

CATCHWORDS: *Company law—intervenor— the power to apply to intervene in a proceeding involving a company in liquidation is in section 543 (3) of the Companies Act 2015; Company law—section 130 of the Companies Act apply when the company is not in liquidation; Interpretation of statutes and the application of the Latin maxim generalia specialibus non derogant.*

Introduction

1. This is an application via an Originating Summons by the Plaintiff under section 169 of the Land Transfer Act 1971 to evict the 1st Defendant from her property at 386 Waimanu Road, Suva.
2. The First Defendant had entered into a Tenancy Agreement with the Plaintiff on 1st March 2024 to rent a residential property belonging to the Plaintiff at 386 Waimanu Road, Suva for \$3,500 per month. The property is freehold and registered as CT 4783, (Register Vol. 48 Folio 4783) on the island of Viti Levu, in the City of Suva. The Certificate of Title shows the last registered owner as Jayantilal Chotabhai Patel and Varsha Patel f/n Hirabhai as joint tenants.
3. The tenancy expired on 28th February 2025 and it was not renewed. The First Defendant has not vacated the property and its directors had continued to occupy the property.
4. Through her solicitors, the Plaintiff issued and served a Notice to quit on the First Defendant 11th March 2025 at 386 Waimanu Road.

The Winding Up of the First Defendant

5. On the 31st of March 2025, the First Defendant was wound up by the High Court of Fiji on the application of Pampha Devi Rimal trading as *Same Day Services* on the grounds that the company was insolvent. The statutory demand was served on Leslie Gee Way Wong as a Director of the Company in the amount of \$41,181.50. Two other creditors, including the Plaintiff in this action supported the application and according to their solicitors, the First Defendant owed them a total of \$82,268.95.¹
6. On 24th June 2025 the Plaintiff filed the eviction proceedings in the High Court accompanied by an affidavit in support sworn by the Plaintiff stating out the facts outlined above and attached a copy of the title to the property showing her and her late husband are the last registered proprietors as joint tenants.
7. The Second Defendant did not oppose the eviction proceedings.

Attempt to Intervene by Leslie Gee Way Wong

8. On 7th August 2025, Mr. S. Valenitabua attempted to intervene in court on behalf of a Director of the Company, Leslie Gee Way Wong. His attempt was vigorously opposed by solicitors for the Plaintiff. I ordered Mr. Valenitabua to file any application for leave to intervene and adjourned the matter to 8th of August 2025. Mr. Valenitabua then filed

¹ Structural Steelworks Engineering (Fiji) Pte Ltd, In re [2025] FJHC 173; HBE50.2024 (31 March 2025)

on 7th August a Notice of Motion supported by an affidavit of Leslie Gee Way Wong to intervene in the proceedings pursuant to section 180 of the Companies Act 2015. I set the matter down for hearing on 15th August and allowed the Plaintiff and the 2nd Defendant to file affidavits in opposition.

9. The affidavit in support of Leslie Gee Way Wong states that he is a Director and member of the 1st Defendant company and that he is authorised to depose of matters in the affidavit. There is no evidence of who are the other directors of the company, how many shares there are of the company and how many shares he holds.
10. Mr. Wong said the reasons for his intervention are that the Provisional Liquidator, the 2nd Defendant, presently does not intend to defend the leave and eviction proceedings filed by the Plaintiff; that the company has a counter-claim regarding the illegality of the tenancy agreement; that the company carried out repairs to the property; that Plaintiff unlawfully increased the rental on the property; and that these are part of their counter-claim in HBC 82 of 2025 filed in the High Court but it is not before me.

The Hearing

11. This application by the proposed intervenor was heard on 15th August 2025 and I thank all counsels for their submissions. Mr. Valenitabua said he relied on section 180 and he is seeking leave of the court pursuant to section 531 of the Companies Act. The matter arose from the Winding Up order of 31st March 2025 and I have read the judgment in that case. The application for winding up was made by one PAMPHA DEVI RIMAL trading as *Same Day Services*. The Plaintiff herein, Varsha Jayantilal Patel joined the action as a supporting creditor.
12. Section 180(2) of the Companies Act requires the court in considering leave to have regard to:
 - a. the likelihood of the proceedings succeeding;
 - b. the costs of the proceeding in relation to the relief likely to be obtained;
 - c. Any action already taken by the company to obtain the relief; and
 - d. The interests of the company in the proceedings;
13. Subsection 180(3) provides that leave will only be granted if the court is satisfied that the company does not intend to diligently defend the proceedings. I will deal later herein with the issue of whether section 180 is the appropriate section to be used to apply to intervene in proceedings when the company is in liquidation.

The Law on Evictions

14. Section 169 of the Land Transfer Act states:

Ejectors

169. The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-

(a) the last registered proprietor of the land;

(b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;

(c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.

