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IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY

CV 2 of 2020

BETWEEN:

MELE TEUSIVA 'AMANAKI

Applicant

-and-

[1] GOVERNMENT OF TONGA
[2] REGISTRAR OF COMPANIES

Respondents

Application to restore Tonga Weekly Newspaper Ltd to the Register of Companies

JUDGMENT

BEFORE: LORD CHIEF JUSTICE WHITTEN
Appearances: Mrs M. Amanaki
Mr S. Sisifa SG with Mrs Tupou for the First Respondent
No appearance for the Second Respondent
Date of hearing: 30 April 2020, 15 June 2020, 17 July 2020
Date of judgment: 3 August 2020

Contents

Introduction

1. On 29 March 2019, the applicant ("Mrs Amanaki") commenced proceedings CV 9 of 2019 against the Government of Tonga, the Tonga Weekly Newspaper Ltd ("the company"), Faka'osi Maama (the editor of the newspaper operated by the company) and William Clive Edwards (a then director of the company) for damages for defamation arising out of articles published by the newspaper on 20 March 2014, 11 April 2014 and 9 May 2014.

2. On 10 December 2019, I granted the Government's application to strike out the claim against it and reserved leave to the plaintiff to replead any claim against the Government by 10 January 2020. No new pleading was filed.

3. During the course of the strike out application, it was revealed that the company:

   (a) was registered on 1 June 2012;

   (b) was 100% Government owned; and

   (c) had been removed from the Tongan register of companies and deregistered.

4. Pursuant to s.19 of the *Companies Act* ("the Act"), a company continues in existence until it is removed from the Tongan register. Accordingly, it was necessary to stay the proceeding pending the hearing and determination of any application by Mrs Amanaki to restore the company to the register in order to determine whether Mrs Amanaki could proceed against the company in the defamation action.[1]

5. On 27 January 2020, Mrs Amanaki filed this application in which she seeks an order pursuant to s.338 of the Act for the company to be restored to the register. The application names the Government of Tonga as first respondent and the Registrar of Companies as the second.

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[1] *Sterns Fashions Ltd v Legal and General Assurance Society Ltd* [1995] 1 BCLC 332, [1995] BCC 510.

Section 338

6. Section 338 provides:

> **338 Court may restore company to Tongan register**
>
> (1) The Court may, on the application of a person referred to in subsection (2), order that a company that has been removed from the Tongan register be restored to the register if it is satisfied that –
>
> (a) at the time the company was removed from the register –
>
> (i) there were not proper grounds for the removal;
>
> (ii) the company was a party to legal proceedings;
>
> (iii) the company was in receivership or liquidation or both;
>
> (iv) the applicant was a creditor or a shareholder or a person who had an undischarged claim against the company; or
>
> (v) the applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company, under Part IX; or
>
> (b) for any other reason it is just and equitable to restore the company to the Tongan register.
>
> (2) The following persons may make an application under subsection (1):
>
> (a) any person who, at the time the company was removed from the Tongan register –
>
> (i) was a shareholder, director of the company;
>
> (ii) was a creditor of the company;
>
> (iii) was a party to any legal proceedings against the company;
>
> (iv) had an undischarged claim against the company; or
>
> (v) was the liquidator, or a receiver of the property, of the company;
>
> (b) the Registrar;
>
> (c) with the leave of the Court.
>
> (3) Before the Court makes an order restoring a company to the Tongan register under this section, it may require any provisions of this Act or any regulations made under this Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.
>
> (4) The Court may give such directions or make such orders as may be necessary or desirable for the purpose of placing a company that is restored to the Tongan Register under this

section and any other persons as nearly as possible in the same position as if the company had not been removed from the Tongan register.

Evidence and submissions

7. Due to the manner in which this application was conducted, which included a number of extraordinary turns (explained further below), it is convenient to summarise the evidence and submissions as filed in chronological order.

8. On 27 February 2020, the Solicitor General, Mr Sisifa, who appeared on behalf of the Government, filed submissions in opposition to the application, supported by an affidavit by the Registrar of Companies, Ms Distaquaine Tu'ihalamaka ("the Registrar") sworn 26 February 2020 ("the Registrar's first affidavit"). The Registrar deposed, relevantly, that:

   (a) the company only filed one annual return in July 2014 for the year 2013;

   (b) on 1 May **2015**, the company was removed from the register for failing to file annual returns pursuant to s.223(10) of the Act;

   (c) a company which fails to file annual returns shall be removed from the register but may be reinstated upon payment of the prescribed fee;

   (d) the Business Registries Office online portal shows the company's status history as having been removed on 1 May **2016**;

   (e) the company's status remained as 'removed' from that date until 1 May 2019 when it was deregistered.

9. Exhibit F to the Registrar's first affidavit is a copy of the company's online extract or history. It shows that it was 'removed' each year from 1 May 2016 through to 1 May 2019, that it was 'deregistered' on 1 May 2019 and that its entity status is 'struck off'.

10. Mr Sisifa's written submissions included, relevantly and in summary, that:

   (a) Mrs Amanaki did not have any undischarged claims against the company at the time it was removed from the register;

(b) Mrs Amanaki had not initiated any legal proceedings against the company during its existence;

(c) there were proper grounds for the removal of the company from the register;

(d) the company was not in receivership, liquidation or both as at the date it was removed;

(e) Mrs Amanaki had not demonstrated that restoration of the company would 'not be nugatory';

(f) there is no purpose in restoring the company because Mrs Amanaki's claim in CV 9 of 2019 is 'without merit' having regard to the court ruling on 10 December 2019; [2]

(g) the decision to deregister the company was made in the public interest;

(h) restoration will not be in the public interest because any related costs would have to be borne by the public;

(i) the company no longer has any assets, officers or employees and would not be able to fulfil its obligations under the Act;

(j) Mrs Amanaki had not satisfied the court that it is just and equitable to restore the company;

(k) as Mrs Amanaki had not demonstrated any undischarged claim against the company at the relevant time, she did not have standing under s.338(2) of the Act to make this application; and

(l) the application was in incorrect form as there is no Statement of Claim and the Government should not be a party to the application.

11. On 14 April 2020, Mrs Amanaki filed a memorandum, supported by one of her affidavits in CV 9 of 2019, sworn 4 September 2019, in which she submitted, relevantly and in summary, that:

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[2] In relation to the Government's strike out application.

