

**IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY**

**CIV-2014-463-169
[2015] NZHC 2596**

BETWEEN DAMIEN GRANT AND STEVEN KHOV
AS LIQUIDATORS OF RANOLF
COMPANY LTD (IN LIQUIDATION)
Applicants

AND STEPHEN BHANA
First Respondent

JASU MATI BHANA
Second Respondent

Hearing: 21 October 2015

Counsel: B J Norling and A Cherkashina for Applicants
No appearance by or on behalf of the Respondents

Judgment: 21 October 2015

JUDGMENT OF BREWER J

Solicitors: Waterstone Insolvency (Auckland) for Applicants
(Copy to Respondents in person)

GRANT AND KHOV AS LIQUIDATORS OF RANOLF COMPANY LTD (IN LIQUIDATION) v BHANA
[2015] NZHC 2596 [21 October 2015]

[1] The applicants are liquidators of Ranolf Company Ltd. Mr Bhana is described as the person who has had effective control over that company at material times. Ms Bhana, the second respondent, is described as a director of the company.

[2] I am satisfied from the affidavits which have been filed by the applicants that Mr Bhana and Ms Bhana have deliberately frustrated the liquidation process. In particular, and of relevance for this application, they have persistently failed to produce to the applicants the books, records and documents relating to the company and to an associated trust, the Ranolf Trust.

[3] On 13 October 2014, the applicants filed an originating application for orders to compel the respondents to produce the relevant documents and to provide the applicants with relevant information as to the identities of current and past trustees of the Ranolf Trust and details of the assets of the Ranolf Trust.

[4] The respondents took no steps. Accordingly, on 25 November 2014, Woolford J made the orders sought and these were sealed and served on the respondents. Mr Bhana was served on 18 December 2014 and Ms Bhana was served on 22 December 2014. An explanatory memorandum was served on them at the same time. I attach a copy of the orders of Woolford J to this judgment for the sake of completeness.

[5] I am satisfied on the subsequent affidavits that have been filed that the respondents have taken no steps to comply with the orders of the Court. I am satisfied also that the applicants have made all reasonable attempts to convince the respondents to comply with the orders of the Court.

[6] On 16 July 2015, the applicants applied on notice for orders that the respondents be held in contempt of Court, fined, and imprisoned unless they comply with the orders of the Court. That application was served on Ms Bhana on 26 September 2015 and on Mr Bhana on 29 September 2015. Contemporaneously, a

copy of the affidavit of Mr Jones sworn on 15 July 2015 in support of the interlocutory application was served also.¹

[7] There has been no appearance today by or on behalf of the respondents.

[8] In reliance on the affidavits filed by the applicants, I am satisfied beyond reasonable doubt that the respondents are in contempt of Court. That is to say, they have deliberately disobeyed the orders of the Court made by Woolford J on 25 November 2014. Those orders are unambiguous in their terms and are binding upon the respondents. The respondents knew about the orders, were reminded of the orders and failed/refused to act on them.²

[9] Where there has been a deliberate defiance of a Court order, a mere declaration that the respondents have acted in contempt of Court will not be sufficient. Rather, a penalty should be imposed. As the Supreme Court in *Siemer v Solicitor-General* observed:³

The objective of the summary process in contempt of court proceedings is to protect the ability of the courts to exercise their constitutional role of upholding the rule of law. Effective administration of justice under our constitution requires that the orders of the courts are obeyed unless properly challenged or set aside. Public confidence in the administration of the law, also necessary for its effective administration, requires that there is a strong expectation that those who ignore court orders are quickly brought to account.

[10] I am not prepared to decide penalty in this hearing without better understanding the positions of the respondents. I do observe that fines are normally considered appropriate where contempt of Court has been established. The issue for me is how I proceed from this point.

¹ The affidavits of Sharon Dingwall sworn on 14 October 2015 and confirming service do not have as exhibits copies of the documents actually served. Accordingly, there is no specific record that the copy of the interlocutory application on notice served had included in it the date of today's hearing. However, counsel appearing for the applicants have told me that the delay in serving the documents was because of the delay in receiving from the Court the service copies of the notice with the hearing date included. Ms Cherkashina told me that she gave the Court service copies to the office administrator for service. I accept those assurances and, given the further information I have from the registry staff as to the efforts made to confirm with the respondents the date of today's hearing, I am confident that proper service was effected.

