
>
> *(i) contrary to the interests of the members as a whole; or*
>
> *(ii) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.*
>
> *(2) For the purposes of this Part, a person to whom a share in the company has been transmitted by will or by operation of law is taken to be a member of the company."*
>
> *177(1) The court can make any order under this section that it considers appropriate in relation to the company, including an order—*

*(a) that the company be wound up;*

*(b) that the company's existing articles of association be amended or repealed;*

*(c) to regulate the conduct of the company's affairs in the future;*

*(d) for the purchase of any shares by any member or person to whom a share in the company has been transmitted by will or by operation of law;*

*(e) for the purchase of shares with an appropriate reduction of the company's share capital;*

*(f) for the company to institute, prosecute, defend or discontinue specified proceedings;*

*(g) authorising a member, or a person to whom a share in the company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;*

*(h) appointing a receiver or manager of any or all of the company's property;*

*(i) restraining a person from engaging in specified conduct or from doing a specified act; or*

*(j) requiring a person to do a specified act.*

*(2) If an order that a company be wound up is made under this section, the provisions of this Act relating to the winding up of companies apply—*

*(a) as if the order were made under Part 39; and*

*(b) with such changes as are necessary.*

*(3) If an order made under this section repeals or modifies a company's articles of association, or requires the company to adopt articles of association, the company does not have the power under section 46(7) to change or repeal the articles of association if that change or repeal would be inconsistent with the provisions of the order, unless—*

*(a) the order states that the company does have the power to make such a change or repeal; or*

*(b) the company first obtains the leave of the court."*

**Preliminary Issues**

10. The Appellant in its written submissions and at the hearing of this appeal raised two preliminary issues. Firstly that the application was defective in that in its title it referred to another company not the appellant company. Secondly that the Order appointing the Official Receiver was defective because the applicant had not filed a written consent of the Official Receiver to act as liquidator pursuant to Rule 18 of the Companies (Winding Up) Rules 2015.

11. With respect to the first preliminary issue above although there is an error in the title to the application, Mr. Singh, counsel for the Appellant, conceded at the hearing that the Appellant is properly described in the body of the application. Also it was absolutely clear from the affidavits and submissions filed in the matter that the proceedings from the inception related to the Appellant Company Lifestyle Pacific (Fiji) Pte Limited. I do not agree with the Appellant's contention that the action had been erroneously instituted causing confusion and justifying a striking out.

12. With regard to the second preliminary issue set out above Rule 18 provides:-

> *"18. Before the hearing of an application for a winding up order the application or the applicant's solicitor must file the written consent of a liquidator who:-*
>
> (a) *Is registered as a liquidator under the Act; or*
>
> (b) *Is deemed to be registered as a liquidator under the Act; and*
>
> (c) *Would be entitled to be appointed as liquidator if an order for the winding up of the company is made by the court."*

13. Sections 410 and 411 of the Companies Act 2015 which govern the registration of liquidators in Fiji relate to individual natural persons residing in Fiji who are Chartered Accountants who wish to act as liquidators. There is no requirement for the Official Receiver to register as a liquidator. Besides Section 539 of the Act recognises the power of the court to appoint the Official Receiver as a liquidator in the winding up of a company by the court. I do not consider that the appointment of the Official Receiver as liquidator in this matter was defective.

**Evidence**

14. As noted above there was no oral hearing. Counsel for both parties advised the Court that they relied on their respective affidavits and written submissions.

15. The Judge summarised the affidavit evidence in paragraphs 12 and 13 of his decision as follows:-

> *"12. The applicant in the affidavit in support states:*
>
> *a. He is a member/shareholder of* ***Lifestyle Pacific*** *(Fiji) Pte Ltd ('the company') and has 10,000 shares in it. He says that it was agreed between the respondent and him that he will have 50% share in the company.*
> *b. The company was incorporated in Fiji as a company having share capital on 6 December 2016.*
> *c. The other member is Alick George Richard Wallis who holds 90,000 shares in the company.*
> *d. Since the incorporation of the company, the respondent has not filed annual report with the Registrar of the company.*
> *e. The respondent has not given him any moneys profited by the company since its operation.*
> *f. The respondent has refused and is refusing to hold Annual General Meeting and/or any meeting with him (applicant) despite several requests.*
> *g. He has invested almost $100,000.00 towards the company including air fares for the respondent and him (applicant) together with accommodation and meals but in return he (applicant) has not received any profit from the company since its incorporation.*
> *h. He has also lent cash and advance to the respondent but the respondent has refused and/or neglected to pay the moneys that he (applicant) had advanced.*
> *i. He arranged a meeting at Crows Nest Resort, Sigatoka on 17 July 2017, but the respondent refused to provide any information about the company stating that his (respondent) solicitors has advised him the meeting is illegal.*
> *j. The respondent removed him (applicant) as a Director without any company resolution and/or giving any prior notice to him. He came to know about it after a company search on 29 August 2018.*
>
> *13. The respondent in his affidavit in opposition states:*
>
> *a. On 9 November 2016, he was issued a Foreign Investment Registration Certificate by Investment Fiji for the respondent company.*
> *b. on 28 February 2017, he received a letter from the Fiji Revenue and Customs Authority notifying that the respondent company being*