(a) at the time the company was removed on 1 May 2015, she had an undischarged claim against it;

(b) on or about 1 April 2014, she informed her employer (the Executive Board of the Public Service Association) of her intention to sue the company for defamation;

(c) on or about 26 April 2014, she wrote to the editor of the newspaper of her concerns about the alleged defamatory publications to that point in time;

(d) on 2 May 2014, she wrote to the then Prime Minister (whom she describes as "the head of the shareholder of the newspaper") about her concerns regarding the alleged defamatory publications;

(e) on or about 14 May 2014, after the third publication on 9 May 2014, she again wrote to the editor about her concerns;

(f) after further email exchanges including between Mrs Amanaki and Mr Edwards (which have become the subject of related defamation proceedings CV 57 of 2014), in May and June 2014, the then Prime Minister, Lord Tu'ivakano, and Mr Edwards commenced proceedings in the Magistrates Court[3] against the PSA and Mrs Amanaki for defamation;

(g) those proceedings were eventually transferred to the Supreme Court and effectively stayed pending the determination of CV 48 of 2014 (the 'Tongasat' matter) which was determined on 17 August 2018;

(h) Lord Tu'ivakano then withdrew his claim against the PSA and Mrs Amanaki and Mr Edwards continued his claims in CV 57 of 2018;

(i) Mrs Amanaki originally brought counterclaims in that proceeding in respect of the alleged defamatory publications by the newspaper in 2014;

(j) subsequent directions required Mrs Amanaki to withdraw those claims in CV 57 and commence fresh proceedings which became CV 9 of 2019.

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[3] Proceedings CB 87 and 95 of 2014.

12. In relation to the removal of the company from the register, Mrs Amanaki further submitted that:

    (a) the Registrar failed to comply with s.223(10) of the Act which required her to issue a written notice to the company requiring it to comply with its obligation to lodge annual returns within six months of their due date, failing which, the company would be removed from the register;

    (b) it was unreasonable for the Registrar to remove the company from the register in 2015 for failing to submit one annual report for 2014;

    (c) the Registrar did not issue any of the s.223(10) notices in subsequent years prior to the company's deregistration on 1 May 2019;

    (d) further, the Registrar did not file any notices as required by s.326 of the Act, which provides that a company is removed from the register when a notice is filed by the Registrar stating that the company is removed from the register;

    (e) by the time the company was deregistered on 1 May 2019, Mrs Amanaki had already commenced her claim against the company (and others) in CV 9 of 2019;

    (f) given the Registrar's failure to file the requisite notices, and that it was unreasonable for her to remove the company from the register for not submitting a single annual report, it is more likely that the company was removed from the register in May 2019; and

    (g) it is just and equitable for the company to be restored to the register "to be accountable for the defamatory charges against it given the defamatory publications they [meaning the company, the government shareholder, the then Prime Minister, the editor and the directors of the company] have repeatedly made against" her "because of their anger and hatred against her...".

13. On 30 April 2020, after considering the material filed to that date and after hearing from Mrs Amanaki and Mr Sisifa, I was concerned that the Registrar's first affidavit raised a number of questions, the answers to which were relevant and

necessary for the proper consideration and determination of the application. I therefore directed, among other things, that the Registrar file a further affidavit addressing the following issues:

(a) the meaning of each of the terms 'removal', 'de-registered' and 'struck out' referred to in her first affidavit and annexure F thereto, relative to the term 'removed' found in sections 223(10) and 338 of the *Companies Act* ("Act") or any other provision in the Act;

(b) why the company is recorded in annexure F as having been removed more than once, that is, each year between 1 May 2016 and 1 May 2019 before being 'de-registered' on 1 May 2019;

(c) what was the status of the company as at 6 and 11 November 2019;

(d) whether any notice/s were issued pursuant to s.223(10) of the Act; and if so:

  (i) on what date/s any such notice/s were issued;

  (ii) exhibit copies of any such notice/s; and

  (iii) what, if any, response/s were received from the company to any such notice/s;

(e) if no such notice/s were issued, why, and by what statutory means, was the company removed from the Register;

(f) why paragraph 12 of her first affidavit refers to the date of (first) removal as 1 May 2015 whereas annexure F appears to record it as 1 May 2016;

(g) on what date was the company removed from the Register;

(h) provide a current extract of the status of the company from the Register records in certified form pursuant to s.369 of the Act;

(i) why the annual return of the company for 2013 was accepted in its largely incomplete form; and

(j) whether the Registrar's office has any information concerning the financial state of the company at any time prior to the date of its removal from the Register; and if so, exhibit that information to her further affidavit.

14. On 22 May 2020, the Registrar filed a supplementary affidavit ("the Registrar's second affidavit") in which she explained, relevantly, that:

(a) the terms 'removed', 'deregistration' and 'struck off' as used in the online register system all mean 'removal' as referred to in ss 223(10) and 338 of the Act;

(b) when a company fails to file an annual return by the end of the month in which it is due, it is given a six month grace period to file its annual return; and in default, it will be automatically recorded as 'removed' in the register on the first day of the following month;

(c) the online system automatically renews and records the status of the company every year on the date it was previously removed;

(d) the company here was first removed from the register on **1 May 2016** and the system automatically renewed that status on 1 May each year;

(e) the use of the terms 'struck off' and 'deregistration' is a mistake in the system and they have no separate effect to that of being 'removed' under the Act;

(f) notification letters pursuant to s.223(10) were automatically generated by the system and issued to the company on 1st October of 2015, 2016, 2017, 2018 and 2019 (copies of which were exhibited), and to which, the company did not respond;

(g) paragraph 12 of her first affidavit in which she deposed that the company was first removed on 1 May 2015 was a mistake and the correct date was 1 May 2016 (as per exhibit F to her first affidavit);

(h) while the company's annual return for 2013 appeared largely incomplete, it was acceptable because if there are no changes to the information provided in the initial application for registration, it was acceptable for the company to provide only new information on its annual return;

(i) the Business Registries Office only receives company annual returns which contain updates on company profiles whereas a company's financial statement is filed with the Revenue Services department.

15. Annexure B to the affidavit is a company extract for the company from the Business Registries Office generated on 19 May 2020. It showed that the previous statuses of the company having been "removed" now extended an additional year from 1 May 2019 to 1 May 2020. Below that, "removal date" was shown as 1 May 2020. The extract also showed the directors as William Edwards, Paula Ma'u and the Honourable Samiu Vaipulu and the Government as the sole shareholder of 250,000 shares.

16. On 12 June 2020, Mrs Amanaki filed a supplementary memorandum in response to the Registrar's second affidavit, in which she submitted, relevantly, that:

    (a) she questioned whether the system would continue to remove the company indefinitely or until the end of the system's operation;

    (b) the repeated removal of the company was to be compared to the extract and certificate of incorporation for another 'struck off' government company, "Tonga Forest Products Ltd", which showed that that company was removed from 1 May 2016 to 8 August 2016, restored on 8 August 2016 and that its 'dissolution' and 'removal' date was 30 January 2018. That company extract also showed that the reason for removal was "request for removal under s.327(1)". Mrs Amanaki made the point that for that company, the register did not show it as having been removed each year from 2016 to 2018;

    (c) given that the register system "*may have been upgraded or changed on or around 14 November 2019 to 25 February 2020*", the company was in fact removed on a date during that period;

    (d) the s.223(10) letters exhibited to the Registrar's second affidavit were unsigned and did not bear the Ministry stamp. There were other irregularities in that the letters for 2015 to 2017 bore the current Registrar's name when she was not appointed until 23 March 2020, and the 2019 letter did not bear any name for the Registrar;

    (e) Mrs Amanaki posed the question why a Registrar "in their right mind" would issue letters of notification on five consecutive years to a company which did not respond, particularly given that it was public knowledge that the

newspaper had ceased operation after the Government that established the company "lost their seats" in the December 2014 general election;

(f) therefore, she submitted that the notification letters were not issued and delivered on the dates they bear but were printed solely for the purpose of the Registrar's second affidavit;

(g) the company's 2013 annual return, which the Registrar described as being acceptable because there were no changes to the information provided in the original application for registration, in fact, contained significant changes to information about the directorship of the company;

(h) for those reasons, it was submitted that "*the Registrar continued to either lie under oath or tried to mislead this Honourable Court in her supplementary affidavit*" and that "*the Companies Register database was manipulated to show the printout the Registrar produced in her affidavits with the five years multiple 'removals*'"; and

(i) therefore, the company was still in the Register up until 14 November 2019 and was therefore already a party to proceeding CV 9 of 2019.

