

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

**Companies Action No. 31 of 2023**

**IN THE MATTER of VIANI BAY LIMITED**

**AND**

**IN THE MATTER** of the Companies Act 2015, Section 609 (2) and (3) and Companies (High Court) Rules 5 (e) and Order 9 of High Court Rules 1998 and the Inherent Jurisdiction of the High Court.

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**Representation:**

Mr S. Parshotam & Mr E. Kumar for the Petitioner. (Parshotam Lawyers)  
Ms Solimailagi for the Registrar of Companies.  
Mr A. Patel on instruction for the Company.

**Date of Hearing:** 31<sup>st</sup> July 2023

**JUDGMENT**

1. A Petition has been filed to reinstate and re-register Viani Bay Limited ("the Company"). An affidavit verify petition of Noel Charles Reginald Douglas is filed with the Petition. Noel Charles Reginald Douglas is one of the shareholders of the Company. An affidavit in response was filed by Shavleen Prasad, the Registrar of Companies. At the hearing of the matter both the lawyers for the Registrar of Companies and the Company informed the Court that they did not object to the Petition.
2. Section 609 (2) and (3) of the Companies Act 2015 is as follows:  
“(2) The Court may make an order that the Registrar reinstate the registration of a Company if -
  - (a) an application for reinstatement is made to the Court by -
    - (i) a person aggrieved by the deregistration; or
    - (ii) a former liquidator of the Company; and
  - (b) the Court is satisfied that it is just that the Company's registration be reinstated.
- (3) If the Court makes an order under subsection (2), it may -

(a) validate anything done between the deregistration of the Company and its reinstatement; and

(b) make any other order it considers appropriate.”

The Companies (High Court) Rule 5 (e) provides that an application for reinstatement of the registration of a company under Section 609 of the Companies Act 2015 must be made by a Petition. Order 9 of the High Court Rules 1988 also deals with petitions.

3. In order to have locus in this matter, the Petitioner needs to show that either he “is a person aggrieved” or “a former liquidator” of the company. The Petitioner relies on the former. One of the first considerations for this Court is whether the Petitioner is relevantly ‘aggrieved’ and has locus to seek the orders in the Petition? Noel Charles Reginald Douglas in his affidavit states that “I am a person aggrieved by the deregistration of the company...”
4. This is a novel Petition. The phrase “a person aggrieved” needs judicial pronouncement. This Court is grateful to Mr Parshotam and Mr Kumar for assisting this Court with the Australian case laws on this subject. Section 601 AH (2) of the Australian Corporations Act 2001 (Cth) is similar to Section 609 (2) of the Fijian Companies Act 2015. Both deal with reinstatement by Court. The Australian cases provide useful guidance on the issues relating to Section 609 (2) of the Companies Act 2015.
5. In The Bell Group Limited v. Australian Securities and Investments Commission [2018] FCA 884, McKerracher J at Para [47] stated:

*“The expression ‘person aggrieved’ in s 601AH should not be construed narrowly: Yeo v Australian Securities Commission, in the matter of Ji Woo International Education Centre PTY Ltd (deregistered) [2017] FCA 1480 per Gleeson J (at [14]-[16] and the authorities therein cited). For a person to be aggrieved for the purposes of s 601 AH (2) (a) (i), an applicant for reinstatement must be able to show that the deregistration deprived the applicant of something, or injured or damaged the applicant in a legal sense, or if the applicant became entitled, in a legal sense, to regard the deregistration as a cause of dissatisfaction. Danich Pty Ltd; re Cenco Holdings Pty Ltd (2005) 53 ACSR 484 per Barrett J (at [32]).”* and in Para [50] McKerracher J further added that:

