

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**WINDING UP CAUSE NO. HBE 04 of 2015**

**IN THE MATTER OF PACIFIC BUILDING**  
**SOLUTIONS LIMITED**, a limited liability company  
having its registered office at Lot 9 – 12 Nukuwatu  
Street, Lami, in the Republic of Fiji Islands.

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

**COUNSEL:**                      **Mr. Niubalavu**      for the Petitioner  
   **Mr. O'Driscoll**     for the Respondent

**BEFORE:**                        **Acting Master S. F. Bull**

**Date of Hearing:**              **26 March 2015**

**Date of Ruling:**               **26 March 2015**

**EX TEMPORE RULING**

Before the Court today is the Petitioning Creditor's application filed 11 February 2015 to wind up the Respondent Debtor Company. On 6 March 2015, the Respondent filed a notice of motion supported by affidavit, to strike out or stay the said petition.

Mr. O'Driscoll raised a preliminary objection to the affidavit verifying petition being sworn by someone who did not qualify to do so under rule 25 of the Companies (Winding Up) Rules. He submits that the Petitioner has not filed an affidavit in reply to the answering affidavit as required under rule 31(2) and, being out of time, the Petitioner needs to make an application by way of motion to be able to do so. It is further submitted that the petition is without substance and, being an abuse of process, as well as for non-compliance with the winding up rules, ought to be struck out.

Mr. Niubalavu seeks time to reply to Mr. O'Driscoll's motion, saying that the question as to whether counsel should swear the verifying affidavit is a matter for hearing of the petition.

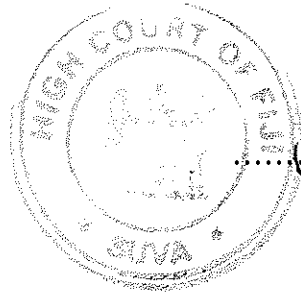
Having considered counsel's submissions and the winding up rules, particularly rules 25 and 31 (1) (2), I am of the opinion that Mr. O'Driscoll's submissions though noble, are relevant to the hearing of his motion, and of the substantive matter should the motion be refused. I note in particular that rule 31 applies to affidavits opposing the petition, and replies to that affidavit.

Apart from the Petition, a notice of motion to strike out and stay the petition is before the Court and I am of the view that the Court needs to first hear the motion before dealing with the substantive matter. To be able do so, an opportunity ought to be given to the Petitioning Creditor to reply to the affidavit in support of the Respondent's motion.

For these reasons, I make the following orders:

1. The Petitioning Creditor is to, within 14 days, file and serve an answering affidavit to the motion to strike out or stay the Petition;
2. The Respondent Debtor Company is at liberty to file and serve a reply within 7 days thereafter;
3. The hearing of the Petition is adjourned pending determination of the motion to strike out;
4. This case is adjourned to 29 July 2015 for hearing of the motion at 11.30 am.

Dated at Suva this 26<sup>th</sup> day of March, 2015.



  
S. F. Bull  
**Acting Master**