17. Mrs Amanaki's allegations against the Registrar were serious. Accordingly, on 15 June 2020, after hearing from the parties again, I directed, among other things, that the Registrar file yet a further affidavit addressing the following issues:

(a) why the copies of the notification letters pursuant to s.223(10) of the *Companies Act* exhibited as Annexure "A" to her supplementary affidavit are unsigned and whether any signed versions of the notification letters were issued on the dates they bear;

(b) why the company extract exhibited as Annexure "B" to her supplementary affidavit shows the company's previous status as having been repeatedly removed on each of four years from 1 May 2016 to 1 May 2020;

(c) an explanation for the statement made in paragraph 4(i) of her supplementary affidavit that the company's annual return for 2013 (exhibited as Annexure "C" to her supplementary affidavit) was acceptable because there were no changes to the information provided in the initial application

for registration, whereas that initial application showed that the directors named were different to those named in the annual return.

18. On 1 July 2020, the Registrar filed a further affidavit ("the Registrar's third affidavit") in which she deposed, relevantly:

(a) the s.223(10) notification letters are automated by the online companies register system and are sent via email by the system directly to the companies' email addresses. The letters are not manually typed, printed, signed or physically sent to the companies;

(b) when a company fails to file its annual return by the end of the month in which it is due, the company is given a six month grace period to file its annual return. If the return is not filed within the grace period, the system will automatically record the company as 'removed' on the register and will automatically renew that status of the company every year on the date it was first removed;

(c) the company's 2013 annual return showed only one director whereas the original application for registration showed three other directors. The director named on the annual return and another were appointed as directors on the same day as the other three directors, but their names were not included in the application form initially submitted. However, the company filed a notice of change of directors on 11 July 2014 (exhibited to her affidavit) naming the additional two directors as new directors but with the same original appointment date. That is the only way that the Business Registries Office could have registered them as directors. The fact that the company's annual return only named one of the directors instead of all five did not change the information on the register, that is, that the company had five directors at the time;

(d) she denied the allegations by Mrs Amanaki against her as being "*frivolous, vexatious and without legal basis as the online companies register system is an automated system which operates and updates on its own depending on the information that is uploaded into the system*". The system is monitored from a software company in New Zealand and was designed to

maintain the integrity of information provided therein by protective mechanisms to avoid tampering.

19. On 13 July 2020, Mrs Amanaki filed a notice requiring the Registrar to attend court for cross examination.

20. On 17 July 2020, the hearing of the application resumed, and the Registrar attended for cross examination. During her further evidence, she said, relevantly:

    (a) Prior to her appointment as CEO of the Ministry of Trade and Economic Development on 6 March 2020, which carries with it the dual position of Registrar of Companies, she had previously held the position of Deputy CEO. She had also been appointed by Cabinet as Registrar of Companies between 2011 and 2017. There was no CEO in 2018, hence no Registrar named on the notification letter for that year. The Ministry was then restructured in October 2019, at which time, she was appointed Acting CEO. That was also the time when the current Minister, the Honourable Samiu Vaipulu, was appointed. The Minister was also one of the former directors of the company.

    (b) When she was appointed CEO earlier this year, she assumed she was automatically also appointed as Registrar although she did not receive any notification of separate appointment pursuant to s.366(1) of the Act, which provides that Registrars are appointed by the Prime Minister with the consent of Cabinet.

    (c) She was familiar with the registration of the company in 2012.

    (d) The registry online database commenced in 2010 and was upgraded in 2015 to the current system.

    (e) The notification letters were not signed because they are automatically generated by the online system which does not permit additional text (such as signatures) to be inserted into the form template, without technical assistance, which would be a further cost to government.

(f) Even though the letters contained post office box addresses for the various companies, they were sent by email to addresses which are required to be in provided in annual returns for the purpose of communication.

(g) She confirmed that the company was first removed from the register on 1 May 2016.

(h) Unless the company in question applies to have itself 'finally' removed from the register, the system will keep recording it as 'removed' each year. The Registrar acknowledged this was a problem within the system and that the Ministry was in discussions with the software developers about it.

(i) About 15 to 20% of companies in Tonga are in a similar position to the company here. The Registrar said that it was not for her to pursue those companies to see if they wanted to be 'finally' removed from the register or not; it was up to the companies.

(j) In relation to the relaunching of a previous Government newspaper known as the "Chronicle", the Registrar said that the new entity was not Government owned and she did not know whether any assets of the company here were now owned by the Chronicle.

(k) Mrs Amanaki produced an apparent[4] list of the company's directors which she said she printed off from the online database the night before the hearing. She put to the Registrar that a previous search[5] did not show any of the former directors, whereas the recent search now shows them, was evidence of the system being tampered with. The Registrar responded that all the directors had always been in the system, that she did not know how Mrs Amanaki had conducted each of the searches referred to, all the information was in the public domain and therefore there was no point trying to tamper with it.

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[4] The printout did not contain the name of the company.

[5] Which was never tendered in evidence, despite Mrs Amanaki conceding in subsequent submissions that if she had a printout of the search, she said she conducted a few months ago which did not show the pull down tab "show former directors", she would have tendered it.

(l) The formal company extract format only includes present or continuing directors.

(m) Mrs Amanaki sought to raise an issue about the incomplete 2013 annual return having been signed by a person who was not a director of the company (or solicitor or public accountant authorized for that purpose) as required by section 11 of the annual return form. The Registrar responded that annual returns did not come to her unless there was an issue.

(n) Minister Vaipulu does not know about this application.

21. Mr Sisifa declined an invitation to examine the Registrar.

22. In final oral submissions, Mrs Amanaki asserted that there was 'clear evidence' that the company's Government shareholder had "worked together [presumably, with the Ministry in charge of the register] through the submission of an unacceptable annual return" and that when the Government "found out there was a mistake in the annual return because they put in a director who was not a director,[6] they submitted a notice of change of directors on 11 July 2014, in order to change what is in the system".

23. A question from the bench, premised on the assumption that Mrs Amanaki's theory was correct, as to why anyone would want to tamper with the information in relation to the directors, went unanswered.