*registered for Value Added Tax (VAT) and providing the respondent company's tax identification number.*

c. *On 29 March 2018, he obtained a Tax Compliance Certificate confirming that the respondent company has been in compliance with all tax obligations in terms of the lodgment and payment for taxation.*
d. *He further applied for a New Investor's Permit and obtained the same via letter dated 26 March 2018.*
e. *He has been issued a work permit to reside and work in Fiji.*
f. *The applicant was a director and shareholder of the respondent company however he was terminated on 2 August 2017.*
g. *The applicant was only allocated 10,000 shares at $1.00 each.*
h. *He personally injected the funds needed to allow the respondent company to start functioning.*
i. *No annual reports were submitted as the business was not trading since 6 December 2016.*
j. *That there have been no profits generated by the company.*
k. *There were meetings between the two of us (applicant and respondent) and also with Anilesh Amitesh Kumar, the other director.*
l. *He attended the meeting at Crows Nest Resort, Sigatoka on 17 July 2017, and all information needed was provided to the applicant.*
m. *He never acted against the interest of the company nor the applicant.*
n. *The applicant was terminated pursuant to a directors meeting because the adverse conduct of the applicant against the other directors and company."*

**Substantive Issues**

16. The grounds of appeal raise the following substantive issues:-

*(a) whether in applying section 176 of the Act on the basis of the evidence before him the Judge was correct in concluding that the acts or omissions in the management of the Appellant by Wallis were oppressive to, unfairly prejudicial to or unfairly discriminatory against the Respondent.*

*(b) If the answer to the above is in the affirmative then has the Judge exercised his discretion under section 177 of the Act correctly by ordering as relief against such conduct that the Appellant be wound up.*

**Judges Analysis**

17. Firstly the Judge observed that the Respondent had correctly brought the application as a member of the company against another member pursuant to sections 177 and 178 of the Companies Act. It was not in dispute that the Respondent was a member of the company

as it was acknowledged that he held 10,000 shares in the company. It was also not in dispute that the Appellant held 90,000 shares in the company so the Respondent was a minority shareholder.

18. The Judge considered that the situation in this case appeared to be a management deadlock in *"quasi-partnership arrangements"* which typically involved two business partners controlling a company, each assuming the combined roles of shareholders and directors.

19. The Judge then set out the law relating to minority oppression in paragraphs 21 to 24 of his judgment as follows:-

> *"21. The remedy against oppression of minority shareholders (oppression remedy) is found in section 176 of the Com Act. This section provides a backbone of substantive rights for protecting an individual shareholder's interests in the face of a company's mismanagement. The oppression remedy gives court the discretionary power to grant relief in circumstances where an actual or proposed act or omission by or on behalf of a company is either-*
>
> *(i) contrary to the interests of the members as a whole; or*
>
> *(ii) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.*
>
> *22. In such circumstances, shareholders may have the option of obtaining relief under section 177 of the Com Act provided they can show the conduct or act falls within either "limb" of these criteria. The court has the discretion toon to grant any relief.*
>
> *23 The oppression remedy provides an important safeguard for the rights of an individual shareholder whose interests may be at risk of abuse from the majority shareholders' mismanagement of the company's affairs.*
>
> *24 The appropriate oppression remedy in any given instance can be fashioned according to the needs and circumstances of the parties and business arrangement involved. The order the court may make include:*
>
> *a) that the company be wound up;*
>
> *b) that the company's existing articles of association be amended or repealed;*
>
> *c) to regulate the conduct of the company's affairs in the future;*
>
> *d) for the purchase of any shares by any member or person to whom a share in the company has been transmitted by will or by operation of law;*