² *Solicitor-General v Krieger* [2014] NZHC 172.

³ *Siemer v Solicitor-General* [2010] NZSC 54, [2010] 3 NZLR 767, at [26].

[11] Pursuant to r 17.84, I direct the issue of an order arresting each of the respondents. The respondents are to be brought before the Court on 5 November 2015 at 9:00 am and until then they are to be kept in safe custody. This order will lie in Court until 2:15 pm on 2 November 2015. It will then be executed unless earlier varied or revoked in accordance with the following direction.

[12] Leave is reserved to the respondents to file affidavits attesting to their compliance with the orders of the Court made by Woolford J on 25 November 2014. If such affidavits are filed prior to 2:15 pm on 2 November 2015, then the respondents may also request that the execution of the arrest order be varied or revoked.

[13] If, because of such application, I vary or revoke the arrest order, or if the arrest order is executed, then a date will be set for a penalty hearing.

[14] I direct the applicants to serve a copy of this Judgment on the respondents as soon as possible. This is to be in addition to the standard efforts of the registry to distribute the Judgment to the parties. I will require affidavits of service from the applicants. If the applicants are unable to serve the judgment by 5:00 pm on 30 October 2015 then they are to advise the registry of that by 10:00 am on 2 November 2015. The registry is directed to at once bring any such advice to my attention.

[15] The applicants are entitled to costs on this application. In view of the nature of the application, those costs will be on an actual and reasonable basis. The applicants are to file a memorandum setting out their actual and reasonable costs so that a further order quantifying costs can be made.



Brewer J

In the High Court of New Zealand
Rotorua Registry

CIV 2014-463-169

Under section 266 of the Companies Act 1993 and Part 19 of the High Court Rules

In the matter of the liquidation of Ranolf Company Limited (in Liquidation)

Between **Damien Grant and Steven Khov** as liquidators of Ranolf Company Limited (in Liquidation) of 16 Piermark Drive, Albany, Auckland

Applicants

And **Stephen Bhana**, Property Manager of 46 Devon Street, Rotorua

First respondent

And **Jasu Mati Bhana**, Director of 46 Devon Street, Rotorua

Second respondent

copy issued x 1

Court Order

Dated December 2014



Solicitors: Brent James Norling/Anna Cherkashina

16 Piermark Drive
Albany
Auckland

PO Box 352
Shortland Street
Auckland 1140

Ph: 0800 256 733
Fax: 0800 329 974
Mob: 021 744 247
Email: brent@waterstone.co.nz/anna@waterstone.co.nz

HIGH/DISTRICT COURT

4 - DEC 2014

ROTORUA

To: **Stephen Bhana**

and

To: **Jasu Mati Bhana**

Before the Honourable Justice Woolford on 25 November 2014:

1. After reading the originating application for orders to produce books, records and documents, the affidavit of Kieran Michael Jones and after hearing Brent James Norling, counsel on behalf of Damien Grant and Steven Khov as liquidators of Ranolf Company Limited (in Liquidation) ("**the company**"), this Court orders:
 - a. That the respondents produce to the applicants:
 - (i) All books, records and documents relating to the company and the Ranolf Trust in their possession or control including, but not limited to, the trust deed for Ranolf Trust, board meeting minutes, board resolutions, financial statements, financial records, sale and purchase agreements, property valuations, and all documents relating to the assets of the company and the Ranolf Trust or any other trust that the company has been a trustee for; and
 - (ii) Copies of all documents that relate to the outstanding debtors of the company.
 - b. The respondents provide the applicants with the following information:
 - (i) Identification of the current trustees of the Ranolf Trust;
 - (ii) Identification of the past trustees of the Ranolf Trust; and
 - (iii) Details of the assets of the Ranolf Trust.
2. The applicants are also awarded costs of the application on a 2B basis, being \$5,665.00 (as detailed in the Memorandum of costs), but reduced to \$4,278.50 being the actual costs and disbursements of the applicants.

Date: 25 November 2014

.....*S. P. Ewing*.....

Deputy Registrar/ Registrar
Isabella Ewing
High Court of New Zealand

