

5-08-04

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS**

**C.I.C.A. (Civil) # 38 of 2003  
(GC Cause # 344 of 2003)**

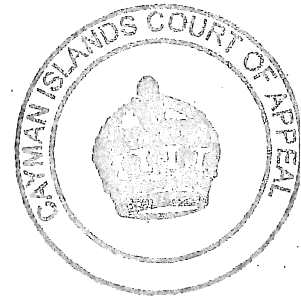
**BETWEEN:**

**CHARLES WILLIAM SCHRAMM ON HIS OWN BEHALF AND  
ON BEHALF OF THE OTHER UNDERWRITING MEMBERS OF  
HISCOX SYNDICATE 33**

**Appellant**

**- and -**

- (1) FINANCIAL SECRETARY OF THE CAYMAN ISLANDS**
- (2) REGISTRAR OF COMPANIES**
- (3) SMECH MANAGEMENT COMPANY LIMITED**
- (4) AXIMA BUILDING SERVICES LIMITED**



**Respondents**

**BEFORE:   The Rt. Hon. Mr. Justice E. Zacca, President  
              The Hon. Mr. Justice G. Collett, J.A.  
              The Hon. Mr. Justice I. Forte, J.A.**

**Appearances:**   Ross McDonough of Campbells for the Appellant. The Honourable Solicitor General, Mr. De Freitas and Suzanne Look Loy (Crown Counsel) for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Tom Lowe instructed by Eliot Simpson of Ogier and Boxalls for the 3<sup>rd</sup> & 4<sup>th</sup> Respondents.

**Heard: 27<sup>th</sup> & 28<sup>th</sup> July, 2004**

**Delivered: 5<sup>th</sup> August, 2004**

## **REASONS FOR JUDGMENT**

### **Collett J.A.**

On 30<sup>th</sup> October 2003, the learned Chief Justice dismissed the Appellant's Originating Summons in Grand Court Cause No. 344 of 2003. This had sought to effect the restoration to the Companies Register of Westwood Holdings Ltd., which had been dissolved pursuant to Section 146 of the Companies Law on or about 17<sup>th</sup> August 2000. The Appellant has appealed. On 28<sup>th</sup> July 2004 we dismissed that appeal and affirmed the decision of Smellie C.J.; we now set out our reasons for doing so.

The purpose of the Appellant's application to the Grand Court had been to enable him to pursue in the English Courts, a claim against the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to recover by way of subrogation the substantial amount which he had paid under a policy of insurance which the company had taken out with his underwriting syndicate in respect of water damage to premises in England, owned by the company. This was, he alleges was attributable to negligence on the part of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents occurring before the

dissolution of the company. Its restoration to the Companies Register in Cayman was a necessary precondition to success in the litigation, since it had by reason thereof ceased to exist as a legal entity.

In a careful and closely reasoned Judgment, the learned Chief Justice held that the Grand Court did not have jurisdiction to restore to the Register a company which had been voluntarily wound up under The Companies Law, Section 145 and 146, and had, accordingly, in the words of the latter section, been “deemed to be dissolved” three months after the registration of the return of the general meeting at which the final accounts of the winding-up had been presented. It is to be noted that the subsequent action of the Registrar of Companies in removing the name of the Company from the Register was an administrative act on his part, described in evidence as “a tidying-up exercise” and not in any sense the exercise of a judicial discretion on his part as is striking off under Part VI of the Law.

It is unnecessary for us to rehearse in this statement of our Reasons the careful analysis which led the Chief Justice to the conclusion which he

reached. We are content to say that we fully endorse those reasons but out of consideration for the arguments advanced to us by Mr. Ross McDonough for the Appellant, we wish to add the following observations of our own.

There had been one previous decision of the Grand Court directly on point, which the Chief Justice for the reasons he gave declined to follow. This was the decision of Sanderson J, in *Campillo and Registrar of Companies (2001) CILR 547* in which the learned Judge held that he had power under Section 178 of the Companies Law to restore to the Register a Cayman registered company which had been dissolved pursuant to section 146. That decision was not, of course, binding upon the Chief Justice but it is desirable that we should clearly state that it cannot any longer be regarded as good law. The learned Judge was incorrect in holding that the late discovery of an asset of a company dissolved under Section 145 would empower the Court to restore the company to the Register. He founded that decision upon the wording of the section – “deemed to be dissolved” rather than “shall be dissolved”; but it is clear in the context that the Legislature intended the meaning to be “conclusively presumed to be dissolved”, a meaning which finds support in “Words and Phrases Legally Defined”, pages 26-28.