*e) for the purchase of shares with an appropriate reduction of the company's share capital;*

*f) for the company to institute, prosecute, defend or discontinue specified proceedings;*

*g) authorising a member, or a person to whom a share in the company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;*

*h) appointing a receiver or manager of any or all of the company's property;*

*i) restraining a person from engaging in specified conduct or from doing a specified act; or*

*j) requiring a person to do a specified act. (Com Act, s.177)".*

20. The Judge then stated that what constitutes oppressive conduct depends on the specific facts of each case but might include the following:-

*"a. Misappropriation of company funds or assets;*
*b. Running the company in a party's own interests to the exclusion of (or indifference to) the interests of other shareholders;*
*c. Denial of access to company information or unfair exclusion from participation in the company's management;*
*d. Payment of excessive remuneration to company officers, possibly at the expense of paying dividends;*
*e. Improper diversion of company business to other entities / individuals;*
*f. An improper issue of shares which might include, for example, one that is calculated to achieve a decisive majority shareholding or voting right;in that entity (or, conversely, dilute another party's."*

21. On the basis of the above, the Judge then referred to the following acts or omissions which he considered were established by the affidavits as illustrations of oppressive conduct by Wallis against the Respondent:

a) refusing to provide any information about the company including its income and its financial position

b) refusing to convene a company meeting despite several requests made by the Respondent.

c) improperly and/or illegally removing the Respondent as a director of the company as a consequence of the Respondent insisting that the Respondent provide financial information of the company.

22. The Judge then made the following conclusion at paragraph 33 of his judgment regarding whether or not the respondent had acted oppressively to, unfairly prejudicial to or unfairly discriminatory against the Respondent as a minority shareholder in terms of section 176 of the Act:-

> *"33. On the evidence and having been satisfied on the balance of probabilities, I conclude that the respondent's acts or omissions in the management of the company to be oppressive, unfairly prejudicial to, or unfairly discriminatory against the applicant, a minority shareholder, that the parties are at an irreconcilable deadlock and there is no prospect of the business continuing, that the respondent is running the company in his own interests to the exclusion of the interests of the shareholder, the applicant, and that the respondent had denied the applicant access to company information or had unfairly excluded the applicant from participation in the company's management."*

**Appellant's Submissions**

23. The appellant cited the case of In re: **Five Minute Car Wash Service Limited** (1966) 1WLR 745 as authority for the proposition that in considering whether there has been oppression in the context of Section 177 of the Act, it must be established that the oppressor has acted unscrupulously, unfairly or with lack of probity and that his acts or omissions were designed to achieve an unfair advantage.

24. The appellant also cited the case of In re: **Harmer Ltd** 1 WLR 62 where Lord Keith stated "oppression involves, I think, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

25. The Appellant acknowledged that the judge had a wide discretion in considering claims of oppression but that in exercising that discretion the Judge must consider the law as set out above and on the basis of that law and the evidence both for and against determine whether the conduct complained of is oppressive to, unfairly prejudicial to or unfairly discriminatory against the member concerned. If this is not established the wide discretion of the judge should be set aside. The Appellant concluded in this respect that there should at least be a visible departure from the standards of fair dealing and a violation of the

condition of fair play on which every shareholder who entrusts his money to the company is entitled to rely.

26. The Appellant then submitted that on the basis of the above authorities there was no evidence before the judge to establish oppression by Wallis against the Respondent.

**Respondent's Submissions**

27. The Respondent on the other hand in his submissions submitted that there was sufficient documentary evidence before the Court that the Appellant was operating the company contrary to the interests of the respondent and to make the orders imposed. He cited as examples of such evidence.

a. failing to call a meeting to discuss the affairs of the company
b. allocating 10% of the shares in the company to the Respondent when their agreement was that the Respondent would hold 50% of the shares as per the Investment Fiji approval.
c. failing to file and an annual report with the Companies Office.
d. removing the Respondent as a director without a proper notice of a meeting to remove him or notice of his removal.
e. operating the company how he wants without consulting the Respondent a minority shareholder.
f. a suggestion that the Appellant is illegally operating as it has not been able to meet the requirements of Investment Fiji which did not dispel in its affidavit evidence.