24. Finally, Mrs Amanaki emphasised her belief that the directors of the company, who were Ministers in Government at the time, defamed her for the Government. She submitted that the company should be restored, regardless of its financial situation, because "what the company did was very bad" and that if the company is not restored, it would mean that, in the future, Government could defame anyone through a Government-owned newspaper who is "not on their political side."

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[6] Referring to an affidavit filed in CV 9 of 2019 of Mr 'Alifeleti Tu'ihalamaka, Director of Communications at the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications, sworn 29 April 2019, in support of the Government's strike out application, but in which, he did not mention whether he had ever been a director of the company.

25. Mr Sisifa declined an invitation to make any final submissions in response.

Issues

26. Mrs Amanaki relies on the grounds in s.338(1)(a) for restoration, and claims standing pursuant to subsection (2)(a); alternatively (c), namely, that at the time the company was removed from the register:

    (a) it was a party to her defamation proceedings;

    (b) alternatively, she had an undischarged claim against it.

    Otherwise, she relies on the just and equitable ground in subsection (1)(b).

27. The evidence and submissions reveal the following issues for determination:

    (a) has the company been removed from the register;

    (b) if it has, when was it removed; and

    (c) at that date:

        (i) was the company a party to proceeding CV 9 of 2019; or

        (ii) did Mrs Amanaki have an undischarged claim against the company; or

    (d) for any other reason, is it just and equitable to restore the company to the register?

Consideration

28. Notwithstanding Royal Assent to the Act having been granted in 1998, the only previous decision in relation to s.338 referred to during this application was *Moehau & Epic International Limited v Kingdom of Tonga & Registrar of Companies* (unreported, CV 51 of 2016, 26 April 2017) ("*Moehau*"). My research has not unearthed any others.

29. In *Moehau*, Paulsen LCJ adopted the New Zealand approach to applications for restoration of companies pursuant to s.329 of the Companies Act (NZ) with a caveat that care must be taken to have regard to any material differences in the

wording of the respective sections. For the purposes of the instant application, the relevant parts of the two provisions are virtually identical.

30. Sections 338(2)(a) and (b) identify those who may apply to restore a company to the register. Others must obtain the Court's leave under s.338(2)(c).

31. The grounds for restoration are set out in ss 338(1)(a) and (b). If the applicant can satisfy any of the grounds in s.338(1)(a), then it will be unnecessary to consider the just and equitable ground in s.338(1)(b). However, even if the Court is satisfied that one of the s.338(1)(a) grounds exists, the word "may" in the chapeau to s.338 means that it still has a residual discretion whether to restore the company.[7]

32. Generally, it will be unusual for the Court to refuse to restore a company where restoration is required to enable the applicant to pursue remedies against the company provided by the substantive law.[8] The contest on such an application is between principles of access to justice and rules of pure administrative convenience.[9] In *Re Pranfield Holdings Ltd*, the Court stated the approach as:[10]

> *"...the somewhat peremptory power of the Registrar to remove deadwood from the corporate scene, will not prevail against the rights of those so removed, or of others with whom they have dealt, to reinstate the company to pursue remedies provided by substantive law, unless it is plain that the proceeding, if unsuccessful, will still be nugatory. This principle puts grand notions of access to law ahead of mere rules for administrative ease."*

33. The applicant bears the onus of establishing standing and of the ground/s upon which it relies. Thereafter, restoration should follow unless an evaluative judgment of any discretionary factors weighs against restoration, the onus of which is on the respondent.

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[7] *Wellington City Council v Registrar of Companies* [2015] 3 NZLR 411 at [97]; *Re Trade Indemnity New Zealand Ltd, McSwain v Registrar of Companies* HC Auckland CIV 2003-404-6684, 12 December 2003 at [6].

[8] *Moehau* at [28] citing *John Hammonds & Co Ltd v Registrar of Companies* (1999] 3 NZLR 690 (HC) at [57] and *Re Pranfield Holdings Limited* (2001) 9 NZCLC 262,577 at [20] referred to in *Re Salamanca Investments Ltd; Wellington City Council v Registrar of Companies* [2015] 3 NZLR 411 ("***Salamanca***").

[9] *100 Investments Limited v Registrar of Companies* [2020] NZHC 880 at [33].

[10] *Re Pranfield Holdings Ltd* (2001) 9 NZCLC 262,577 at [20].

34. As to the merits of Mrs Amanaki's substantive claim in CV 9 of 2019, Mr Sisifa submitted that there is no purpose in restoring the company because Mrs Amanaki's claim is 'without merit' having regard to the Court's ruling on 10 December 2019.

35. In *Salamanca*,[11] Bell AJ observed that in cases where a creditor wishes to have a company restored to the register for the purpose of starting or continuing a legal proceeding against the company, an application to restore a company to the register is not the occasion for a thorough examination of the merits of the applicant's claim. The process is a relatively summary one in which the merits of claims are rarely subject to in-depth scrutiny. In some cases, the courts check that claims will not be statute-barred. That aside, as long as the applicant appears to have a genuine case (as opposed to one that is frivolous, vexatious or without merit), which it is pursuing in good faith, the courts have not required an applicant to prove more. In Australia, the test has been described no higher than appearing that the claim raises a serious question to be tried, and that all other ways of seeking relief have been exhausted.[12] Bell AJ explained this low threshold as the law's interest in allowing access to the courts and the recognition that the court or tribunal to hear the substantive proceeding will be in a far better position to judge the merits of the case.

36. The decision to strike out Mrs Amanaki's pleaded claim against the Government was based primarily on the manner in which the claim had been pleaded, including the lack of any legal basis for attaching liability to the Government, as shareholder, for the company's alleged tort. The ruling did not involve any assessment of Mrs Amanaki's claim against the company.

37. On the basis of my observations as the judge in charge of proceeding CV 9 of 2019 and the affidavit material from that proceeding which Mrs Amanaki included on this application (without objection), I am satisfied that her claim for defamation against the newspaper (i.e. the company here) is genuine, raises serious

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[11] Ibid at [104] referred to in *Moehau* at [33].
[12] *Holli Managed Investments Pty Ltd v ASC* (1998) 160 ALR 409; *Newham v ASIC* (2000) 35 ACSR 147.

questions to be tried, has been brought in good faith and is not frivolous or obviously without merit.

Has the company been removed from the register?

38. Part XVII of the Act is entitled "Removal from the Tongan Register". Section 327 prescribes the grounds for removal from the register. It requires the Registrar to remove a company from the register if, relevantly, the Registrar is satisfied that the company has failed to file its annual return within a period of six months after the annual return is due.

39. However, s.326 provides that a company is removed from the Tongan register:

> "...when a notice is filed by the Registrar stating that the company is removed from the Tongan register is registered under this Act."

40. It is to be expected therefore that when the Registrar determines to remove a company for failure to lodge annual returns, he/she will file a s.326 notice stating that the company is removed from the register.

41. In her first submission on this application, Mrs Amanaki raised issue with the Registrar's alleged failure to file a s.326 notice in respect of removal of the company. Neither the Government nor the Registrar sought to refute or answer that issue. There are no discrete s.326 notices in evidence before me. If they exist, it is reasonable to have expected the Registrar to have produced them.