The other reason advanced for the decision in *Campillo* is also unsound. The learned Judge considered that the use by the legislature in Section 178 of the Companies Law of the phrase “aggrieved by the company having been struck off the Register in accordance with this Law”, indicated an intention to permit an application to restore it not only where it had been struck off by the Registrar under Part VI of the Law but also when it had been struck off following its dissolution under Section 145 and 146. That is demonstrably incorrect, since dissolution in the latter circumstances takes place automatically by reason of the provisions of those sections and does not require any act to be done under the sections to effect it. It follows that a company dissolved by operation of those sections is not struck off the Register under the Companies Act – the striking off is a mere administrative action which is taken after the company is dissolved and it has ceased to exist by operation of law. This indicates that “under this Law” really means “under this Part”.

It was at the forefront of the argument advanced to us by the Appellant’s counsel that the absence of jurisdiction to restore to the Register a company struck off after its dissolution following a voluntary winding-up was apt to

cause injustice in a case such as the present. It was pointed out that following the decision in England of Re *Pinto Silver Mining Company* (1878) VIII Ch. D. 273 and Re *Caledonian Marine Insurance Company* (1878) XI Ch. D. 140, Parliament enacted legislation which permitted, for a limited period and under strict conditions, the restoration to the Register after dissolution of companies registered in England which had been dissolved in consequence of a voluntary winding-up. Such legislation was consolidated in the Companies Act 1907 and is now contained in section 352 of the current legislation, it has been taken as a model for companies legislation in a number of dependant territories of the United Kingdom.

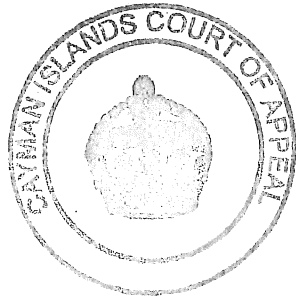
By contrast the Cayman Islands companies legislation, enacted by the local Legislature, since it ceased to be a dependency of Jamaica, has always based itself upon the 1865 legislation of the United Kingdom and not the later models. Extensive overhaul of this legislation was undertaken here at the end of the 1980's but despite that review, no decision was taken to follow the later United Kingdom models instead. That decision must be regarded as a deliberate one on the part of the well informed local Legislature and is readily to be understood as a reaction to the establishment of the formidable array of off shore companies registered in these Islands, which present a scenario

unlike that of the United Kingdom, Canada, Australia or other established countries of the Commonwealth: they do not, to anything like the same extent, seek to attract overseas business incorporations. Occasional injustice must be regarded as the price which the local Legislature has considered to be worth permitting to occur rather than to introduce the uncertainties which might plague the Law if the more recent English precedents, or indeed those very recently introduced in Australia, were to be adapted here. Indeed Australia has radically reformed its legislation within the recent past.

As an alternative submission, Counsel for the Appellant sought to enlist this Court in disapproving of the decisions of the English Court of Appeal in the cases of *Re Pinto* and *Re Caledonian Marine* already referred to. Quite apart from the respect which this Court pays to the decisions of established courts of similar jurisdiction in the Commonwealth, it was pointed out to us that the decisions in question were subsequently approved by the House of Lords in *Russian and English Banks vs Baring Brothers and Co. Ltd.* (1936) AC 405. It is rarely if ever that a court at this level fails to follow a line of authority so established. We are not prepared to do so in this case since there is no compelling reason for us to do so.

We therefore find that the Grand Court has no jurisdiction under Section 178 to register a Company which has been dissolved by operation of Section 145 and 146. For these reasons in addition to those referred to in the Judgment of the Chief Justice, this appeal was dismissed with costs.

Zacca, P.



Collett, J.A.

Forte, J.A.