28. In support of his submissions the Respondent referred to the High Court decision in **Patel v Anand** (2018) FJHC 319; Winding Up Action 2 of 2017 (20 April 2018), where in discussing shareholder oppression Justice Deepthi Amaratunga stated:-

> *"The scope of oppressive acts cannot be defined precisely, but taken in the context and circumstances it is possible to see the objective and the results of such actions. It is not one particular act but the cumulative effect of the Respondent, that is oppressive."*

29. Although the evidence of both parties in their respective affidavits is somewhat limited both parties had decided to rely on those affidavits and not have an oral hearing so it was all the Judge had before him to consider.

30. I have considered the Affidavit evidence.

31. I consider that the evidence at the very least establishes that Wallis, acted in a manner that lacked probity and fair play.

32. I further consider that on the basis of this evidence the Judge was correct in reaching his conclusion that the Appellants acts or omissions in the management of the company as set out above was oppressive to, unfairly prejudicial to, or unfairly discriminating against the Respondent in terms of section 176 of the Act. I therefore answer the first substantive issue set out in paragraph 16 (a) above in the affirmative.

33. Having reached this conclusion I must now consider the second substantive issue set out in paragraph 16 (b) above which is:-

*Has the Judge exercised his discretion under Section 177 of the Act correctly in ordering the winding up of the company?*

34. The judge, at the beginning of his consideration of the appropriate relief at paragraph 34 of his judgment states that the Respondent is seeking a winding up order using the oppression remedy. He makes no mention at this point of the Respondent's first prayer in the application that Wallis purchase his shares.

35. The Judge then correctly states that a court will generally view the winding up of a solvent and trading company as a drastic step.

36. He then makes the supposition that the Appellant had been formed and was dependent on the existence of a relationship of mutual cooperation, trust and confidence between the parties (partners) and those relationships no longer existed. He then concludes that in those circumstances the court could exercise its discretion to make the order to wind up a solvent and trading company. He does not cite any authority for this conclusion. As a general proposition this is clearly wrong.

37. He further notes in paragraph 34 of his judgment *"....that it was significant that the company (business) has not been trading since its formation on 6 December 2016. This means the company is not a trading entity."*

38. Later in his judgment he notes that the Respondent has also sought what he called a mandatory *"buy out"* order for the Respondent to purchase the shareholding of the applicant at the rate of $10.00 per share but curiously he does not address this claim at all even though it was the Respondents first order prayed for in his application.

39. He concludes that after considering the facts and circumstances of the case he exercises his discretion by granting a winding up order as a remedy for the unfair or prejudicial conduct on the part of the respondent's mismanagement of the company.

40. The notes to the financial statements exhibited to Wallis' affidavit sworn the 13 March 2019 indicate that Wallis had made a significant investment in the Appellant. This was not disputed in the Respondent's affidavit in reply.

41. Further the Respondents affidavit sworn the 2nd May 2019 confirmed that Wallis had constructed display homes on a Native Lease from where he operated the Appellant Company

42. It is also significant that in his written submissions before the High Court the Respondent submitted that since Wallis was objecting to the winding up order the only option left to Wallis was that he buy the Respondent's shares as prayed in the application. This submission was repeated before this court.

43. The relevant provisions of Section 513 of the Act provide that a company may be wound up by the court if:-

> *"(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 insolvent';*
>
> *(d) the court is of the opinion that it is just and equitable that the company should be wound up;"*

44. The deterioration in the relationship between the two parties is not a ground for winding up. There was no application before the court relating to the companies solvency. Neither was there an application relating to the company's commencement or suspension of its business in terms of Section 513 (b) above. Indeed exhibits annexed to Wallis' affidavit namely the Investment Fiji Approval, Foreign Investment Registration Certificate and VAT Registration indicate that the company had commenced business. Further the appellant had constructed mobile display homes as disclosed by the Respondent in his affidavit.

45. As the Appellant pointed out in its written submissions before this court in respect of ground 5 of its grounds of appeal:-

> *"There were no evidence that the Appellant Company was non-operational when the only evidence before the Court was that the Appellant company had not commenced trading in the commercial sense of that word. The mobile homes were there for would-be customers to see but no homes were sold to generate profit for distribution to the shareholders.*
> *The Appellant Company was solvent, it had already on display mobile homes which in itself was a significant investment. Interestingly, the Respondent was not a contributor to the activities of the company."*

46. Although the Appellant and Wallis may have been in default of their Investment Fiji approval this is not a ground for winding up.

