



CARIBBEAN COURT OF JUSTICE

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CCJ DISMISSES APPEAL IN A COMPANY LAW CASE FROM GUYANA

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (CCJ) dismissed the appeal and affirmed the decision of the Court of Appeal of Guyana in the matter of *Shir Affron Nabi, Rafael Nabi & The Estate of Shir Amineen Nabi v Ashmidphiraque Sheermohamed, S.A. Nabi & Sons Limited, Maurice Solomon (in his capacity as Liquidator/Receiver/Manager)*. The Court also ordered that the appellants pay the respondent the costs of this appeal.

The company, S. A. Nabi & Sons Limited, is a family-owned company. Following its incorporation, the relationship between the shareholders deteriorated. In light of the circumstances on 11 November 2009 Ashmidphiraque Sheermohamed (the first respondent) filed a petition in the High Court seeking an order that the company be wound up under section 354 (e) of the Companies Act on the basis that it was just and equitable so to do. The High Court (Justice Persaud) granted the order for the just and equitable winding up of the company.

In 2015, the appellants filed an appeal against this order (the first appeal). Some months later, they applied for a stay or revocation of the same order. However, Justice Persaud of the High Court refused to grant this application and instead appointed a receiver-manager. The appellants then appealed also this order to the Court of Appeal in 2016, making it the second appeal. The Court of Appeal held that it had the legal authority to hear the first appeal but none to hear the second appeal. They dismissed the appeals, the first one on the merits. The appellants then appealed to the CCJ arguing that the Court of Appeal made an error when they upheld the decision which granted the order to wind up the company.

The CCJ was satisfied that the Court of Appeal acted upon correct principles of law in upholding Persaud J's section 354 (e) discretion in ordering the winding up of the company. As such, the question which the CCJ had to answer was if the Court of Appeal misapplied those principles to the evidence before it, as contended by the appellants.

The CCJ was satisfied that the Court of Appeal had enough evidence to hold that Mr Sheermohamed was a shareholder or in the position of a shareholder which legally allowed him to file a petition to wind up the company. The CCJ also found that the Court of Appeal did not misapply the just and equitable principles as there was an abundance of evidence to support the finding that the parties were in deadlock. The general decision-making process within the company had broken down and there was no realistic prospect of it being repaired.

For these reasons, the CCJ dismissed the appeal and ordered the appellants to pay the respondents' cost. The Court was presided over by the Honourable Mr Justice Jacob Wit, Mr Justice Winston Anderson, Mme Justice Maureen Rajnauth-Lee, Mr Justice Denys Barrow, and Mr Justice Andrew Burgess.

The full judgment of the Court and a judgment summary are available on the CCJ's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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