Particulars to be stated in summons

170. *The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons.*

Order for possession

171. *On the day appointed for the hearing of the summons, if the person summoned does not appear, then upon proof to the satisfaction of the judge of the due service of such summons and upon proof of the title by the proprietor or lessor and, if any consent is necessary, by the production and proof of such consent, the judge may order immediate possession to be given to the Plaintiff, which order shall have the effect of and may be enforced as a judgment in ejectment.*

Dismissal of summons

172. *If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit;*

Provided that the dismissal of the summons shall not prejudice the right of the Plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:

Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.

The First Issue – what are the chances of the Plaintiff's success in the eviction proceedings?

15. Section 169 of the Land Transfer Act gives the last registered proprietor and indefeasible title to the land by virtue of Section 39 of the Land Transfer Act. The Plaintiff is the last registered proprietor with her husband as joint tenants, and her title is paramount and guaranteed upon registration:

Estate of registered proprietor paramount, and his title guaranteed

39.-(1) *Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, shall, except in case of fraud, hold the same subject to such encumbrances as may be notified on the folium of the register, constituted by the instrument of title thereto, but absolutely free from all other encumbrances whatsoever except-*

..... (no applicable)

16. The power to grant a lease to any tenant derives from the indefeasibility provisions of the Land Transfer Act and when the tenancy expired, the Plaintiff had issued a legal notice to quit, and this entitled her to bring this action under section 169(c) of the Act. The Plaintiff therefore can succeed on section 169(a) or 169(c) unless the 1st Defendant or the intervenor can prove a right to remain on the property.
17. Mr. Valenitabua's argument that the 2nd Defendant did not push for proof of the Plaintiff's title as the sole registered owner for her to rely on section 169 of the Land Transfer Act is a moot point and is irrelevant under section 169 (c).
18. The application under section 169 of the Land Transfer Act is a summary proceeding and the affidavit of the proposed intervenor does not disclose any facts which would give the company the right to remain on the property. The court has all the evidence it requires to deal with the eviction application.
19. Whether the Liquidator defends the case or the proposed intervenor takes his place, the facts and the application of the law to the facts do not change.
20. There is nothing that Mr. Wong has said in his affidavit that gives him the right to remain on the property. HBC 82 of 2025 is a claim by the Plaintiff and the company has pleaded its counter-claim inter alia, for repairs it allegedly made to the property; and for alleged illegal raises of the rent by the Plaintiff. The intended intervenor said in his affidavit in support of the motion that these are the reasons he wishes to intervene; plus the fact that the First Defendant is not pursuing the matter diligently. Mr. Valenitabua for the proposed intervenor argued evidence of lack of diligence is the First Defendant not objecting to the fact that the Plaintiff is only one of the two joint tenants who are the last registered owners of the property. This might be a valid reason if section 169(a) were the only cause for eviction. This example lacks merit as section 169(c) of the Land Transfer Act allows the Plaintiff to pursue eviction proceedings independently of section 169(a).
21. The matter is before another court and the hearing of the matter does not depend on the company remaining on the property.
22. HBC 82 of 2025 is a claim by the Plaintiff with a defence and counter-claim by the company. The remedy for that action, should the company succeed is in damages and is enforceable against the Plaintiff or the company *in personam*. It does not create a right

to the property of any kind. It certainly does not overcome the indefeasibility provisions of the Land Transfer Act.

Conclusion on the First Issue

23. For the reasons given above, the eviction proceedings, whether defended by the First Defendant alone or by the proposed intervenor is doomed to fail and the Plaintiff, on the evidence before the court will succeed. These are summary proceedings and the court will not allow any further evidence by way of affidavits to be filed.

Second Issue— Does Section 180 of the Companies Act 2015 give the intended intervenor any right to intervene when the company is in liquidation?

24. The intended intervenor relied on section 180 of the Companies Act which provides: -

180.— (1) Subject to subsection (3), the Court may, on the application of a Member or Director of a Company, grant leave to that Member or Director to—

(a) bring proceedings in the name and on behalf of the Company or any Related Body Corporate; or

(b) intervene in proceedings to which the Company or any Related Body Corporate is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the Company or Related Body Corporate, as the case may be.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court shall have regard to—

(a) the likelihood of the proceedings succeeding;

(b) the costs of the proceedings in relation to the relief likely to be obtained;

(c) any action already taken by the Company or a Related Body Corporate to obtain relief; and

(d) the interests of the Company or Related Body Corporate in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1), only if the Court is satisfied that either—

(a) the Company or Related Body Corporate does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or

(b) it is in the interests of the Company or Related Body Corporate that the conduct of the proceedings should not be left to the Directors or to the determination of the Members as a whole.

(4) Notice of the application must be served on the Company or Related Body Corporate.

(5) The Company or Related Body Corporate—

(a) may appear and be heard; and

(b) must inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

(6) Except as provided in this section, a Member is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a Company or a Related Body Corporate.