*“There needs, however, to be some connection other than simply being a shareholder or a director of a company that is deregistered in order to be a person aggrieved. An applicant must demonstrate that his or her interests have been, or are likely to be, prejudicially affected by the deregistration of the company. A mere dissatisfaction with an event will not render someone a ‘person aggrieved’; they must be a person who has been damaged or injured in a legal sense: Callegher v Australian Securities and Investments Commission (2007) 218 FCR 81 per Lander J (at [50] and the authorities therein cited). For example, a shareholder demonstrating that he or she is a creditor of the company, or that there will be a surplus of assets and rights to dividends if the company were to be reinstated: Vukasin v ASIC [2007] NSWSC 1341.”*

6. On the application to reinstate the company, the **first matter** to consider is whether Petitioner, Noel Charles Reginald Douglas “a person aggrieved by the deregistration”. In this matter the Petitioner has disclosed that he is a shareholder of the company. The reasons advanced by the Petitioner for seeking reinstatement are contained in his affidavit as follows:

*“13. That I seek for the Company to be reinstated for the following reasons;*

*(a) I would be unable to take further steps in Companies Action No 5 of 2021 if the Company is deemed to be de-registered.*

*(b) I would be unable to file further proceedings against the Company and its then directors for fraud if the Company is deemed to be de-registered.*

*(c) I would not be able to enforce any judgments against the Company.*

*(d) The company owns a Property of substantial value, and if the Company decides to sell the Property to pay out the shares to the shareholders, it will be unable to do that if the Company is deemed to be de-registered.”*

7. In this matter the Petitioner while being a shareholder has shown that he has a pending Court action relating to the Company. As a shareholder he is showing some particular prejudice, with the winding up action. The company also needs to deal with its property and give its shareholders their share and/or settle any claims made against it. The Petitioner is alleging unlawful changes to the shareholding, unlawful changes to office bearers, and oppressive conduct of certain persons who had assumed control of the company. The Petitioner intends to sue previous directors for fraud for making changes to the shareholding of the company. These are serious issues for consideration. Copies of the amended application for winding up filed and the minutes of the shareholders meeting held on 27<sup>th</sup> February 2022 are annexed in the Affidavit of the Petitioner. It shows shareholders appointing new directors. In order for these to be regularised with the Registrar of Companies the company would need to be re-registered. The company also has property of substantial value which needs to be dealt with. This Court finds that the Petitioner is a person aggrieved by the deregistration in this matter.

8. The **second matter** for the Court to consider is whether “it is just that the company’s registration be reinstated”. According to McKerracher J in **The Bell Group Limited** (Supra) at Para [72], [73] and [74] “*the question of whether it is ‘just’ to make these orders is not constrained by any particular legislative parameters but, as noted in Wedgewood Hallam Pty Ltd v Australian Securities and Investments Commission, in the matter of Combined Building Consultants Pty Ltd [2011] FCA 439 per Gordon J (at [5] and the authorities therein followed by her Honour), regard should be had to:*

*(a) the circumstances in which the companies came to be deregistered;*

*(b) the future activities of the companies, if an order for reinstatement is made; and*

*(c) whether any particular person is likely to be prejudiced by the reinstatement.*

*[73] A further consideration is also raised within the case law being that of public policy; see, for example, Re ERB International Pty Ltd (deregistered) (2014) 98 ACSR 124 per Brereton J (at [5] and the authorities therein cited).*

[74] *These are by no means the only considerations and they may well overlap one another. They should not be approached as though they are statutory prescriptions.*”

9. The company was deregistered on 31<sup>st</sup> December 2021 for failing to be reregistered in accordance with Part 47 of the Companies Act 2015. In **Donmastry Pty Ltd v Albarran (2004) 49 ACSR 745**, Barrett J (at [5]) pronounced that a court should be more ready to reinstate a company that has not been through a winding up process. His Lordship said:

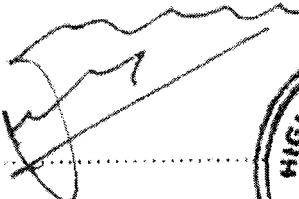
*“The next matter to which s601 AH (2) directs attention is the question whether the court is satisfied that it is “just” that the registration be reinstated: s601AH (2) (b). this is not a case where deregistration occurred as an administrative measure in the nature of a cleansing of the register to remove apparently superfluous entries. Deregistration was the culmination of the process of winding up and, in the normal course, the court would be more reluctant to disturb that kind of deregistration than it would be to resuscitate a company removed as a purely administrative measure...”*  
(Emphasis added).