42. Prima facie then, it appears on the evidence that the company has not been removed from the register in accordance with the Act. In that event, the register should be corrected, there is no need for it to be restored and Mrs Amanaki would be free to proceed against the company.

43. However, the inherent implausibility of that result has caused me to look behind the company extract exhibited as Annexure B to the Registrar's second affidavit.

44. Section 367(3) of the Act permits the Registrar to keep the register, wholly or partly, by means of a device or facility that records or stores information electronically or by other means and that permits the information so recorded or

stored to be readily inspected or reproduced in usable form. To that end, the Registrar keeps the register in the online database system described in her evidence.

45. Section 369(5) provides that an extract certified by the Registrar as containing particulars of a registered document that have been entered in any device or facility referred to in s.367[13] shall be, in the absence of proof to the contrary, conclusive evidence of the entry of those particulars.

46. The exhibited company extract was produced by accessing the online portal for the register in respect of the company and clicking a button on that page marked "Request Extract or Certificate". That page appears at Annexure A hereto. A number of filings are shown including "Registrar's Notice of Removal" for the years 2016 to 2020. An example of those notices appears at Annexure B hereto.

47. While there is no reference to s.326 on the notices, in my view, it is more likely than not that they are intended to represent the s.326 notices.

48. If that is correct, then the company was removed in accordance with the Act.

49. Given the relative lack of attention given to the above issue by the parties, I will proceed on the more likely basis that the company was removed in accordance with the Act. As will ultimately be seen, both scenarios arrive at the same result.

When was the company removed from the register?

50. This case has demonstrated that the seemingly interchangeable use within the register system of terms such as 'removed', 'deregistered' and 'struck off' (not to mention 'dissolution') is unhelpful and confusing. The only relevant term used within Part XVII of the Act is 'removal'. The others are nowhere to be found within the Act. I strongly recommend that consideration be given to standardising the relevant descriptors for the status of a company in the register as either 'registered' or 'removed'. Then, there is the issue of the annually repeated

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[13] The section refers to s.367(4), which does not exist. Subsection (3) provides for the use of electronic device of facility.

removals. On the proper interpretation and application of the relevant Part of the Act, a company is registered and continues in existence until it is removed. The Act does not contemplate repeat (or annual) removals. As acknowledged by the Registrar, that feature appears to be a defect in the online system which will hopefully be remedied.

51. It follows that, subject to any subsequent restoration/s and possible removal/s again thereafter, a company can only be removed from the register once.

52. Here, the only reliable evidence is that the company was removed on 1 May 2016. All subsequent references in the register to the company being removed in subsequent years and deregistered on 1 May 2019 must be interpreted as meaning that the company's status remained 'removed' from 1 May 2016. There is no evidence that its status has changed since that date.

53. For those reasons, I do not accept Mrs Amanaki's submission that the register has been tampered with in any way which could support a conclusion that the company was not removed until late 2019, i.e. after the commencement of proceeding CV 9 of 2019. There was also no evidence to support her submission that the register "*may have been upgraded or changed on or around 14 November 2019 to 25 February 2020*". The irregularities in certain of the register entries or descriptions and underlying documents such as the company's 2013 annual return do not amount to more than a suspicion on the part of Mrs Amanaki and the evidence in that regard did not meet the civil standard of proof for a serious finding of tampering.

54. I accept the Registrar's explanations for the irregularities. Moreover, the evidence did not disclose how some unidentified person could have tampered with the online register system nor did it provide any rational insight into any motivation for doing so. The relevant feature of the register, namely the initial date of removal, remained consistent through all the various displays, printouts and extracts adduced in evidence from the register.

55. Accordingly, I find that the company was removed from the register on 1 May 2016.

56. The company therefore could not have been a party to proceeding CV 9 of 2019, which was commenced in March 2019, prior to its removal.

57. That ground within s.338 therefore fails.

Did Mrs Amanaki have an undischarged claim?

58. The term "undischarged claim" is not defined in the Act. The phrase only appears in sections 330 and 338.

59. During oral submissions,[14] Mr Sisifa contended that Mrs Amanaki's claim was not an undischarged claim because it was not the subject of litigation as at the date the company was removed from the register. On a plain reading of s.338(1)(a), that definition cannot be accepted. Subsection (ii) thereof provides the ground of the company being a party to legal proceedings. If an undischarged claim within subsection (iv) was intended to mean a claim, the subject of extant legal proceedings, then subsection (ii) would have no work to do. The rules of statutory interpretation include a presumption that Parliament intended each provision of an enactment to operate in accordance with its terms, in furtherance of the evident purpose of the statute and for none to be rendered otiose.[15] Accordingly, an "undischarged claim" is not limited to one which is the subject of legal proceedings on foot at the time a company is removed from the register.

60. Within subsection 338(1)(a)(iv), the phrase 'undischarged claim' appears alongside persons who are creditors or shareholders of the company. Subsection (2) specifies persons with standing separately as either a shareholder or director of the company, a creditor of the company, a party to any legal proceedings against the company or a person who had an undischarged claim against the company. Application of the ejusdem generis rule reveals that they all involve legal rights, interests in, or claims against, the company.

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[14] On 30 April 2020.

[15] *Collector of Customs v Agfa Gevaert Ltd* (1996) 186 CLR 389; *Sheehan v Watson* [2011] 1 NZLR 314, referred to in *'Atenisi Institute Inc v Tonga National Qualifications and Accreditation Board* [2019] TOSC 45

61. For present purposes, the obvious contradistinction to be considered between those different persons and claims is between a creditor and a person with an undischarged claim.

62. 'Creditor' is generally defined as one to whom another person owes money.[16] Section 236 of the Act (within Part XIV - Compromises with Creditors) and s.249 (within Part XVI – Liquidation) define "creditor", relevantly, as including a person who, in a liquidation, would be entitled to claim in accordance with s.312 that a debt is owing to that person by the company. Section 312 broadly defines "admissible claims" against a company in liquidation as a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or liability or a liability for damages.

63. How then is a creditor to be distinguished from a person with an undischarged claim? In practice, a creditor will be able to demonstrate a legal entitlement to be paid money whether by way of a contractual debt or some form of damages. Where that claim has been determined by a court of competent authority, the creditor will be regarded as a judgment creditor. In a liquidation, unsecured creditors are required to demonstrate their claims to the satisfaction of the liquidator by other means in order to rank in any *pari passu* distributions. By that comparison, a person with an undischarged claim must be intended to mean something other and, most likely, something less, than a creditor.

64. Consistent with s.312, an 'undischarged claim' has been held to be not limited to liquidated claims.[17]

65. In *Salamanca*,[18] on this question, Bell AJ drew on the statement of admissible claims in s.303(1), the New Zealand equivalent to s.312 of the Tongan Act. His Honour described the provision as:

> *"... a standard provision as to debts and liabilities recognised under insolvency law. It is in wide terms so as to allow a range of debts and liabilities to be recognised. Claims may be in debt but also for other forms of*

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[16] Mozley & Whiteley's Law Dictionary Tenth Edition 1988.
[17] *Moehau* at [34]. See also *Donmastry Pty Ltd v Albarran* (2004) 49 ACSR 745; [2004] NSWSC 632.
[18] At [71].

liability. They need not be certain. They may need to be estimated, a matter of some difficulty with uncertain variables. Claims in tort may be recognised, even if the company has not admitted liability and also if a court has not so far found the company liable."