47. Although generally the court has a wide discretion under section 513 (d) of the Act, in answer to the second substantive issue, I consider that in the circumstances of this case, the Judge exercised his discretion wrongly in ordering that the company be wound up on the basis of the evidence in the affidavits before him. This was to use the Judge's words a *"drastic step"* particularly when the Respondent had in the application firstly sought a purchase of his shares by Wallis and the Judge had the power to grant this remedy under section 177 (1) (d) of the Act. The Winding Up Order should therefore be set aside.

48. It appears that both parties preferred the result that Wallis purchase the Respondent's shares rather than the appellant company being wound up.

49. It is clear from the affidavit evidence that the Respondent and Wallis were not getting on. I consider that the appropriate remedy in the circumstances of this case would have been to order that Wallis purchase the Respondent's shares.

50. The Appellant submitted before this court that the Appellant (Wallis) had never refused to purchase the Respondent's shares.

51. Indeed as recorded at Pages 113 and 114 of the record in an application by the Appellant for a stay of the order to wind up the company before Justice A. Tuilevuka in the High Court at Lautoka on 25 November 2020 counsel for the Respondent confirmed that the parties were talking settlement towards Mr. Singh's client that is Wallis buying out the Respondents shares. An interim stay was then granted, *"On the basis that the parties were pursuing settlement i.e. Mr Singh's client to buy out Mr Sailo's client's shares in the company following a valuation of shares."*

52. In the case of **Scottish Co-operative Wholesale Society Ltd v Meyer** (H.L.(Sc)) 1959 AC at page 369 Lord Denning stated the following in regard to the equivalent English legislation at the time to Section 177 of the Act:-

> *"One of the most useful orders mentioned in the section which will enable the court to do justice to the injured shareholders is to order the oppressor to buy their shares at a fair price; and a fair price would be, I think the value which the shares would have had at the date of the petition, if there had been no oppression. Once the oppressor has bought the shares, the company can survive. It can continue to operate. That is a matter for him. It is, no doubt, true that an order of this kind gives to the oppressed shareholders what is in effect money compensation for the injury done to them: but I see no objection to this. The section gives a large discretion to the court and it is well exercised in making an oppressor make compensation to those who have suffered at his hands."*

53. The Respondent in the application sought an order that Wallis purchase all his shares in the company at a price of $10.00 per share or at another price that the court determines. He did not provide any evidence to indicate how the price of $10.00 was arrived at. I therefore cannot accept this price.

54. I consider on the authority of the **Scottish Co-operative** case supra that the shares should be purchased at a fair price equivalent to the value of the shares as at the date the application was filed in the High Court i.e. 31 October 2018. I further consider that all costs including costs incurred in obtaining a value for the shares should be met by Wallis as the oppressor.

55. It is not for this court to determine that value, or a process to establish the value and the time frame for concluding a purchase. These matters should be determined by the High Court after hearing the parties.

56. I would comment however that it appears to me that the appropriate process for arriving at a value would be for each party to appoint a Chartered Accountant practising in Fiji to each determine a value of the shares and that the price for the shares be the average of those two valuations. I leave this to the High Court however to determine after hearing the parties. The parties may wish for instance to make submissions on the method of valuation to be applied.

**Conclusion**

57. For the reasons stated above I consider that the winding up order made against the Appellant Company on 25 November 2020 should be set aside and that an order be made in its place that Wallis purchase the Respondents shares in the Appellant Company at a value to be determined by the High Court.

**Clark, JA**

58. I concur in the outcome of this appeal, the reasons given and the orders made.

59. **Orders**

I therefore order as follows:-

1. *The Order of the High Court dated 25 November 2020 that the company Lifestyle Pacific (Fiji) Pte Limited be wound up is set aside.*

2. *That Alick George Richard Wallis purchase all the shares of the Respondent Antonio Catanzariti in the Appellant Company at a price equivalent to the value of the shares on 31 October 2018.*

3. *The matter is referred back to the Lautoka High Court Registry to be listed before a Judge to determine a process to establish the value of the Respondent's shares and a timetable for the purchase of those shares by the said Alick George Richard Wallis after hearing the parties.*

4. *That all costs incurred in determining a value of the shares are to be paid by Alick George Richard Wallis.*

5. *I make no order for costs of this appeal.*

**The Hon Mr. Justice Isikeli Mataitoga**
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

**The Hon Mr. Justice Walton Morgan**
JUSTICE OF APPEAL

**The Hon. Madam Justice Karen Clark**
JUSTICE OF APPEAL