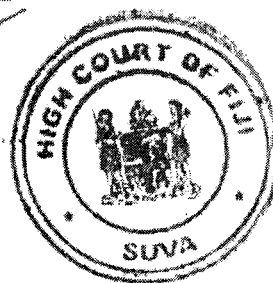
10. The company was not deregistered in the process of winding up. It was deregistered for failing to be re-registered. The deregistration was basically an administrative measure. There are a number of activities the company needs to undertake, if an order for reinstatement is made. The shareholders need to sort out various issues involving the governance of the company. The Petitioner has affirmed in his affidavit that no prejudice will be caused to any party or individual if the company’s registration is reinstated. The Registrar of Companies does not take any issue with this position. This Court is satisfied that it is “just” that the company’s registration be reinstated.
11. This is not the end of the matter. We need to consider the effect of reinstatement which is, section 609 (5) of the Companies Act 2015 which provides:

*“If a company is reinstated, the company is taken to have continued in existence as if it had not been deregistered. A person who was a director of the company immediately before deregistration becomes a director again as from the time when the Registrar or the Court reinstates the company. Any property of the company that is still vested in Government or Registrar reverts in the company. If the company held particular property subject to a security or other interest or claim, the company takes the property subject to that interest or claim.”*

12. The Petitioner in his affidavit has raised issues about unlawful changes to the shareholding of the company. There is also allegations of unlawful changes to the office bearers. The Registrar of Companies in her affidavit has averred that an application for reregistration of the company was made on 3<sup>rd</sup> December 2022. It was not reregistered due to non-compliance with the prescribed requirements. The Registrar states “in particular, the shareholding structure provided with the reregistration application does not match the records of the shareholding structure in the Company’s file. Also one of the purported officeholders of the Company namely Mr Uttam Satesh, as shown on the reregistration application, does not match the records of the Company with my office.” The Registrar of Companies and the Petitioner both have raised similar issues of concern. These relate to attempts being made to make changes to the company shareholding. These concerns appears to me to be well founded.

13. This brings me to the **third matter**, being the extent of the Court's power to make ancillary orders under Section 609 (3) (b) of the Companies Act 2015, and what orders are appropriate in this case. Section 609 (3) (b) gives the Court power to "make any other order it considers appropriate". The "other" refers to section 609 (3) (a) which empowers the Court to validate things done during the period of deregistration. In **Pagnon v. Workcover Queensland [2201] 2 Qd R 492**, Mepheron JA considered the power to be very wide at [15]. In **Re Bele & Co Pty Ltd [2017] NSWSC 1824**, Black J read the power as incidental to the Court's power to reinstate a deregistered company, and not as independent of it: at [6]. Having noted that there is concern by the Registrar of Companies in addition to those of the Petitioner which relate to the shareholding and officeholders it is prudent that this Court make ancillary orders as sought by the Petitioner. Which is to appoint the current directors of the Company, Karen Hill and Claude Michel Prevost appointed vide shareholders meeting of 27<sup>th</sup> February 2022 to provide all necessary documentations to the Registrar of the Companies and to update the register and attend to ancillary matters required for the re-registration of Viani Bay Limited.
14. The Court makes the following orders and directions:
- (a) That the Registrar of Companies reinstate and re-register Viani Bay Limited.
- (b) That the current Directors of the Company, Karen Hill and Claude Michel Prevost appointed vide shareholders meeting of 27<sup>th</sup> February 2022 provide all necessary documentations to the Registrar of the Companies and to update the register and attend to ancillary matters required for the re-registration of Viani Bay Limited.

  
Chaitanya Lakshman  
Acting Puisne Judge



4<sup>th</sup> August 2023