66. Further, in my view, a claim, in the relevant sense, must be one for relief available in law or equity. That requires identification of the elements of a relevant cause of action including a recognized legal right, breach or other infringement of that right and loss and damage suffered as a result of the breach. Therefore, once those events have occurred, and a cause of action accrues, the aggrieved person has a claim.[19] Unless and until the claim is dismissed by judgment or arbitral award, paid or otherwise satisfied, it is an undischarged claim.

67. Mrs Amanaki's claim against the company is for damages for defamation. That tort is well recognised at law. The material facts alleged in her Statement of Claim in CV 9 of 2019 identify the elements of the cause of action having occurred between March and May 2014. As the alleged defamation includes imputations of unchastity, s.16(1)(d) of the *Defamation Act* effectively deems loss to have been suffered by reason of the impugned publications. The cause of action accrued prior to the company's removal from the register. The claim has not been admitted by the company, nor has it yet been dismissed, paid or otherwise fulfilled.

68. Accordingly, I am satisfied that, as at the date of its removal from the register, Mrs Amanaki was (and is) a person who had (and has) an undischarged claim against the company for the purposes of s.338 of the Act.

Is it just and equitable to restore the company?

69. As Mrs Amanaki has demonstrated standing pursuant to s.338(2)(a)(iv) and a ground for restoration pursuant to subsection (1)(a)(iv), it is unnecessary to

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[19] In *Salamanca*, Bell J recognised undischarged claims in respect of 'future torts' caused by a company's act or omission constituting breach of duty prior to its liquidation but where the loss and damage manifested after liquidation.

consider her alternative claim on the more general "just and equitable" basis in s.338(1)(b).

70. However, if it be considered that the above findings are incorrect, then I would still have allowed the application (subject to a consideration of discretionary factors discussed further below) on this ground.

71. The following principles[20] may be relevant on a restoration application when the just and equitable ground is invoked or when the Court is asked to exercise its discretion against restoration:[21]

(a) the effect of the restoration is that it validates retrospectively all acts done in the name of or on behalf of the company during the period between dissolution and restoration – here, there is no evidence of any such acts;

(b) where there is opposition to an application to restore a company on the grounds that its restoration would not be "just", the person opposing must have a legitimate interest in that opposition – here, the Government, as the company's sole shareholder, eschewed any possibility of legal liability for Mrs Amanaki's claim as the basis for its strike out application. That application succeeded (on the bases referred to above). In this application, the Government objected to having been joined as a Respondent. While it sought to actively oppose the application, it has not demonstrated any 'legitimate interest' in doing so;

(c) there must be a full and frank disclosure to the court as to the circumstances leading up to the removal (where an insider such as a director applies)[22] – here, there has been no such disclosure to the court notwithstanding leave

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[20] *Re Saxpack Foods Ltd* [1994] 1 NZLR 605 , 609–610 cited and applied in *John Hammonds & Co Ltd v Register of Companies* [1999] 3 NZLR 690 ; *Re West* HC Napier M37/02, 15 May 2003; *Re Trade Indemnity New Zealand Ltd* HC Auckland CIV-2003-404-6684, 12 December 2003; *Metal Building Systems Pty Ltd v Registrar of Companies* (2005) 9 NZCLC 263, 909; *Thornton Estates Ltd v Registrar of Companies* (2006) 3 NZCCLR 590 and *Skeates v Bruce* [2008] NZCCLR 27

[21] See *Wellington City Council v Registrar of Companies* [2015] 3 NZLR 411 at [99]–[100] for discussion of when these principles are likely to be apply.

[22] *Wellington City Council v Registrar of Companies* [2015] 3 NZLR 411 at [99].

being granted on 30 April 2020 for any former directors of the company to be heard on the application;

(d) the personal circumstances of the plaintiff which led to the striking off may be considered – here, not applicable, other than it appears the newspaper ceased operation not long after Mrs Amanaki repeatedly made her concerns known to the editor and directors of the company;

(e) the countervailing public and private disadvantages to the plaintiff and the public must be identified and assessed – here, see below on discretionary factors;

(f) the length of time which has elapsed since the removal is a relevant factor – here, given the confusing nature of the 'removal' and 'deregistration' statuses employed in the online register system were only clarified during the course of this application and the fact that the only other party which could be indirectly affected is the Government, I do not consider that the period which has elapsed since the removal of the company to be of any significant weight against granting the application;

(g) misconduct on the part of the plaintiff requires consideration, but the court when considering a restoration order has no power to impose a penalty on an applicant – here, no misconduct has been raised; and

(h) an order can be made on terms – here, considered below on the result.

72. Having regard to those factors, and the nature of Mrs Amanaki's claims in the substantive proceeding, I would have been satisfied that it is just and equitable to restore the company to the register for the purpose of her pursuing those claims.

Discretionary factors

73. The final consideration is whether, notwithstanding the fulfilment of the requirements of ss 338(1) and (2), the application should be refused pursuant to the Court's residual discretion. In that regard, I now turn to the balance of the submissions made on behalf of the Government in opposition to the application.

74. "*There were proper grounds for the removal of the company from the register.*"

That has not been disputed. However, the application has not been brought on the separate basis under ss 338(1)(a)(i) that there were no proper grounds for the removal. The submission is therefore irrelevant.

75. "*The company was not in receivership, liquidation or both as at the date it was removed.*"

Again, the inverse of the submission provides a separate ground for restoration under s.338(1)(a)(iii). That at the date of removal, the company was not in liquidation, etc, is not a ground for refusing restoration on other grounds such as Mrs Amanaki having an undischarged claim against the company. If anything, and without evidence to the contrary, the fact that the company was not in liquidation at the date it was removed from the register, may suggest that it held assets and was otherwise able to meet its debts and other financial obligations as and when they fell due.

76. "*The decision to deregister the company was made in the public interest.*"

The submission did not identify any public interest nor the basis for the decision to remove the company other than the Registrar's explanation as to the automatic removal process upon failure to lodge annual returns within six months of their due date. In any event, as Paulsen LCJ observed in *Moehau*,[23] "it is sufficient to say that the public interest does not trump an individual's (or company's) right to remedies it is entitled to under the substantive law".

77. "*Restoration will not be in the public interest because any related costs would have to be borne by the public*"

Any costs associated with restoration of the company have not been identified. The only direct costs are likely to be in lodging annual returns for the years between removal and restoration. In light of what was evidently involved in submitting the 2014 return, it is difficult to see any significant costs being incurred

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[23] [48]

for that exercise. In any event, any such costs would have to be borne by the company, not the public. The main legal plank to the Government's strike out application was the separation of the company as a legal entity in its own right from the limited liability of its shareholder as enshrined in s.19 of the Act. That appears to have been forgotten on this submission. In any event, the court can decide upon reinstatement even if it means that the reinstated company may be prejudiced by coming under a new liability.[24]

78. "*Mrs Amanaki has not demonstrated that restoration of the company would 'not be nugatory'.*"

An applicant who has made out a ground under s.338(1)(a) does not have to pass an additional test of showing that restoration will not be nugatory. It is up to the party opposing to establish that restoration will serve no useful purpose: *Salamanca* (supra) at [122] and [125].

