

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No: 19 of 2024

IN THE MATTER OF THE D' TRUCK CENTER LIMITED

AND

IN THE MATTER OF SECTION 227 (1) (F) AND 228 OF THE BELIZE COMPANIES ACT NO.11 OF 2022

AND

IN THE MATTER OF PETITION BY DIOMEDES TITO RIVERA TO WIND UP D' TRUCK CENTER LIMITED

Appearance:

Mr. R. Montero for the Petitioner

2024: July 24
October 29

DECISION

Winding Up – Company's inability to pay debts – Sections 227 and 228 of the Belize Companies Act

- [1] **Mansoor J:** The petitioner, Diomedes Tito Rivera, has applied to wind up D'Truck Center Limited ("company"), a company incorporated under the former Companies Act (chapter 250) and re-registered under the Belize Companies Act No.11 of 2022 ("the Act"). The petitioner's affidavit in support states that the company carries on the business of selling auto parts, particularly for heavy duty trucks. The company's registered office is at 2 ½ miles, George Price Highway in Belize City. The petitioner owns half of the company's issued

shares of 5,000. The balance 2,500 shares are held by Zeida Young. The petitioner has been a shareholder and director of the company since its incorporation in 2003. The petitioner is seeking to appoint Mr. Emil Pinelo of Emil C Pinelo & Associates as the liquidator.

- [2] The petitioner states that on 21 December 2023, the director general of the Belize Tax Service Department served the company with two notices of demand for the sums of \$30,715.00 and \$75,362.91. Subsequently, the petitioner was summoned to appear before the Belize City Magistrate Court. On 5 June 2024, on the direction of court, the Belize Tax Service Department re-calculated the company's outstanding tax dues to be \$33,140.11. He says he informed the Magistrate Court that he would petition this court to wind up the company. He states that he has appeared before the Magistrate Court on behalf of the company and spent over \$8,000.00 as legal fees.
- [3] The petitioner states that the company has not settled its tax dues notwithstanding a demand to do so and that 21 days have lapsed since the issuance of the demand. He states that the company also owes approximately \$23,100.00 to Heritage Bank. The petitioner states that he has been paying the company's loan from his personal funds. It is averred that the company has four blocks of land, out of which three are mortgaged to Heritage Bank. The petitioner states that the few spare parts held by the company cannot be sold.
- [4] The petitioner states that the company has not been in operation since January 2024 and, therefore, it no longer serves the purpose for which it was created. The affidavit states that relations between the petitioner and the other shareholder are strained and they are no longer able to continue operations. The affidavit states that there is a deadlock in the conduct of the company's business and in the paying of its debts, and, as a result, the company is unable to pay its debts within the definition of section 228 (1) of the Belize Companies Act.
- [5] The petitioner avers that the company was re-registered by the other shareholder and that he has had no response to his request, sent through his attorney at law, for a detailed extract of company information and access to the online business registry system. The petitioner asserts that in these circumstances it is just and equitable to wind up the company.
- [6] At the hearing of the petition, counsel for the petitioner submitted that liquidation of a company is governed solely by the provisions of the Belize Companies Act and that the winding up application and process *per se* are not governed by subsidiary legislation. There was no representation on behalf of the company sought to be wound up. The affidavit of service states that documents were served on the company at its registered address on 12 July 2024.

- [7] Liquidation of a company is under part XIV and sub part 3 deals with winding up by the court. Section 227 of the Act sets out the circumstances in which a company may be wound up. Section 227 (1) (D) states that a company may be bound up by the court if the company is unable to pay its debts or is insolvent. Section 228 (1) (c) states that a company is deemed to be unable to pay its debts if it is proved to the satisfaction of the court that the company is unable to pay its debts. Section 227 (1) (f) states that a company may be wound up if the court is of the opinion that it is just and equitable to do so.
- [8] Section 229 of the Act provides for an application to be made to the court for the winding up of a company by presenting a petition. Such a petition can be presented by the company, by any creditor or by any contributory, and a competent regulatory or licensing authority. Section 229 (2) imposes certain restrictions on a contributory in presenting a winding up petition. From the facts averred in the affidavit, these restrictions, ostensibly, do not apply to the petitioner. The powers of the court upon hearing a winding up petition are set out in section 230 of the Act.
- [9] Winding up a company can have far reaching consequences and the court must have regard to the interests of all stakeholders, including the claims of creditors. It is imperative that creditors and others with an interest in the company have due notice of the application to wind up the company. It is possible that there are creditors who will want to support the application. Others may intervene to oppose the winding up. These stakeholders must be able to participate in the winding up proceedings.
- [10] Some jurisdictions have detailed rules on the winding up procedure to be followed such as the giving of notice to the public, timelines for supporting or objecting to the winding up and the consequences of failing to comply with rules. Counsel for the petitioner submits that such rules do not currently exist in this jurisdiction apart from the provisions of the Belize Companies Act. Sub part of Part V of the Belize Companies Regulations 2022 refers to voluntary liquidation. These and other companies regulations do not lay down a procedure for the winding up of a company by court order under section 227 of the Act.
- [11] The petition discloses two creditors; whether there are others is not clear. One of the creditors, Belize Tax Service Department has filed criminal proceedings in the Magistrate Court for default of tax. The present status of this case is not known. Heritage Bank is the other disclosed creditor. In these circumstances, the petitioner is directed to publish a notice of the application to wind up the company in two national newspapers and provide proof of publication. A supporting application or objection to the winding up must be filed within seven days of publication.

[12] Section 232 (1) of the Act states that when a winding up order is made or a provisional liquidator is appointed, no suit, action or other proceedings, including criminal proceedings, can be proceeded with or commenced against the company except with the leave of the court. The petitioner has stated that a case has been filed against the company to recover taxes in default. It is necessary therefore to issue notice of this proceeding on the director general of the Belize Tax Service Department so that steps may be taken in accordance with this enactment.

ORDER

- A. The petitioner is directed to publish a notice of the application to wind up the company in two national newspapers published in Belize. Proof of publication is to be submitted to the court registry within seven days of publication.
- B. Notice of these proceedings must be served on the Belize Tax Service Department within seven days.
- C. An application in support of or objecting to the winding up is to be filed within seven days of publication as aforesaid.
- D. A supporting application or objection will be heard on 12 December 2024.

M. Javed Mansoor
Judge