Discussion

25. The Companies Act is extensive and contains a total of 778 sections not counting those amendments numbered with an alphanumeric number such as section 714A. The companies regulations are extensive also and the Companies (Winding Up) Rules contains 119 Rules.
26. A study of the table of contents of the Act clearly shows that each Part and Division deals with specific matters shown by the headings. There are 47 Parts and within each part, there are several Divisions and several sections make up a division. PART 39 is titled, WINDING UP BY THE COURT and constitutes sections 512 to 601 of the Act.
27. Section 180 of the Act on which the intended intervenor relies is in Division 2 of Part 16 titled, MEMBERS RIGHTS AND REMEDIES. Division 1 is titled, Oppressive Conduct of Affairs, **Division 2 deals with Proceedings on Behalf of a Company by Members and others**, Division 3 deals with Class rights and Division 4 deals with Inspection of Books. Section 180 is in Division 2.
28. In interpreting the Companies Act, one must have regard to the Latin maxim, *generalia specialibus non derogant* meaning "the general does not detract from the specific". It is a principle of statutory interpretation, where a specific provision in a law will prevail over a more general, conflicting provision when both apply to the same situation. This maxim ensures that detailed laws are given precedence, providing fairness and justice by applying specific regulations to particular cases.
29. The meaning of a power or right in a statute cannot be arrived at simply by looking at the provisions of a particular section in isolation. One must look at the surrounding provisions and divisions and Part of the Act to ascertain when the particular provision will apply.
30. When applying the maxim *generalia specialibus non derogant* to the Companies Act, for a company in liquidation, the specific rule that must prevail are the provisions of Part 37 of the Act dealing with Part 39 – Winding Up by the Court.
31. Section 180 of the Companies Act, belongs to Part 16, Members rights and Remedies and Division 1 deals with Oppressive Conduct of Affairs. A study of the sections 176 to 179 shows the situation for when an application under section 180 can be made. It can be made where the conduct of the company's affairs or an actual or proposed act or omission of the company or a resolution or proposed resolution of the members or class of members is either (i) contrary to interests of the members as a whole or is oppressive to, unfairly prejudicial to or unfairly discriminatory against a member or members. The reference to a company in section 176 to 180 means the Board of Directors who are the controlling mind in the company.

32. When read with sections 176 to 179 of the Companies Act and from the preceding and subsequent Parts of the Companies Act, it is clear that section 180 applies to the situation where the company is solvent and has not been wound up by the court and does not apply where the company is in liquidation. The authority for him to apply when the company is in liquidation must be found in Part 37 of the Companies Act and not section 180 of the Act.

33. The powers of the Liquidator are set out in section 543 of the Companies Act and include the power to: -

- a. *Bring or defend any action or other legal proceedings in the name of and on behalf of the company: (1) (a);*
- b. *to make any compromise, or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the Company, or whereby the Company may be rendered liable; ss 534(1)(e)*
- c. *To do all such other things as may be necessary for winding up the affairs of the company and distribution of its assets: ss (2)(h).*

34. Any intervention can be made by a creditor or contributor pursuant to section 543(3) of the Companies Act 2015 which provides:

543(3) The exercise by a liquidator in a winding up by the Court of the powers conferred by this section must be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

35. This is a specific power dealing with interventions when the company is in liquidation and the Latin maxim *generalia specialibus non derogant* requires that the proposed intervenor must apply via this provision rather than using section 130 of the Companies Act.

36. Section 543(3) of the Companies Act 2015 states that only a creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers in section 543(1) and (2).

37. The affidavit in support of Mr. Wong, states that he is a **director and member** of the company and it does not say that he is a contributory and he is therefore not entitled to file an application to intervene.

Conclusions on the Second Issue

38. For the reasons given, I conclude that: -

- a. the intended intervenor cannot rely on section 180 of the Companies Act 2015 to intervene in the eviction proceedings as section 180 is for use before the company goes into liquidation.
- b. the proper provision for applications to intervene when a company is in liquidation is in section 543 (3) of the Companies Act 2015;

- c. the intended intervenor is neither a contributory nor a creditor of the company in liquidation and he therefore is not eligible to apply;
- d. There are different considerations for a section 180 application and a section 543(3) application;


39. The application to intervene therefore must be dismissed.

The Decision on Eviction

40. The application for eviction was not opposed by the First or second Defendant and I am satisfied on the balance of probabilities of the following: -
- a. The Plaintiff is the last registered owner of CT 4783, (Register Vol. 48 Folio 4783) on the island of Viti Levu, in the City of Suva situated at 308 Waimanu Road (the property) and is entitled to vacant possession of the property pursuant to section 169 (a) of the Land Transfer Act.
 - b. Pursuant to section 169(a) of the Land Transfer Act, the Plaintiff is also entitled to bring this action as a legal notice to quit has been given and the term of the lease has expired;
 - c. The Plaintiff is entitled to immediate vacant possession of the property.

Orders

1. For the reasons given, I order the First Defendant by its servants and agents including the intended intervenor, **Mr. Leslie Gee Way Wong** to give immediate vacant possession of the property, CT 4783, (Register Vol. 48 Folio 4783) on the island of Viti Levu, in the City of Suva situated at 308 Waimanu Road to the Plaintiff.
2. Costs summarily assessed at \$1,000 be paid by the proposed intervenor to the Plaintiff within 14 days of this order.


Penijamini R Lomajana
A/Judge