During oral submissions, Mr Sisifa referred to the decision in *Mules v Registrar of Companies* [2016] NZHC 986. The case is clearly distinguishable. There, Bell AJ refused an application to restore companies which Mrs Mules believed her former husband used to dissipate assets to which she was entitled. The companies had been liquidated. His Honour considered Mrs Mules potential claim that following the marriage break-up, she received less than her proper share of relationship property, and other potential claims against the companies on the basis of Mrs Mules' evidence and the liquidators' reports. He concluded that he was not satisfied that any useful purpose would be served by restoring the companies to the register. For the reasons which follow on the next submission, I am not satisfied of that in this case.

79. "*Mrs Amanaki's defamation claim (if successful) will be futile because the company has no assets.*"

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[24] *Australian Competition and Consumer Commission v Australian Securities and Investments Commission* (2000) 34 ACSR 232; 174 ALR 688; [2000] NSWSC 316

Like Paulsen LCJ in *Moehau*,[25] and for the following reasons, I am not satisfied that restoration in this case will be a futile or 'barren' exercise:

(a) Firstly, while Mr Sisifa submitted that the company had no assets at the date of its removal, or no longer has assets, there is no evidence on this application to support that assertion. Nor is there any evidence as what, if any, assets the company owned when it ceased operation or what may have become of those assets. The only persons from whom that evidence might reasonably be expected was the Government shareholder or the directors. As noted above, there is no evidence or public record of the company having been wound up in insolvency.

(b) Secondly, pursuant to s.333 of the Act, all property of the company which had not been distributed or disclaimed immediately prior to removal, vested in the Crown. By s.340, all such property shall, on restoration, vest in the company as if the company had not been removed from the register.

(c) Thirdly, during the hearing on 15 June 2020, Mrs Amanaki relied on the affidavit of 'Alifeleti Tu'ihalamaka sworn on 29 April 2019 in CV 9 of 2019 as evidencing an attempted sale by the company of TOP$200,000 worth of its shares.

(d) Fourthly, even if the company would be insolvent, an order for reinstatement may be made when it is to be reinstated only to be wound up.[26] However, in exercising its discretion, the Court will be reluctant to make an order where the result would be to allow the recommencement in business of a company which would be 'hopelessly insolvent'.[27] Here, there is no evidence of that.

80. *"The company has no officers or employees and would not be able to fulfil its obligations under the Act."*

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[25] [46] and [47]
[26] *Payne v Wizard Industries Pty Ltd* (1997) 24 ACSR 277; 15 ACLC 1012.
[27] Re Great Eastern Cleaning Services Pty Ltd (No 2) (1978) 3 ACLR 886; (1979) CLC 40–511.

This submission too must be rejected for the following reasons:

(a) Firstly, there is no evidence that the company's former directors are not willing to resume their role or discharge their responsibilities in accordance with the Act.

(b) Secondly, given that the company ceased its newspaper operation approximately five years ago, there is no evidence as to what obligations will be required, save for lodging annual returns and possibly defending Mrs Amanaki's claim.

(c) Thirdly, pursuant to s.338(4), the Court may give such directions or make such orders as may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been removed from the Tongan register. That will include its former directors. As s.339(2) deems a restored company to have continued in existence as if it had not been removed from the register, restorative orders will have the effect that the company's directors have continued as its officeholders.

(d) Fourthly, s.335 provides that removal of a company from the register does not affect the liability of any former director or shareholder of the company in respect of any act or omission that took place before the company was removed and that liability continues and may be enforced as if the company had not been removed from the register. Mr Edwards SC remains a Defendant in CV 9 of 2019. Therefore, it is reasonable to expect that, if the company intends to defend Mrs Amanaki's claim, any of the company's five directors (subject to Board resolution) will take the necessary steps to ensure that it does so.

(e) Fifthly, if there is in fact any substance to the Government's submission that the company has no assets or directors (meaning no directors willing to resume their responsibilities), such that it would not be just to resurrect the company since it would lack proper governance, the court may, when ordering reinstatement, in an appropriate case, appoint a provisional

liquidator[28] or make an order for winding up.[29] That course, in turn, may give rise to issues and applications pursuant to ss 256 and/or 257 of the Act in relation to Mrs Amanaki's claim proceeding against the company. However, in circumstances where there has been no evidence and no suggestion by the Government of such issues potentially arising, there is presently no need to consider them further.

81. "*The application is in incorrect form as there is no Statement of Claim and the Government should not be a party to the application.*"

Both submissions are correct. However, for the following reasons, no prejudice has been occasioned and neither are grounds for refusing the application:

(a) Mrs Amanaki, a non-lawyer, filed the application with 38 paragraphs of background and grounds to the application. It was effectively a Statement of Claim. Further, Order 4 rule 1(a) of the Supreme Court Rules provides that a failure to comply with the rules in any respect shall be treated as an irregularity and shall not nullify the proceedings or any judgment or order made therein.

(b) The Government filed a notice of opposition and a memorandum of submissions. There is no suggestion of it not knowing the case it had to meet, if in fact it was required to meet any case. There was also no suggestion by Mr Sisifa that the Government was impeded or precluded from placing before the Court all the evidence and submissions upon which it wished to rely.

(c) The reason for the joinder of the Government shareholder was never explained. Again, Mrs Amanaki brought the application as best she could without apparent legal assistance. Arguably, the Government, as the company's former shareholder, has an interest in the outcome of the application. However, rather than seek to be dismissed from the application

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[28] *Vukasin v Australian Securities and Investments Commission* (2007) 25 ACLC 1554; [2007] NSWSC 1341.
[29] *CGU Workers Compensation (NSW) Ltd v Rockwall Interiors Pty Ltd* (2006) 201 FLR 296; [2006] NSWSC 690 at [9], [24].

pursuant to Order 9 rule 2(a) of the Supreme Court Rules, for some reason, known only to itself, the Government decided to actively engage with and oppose the application right through to the last hearing.

82. *"Possible limitations defence"*

On 30 April 2020, Mr Sisifa orally submitted that Mrs Amanaki's claim in respect of the first alleged defamatory publication was eight days outside the five year limitation period proscribed by s.16(1) of the *Supreme Court Act*. For the following reasons, I am not satisfied that any potential limitations defence in respect of the first publication justifies refusal to restore the company to the register:

(a) As observed at paragraph 35 above, a limitations issue may be considered on an application for restoration when assessing the merit of the substantive claim for which restoration is sought. However, in *Wardley Australia Ltd v Western Australia* (1992) 175 CLR 514 at 553, the High Court cautioned that it is:

> *"... undesirable that limitation questions of the kind under consideration should be decided in interlocutory proceedings in advance of the hearing of the action, except in the clearest of cases. Generally speaking, in such proceedings, insufficient is known of the damage sustained by the plaintiff and of the circumstances in which it was sustained to justify a confident answer to the question."*

(b) While the element of publication will usually be complete at the time of, here, readers reading the newspaper articles, no submissions were made on when Mrs Amanaki's cause of action for the first alleged defamation accrued.

(c) Further, it is to be recalled that Mrs Amanaki originally sued the defendants to her claim for defamation arising from the newspaper articles by way of counterclaim in CV 57 of 2018. For procedural reasons, that counterclaim was directed to be removed from that proceeding and became the subject of a separate proceeding in CV 9 of 2019. Therefore, any consideration of limitations issues ought include the date on which Mrs Amanaki originally sued the company in CV 57 of 2018.

(d) For those reasons, this is not the 'clearest of cases'. The issue therefore may be a matter of defence. Determination of the issue, if it is pleaded, should await the trial.

(e) Also, even if there is a limitations defence in respect of the first publication, it is clear that the proceeding was commenced within five years of the other two alleged publications.

83. For those reasons, I am satisfied that there are no discretionary factors which are sufficient to warrant refusal of the application.

Result

84. The application to restore the company is granted.

85. Pursuant to s.338(1) of the *Companies Act*, I order that Tonga Weekly Newspaper Limited be restored to the Tongan register of companies.

86. Pursuant to s.339(1), the Registrar shall file a notice forthwith stating that the company is restored to the Tongan register.

87. Pursuant to ss 338(3), I direct that the company (and its directors) must forthwith comply with its obligations to file all outstanding annual returns under the Act and pay all relevant fees and penalties.

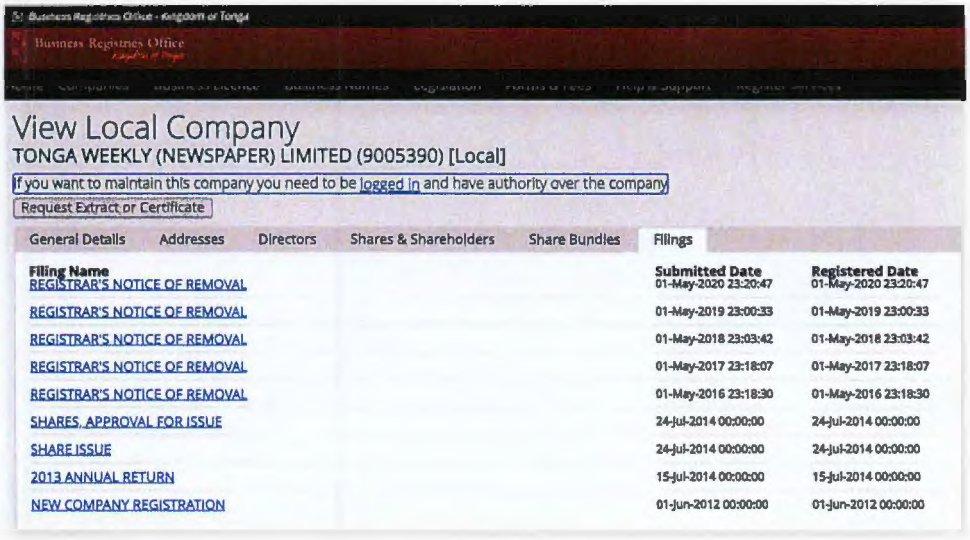
88. Liberty is reserved to any party to apply for any further directions to give effect to this ruling on seven days' notice.

89. Ordinarily, a successful applicant on a contested application would be entitled to his/her costs. In this case, Mrs Amanaki is self-represented. There will therefore be no order as to costs.

NUKU'ALOFA
3 August 2020

M.H. Whitten QC
LORD CHIEF JUSTICE

Annexure A



Business Registries Office

View Local Company

TONGA WEEKLY (NEWSPAPER) LIMITED (9005390) [Local]

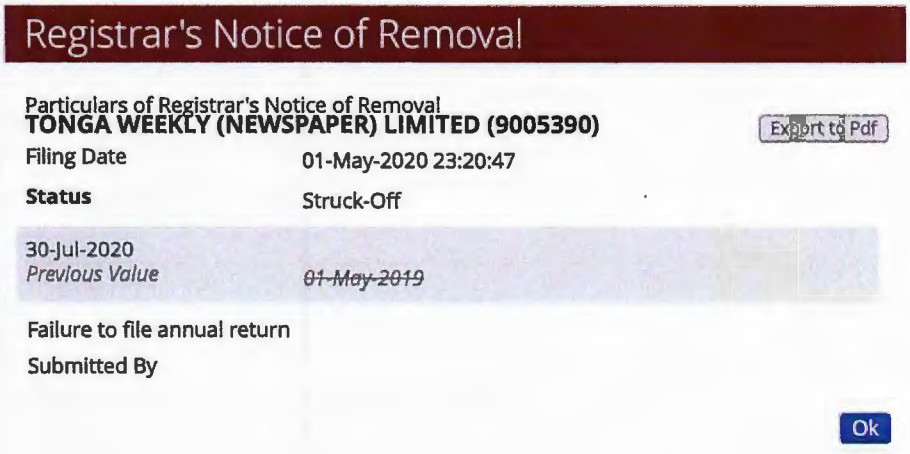
If you want to maintain this company you need to be logged in and have authority over the company

Request Extract or Certificate

General Details | Addresses | Directors | Shares & Shareholders | Share Bundles | Filings

Filing Name	Submitted Date	Registered Date
REGISTRAR'S NOTICE OF REMOVAL	01-May-2020 23:20:47	01-May-2020 23:20:47
REGISTRAR'S NOTICE OF REMOVAL	01-May-2019 23:00:33	01-May-2019 23:00:33
REGISTRAR'S NOTICE OF REMOVAL	01-May-2018 23:03:42	01-May-2018 23:03:42
REGISTRAR'S NOTICE OF REMOVAL	01-May-2017 23:18:07	01-May-2017 23:18:07
REGISTRAR'S NOTICE OF REMOVAL	01-May-2016 23:18:30	01-May-2016 23:18:30
SHARES, APPROVAL FOR ISSUE	24-Jul-2014 00:00:00	24-Jul-2014 00:00:00
SHARE ISSUE	24-Jul-2014 00:00:00	24-Jul-2014 00:00:00
2013 ANNUAL RETURN	15-Jul-2014 00:00:00	15-Jul-2014 00:00:00
NEW COMPANY REGISTRATION	01-Jun-2012 00:00:00	01-Jun-2012 00:00:00

Annexure B



Registrar's Notice of Removal

Particulars of Registrar's Notice of Removal
TONGA WEEKLY (NEWSPAPER) LIMITED (9005390)

Export to Pdf

Filing Date	01-May-2020 23:20:47
Status	Struck-Off
30-Jul-2020 *Previous Value*	~~*01-May-2019*~~

Failure to file annual return

Submitted By

Ok