

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 5/2024
[2024] NZSC 62

BETWEEN ANDREW GRIFFITHS
First Applicant

AND SATORI HOLDINGS LIMITED (IN
LIQUIDATION)
Second Applicant

AND ISLAND GRACE (FIJI) LIMITED (IN
RECEIVERSHIP AND IN LIQUIDATION)
Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: M A Corlett KC and R B Hucker for Applicants
A S Olney and B E Marriner for Respondent

Judgment: 31 May 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The first applicant must pay the respondent costs of \$2,500.**
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REASONS

Introduction

[1] On 17 February 2023 Satori Holdings Limited (Satori) was placed into liquidation by the High Court.¹ This decision was upheld by the Court of Appeal.² The applicants now seek leave to appeal against that decision.

¹ *Island Grace (Fiji) Ltd (in rec and in liq) v Satori Holdings Ltd (in interim liq)* [2023] NZHC 219 [HC judgment] (Associate Judge Andrew) at [118].

² *Griffiths v Island Grace (Fiji) Ltd (in rec and in liq)* [2023] NZCA 627 (Katz, Palmer and Jagose JJ) [CA judgment].

Background

[2] Satori is a New Zealand-registered company. Mr Andrew Griffiths is its sole director and shareholder. Satori is the trustee of the Satori Family Trust, a foreign trust registered in New Zealand. Satori holds a 24 per cent interest in the Island Grace joint venture which relates to the development of a Fiji resort.

[3] The joint venture assets were held by the first respondent, Island Grace (Fiji) Ltd (Island Grace), also a New Zealand-registered company. Satori's debts arose from unmet capital calls under the joint venture and its share of the shortfall on sale of the joint venture assets.

High Court decision

[4] Satori did not oppose the substantive liquidation proceedings. Rather Mr Griffiths, as shareholder, filed a notice of appearance opposing liquidation and a protest to jurisdiction, saying the Fijian courts are the *forum conveniens*.³

[5] Associate Judge Andrew accepted that he could not make an informed assessment of the merits of potential claims of breaches of fiduciary duty against other joint venture partners, including Sequitur Hotels Pty Ltd (Sequitur), but accepted the submission that, if there is merit, the liquidators are best placed to make the relevant decisions.⁴

[6] In the current liquidation proceedings, the Judge held that Mr Griffiths was not a defendant as he had not filed a statement of defence. In order to defend the proceedings he should have done so.⁵ The Judge refused to grant Mr Griffiths special leave to file a statement of defence out of time.⁶

[7] The Judge nevertheless addressed the issues raised by Mr Griffiths, which the Judge described as "wide-ranging" and giving rise to "an unnecessary degree of

³ HC judgment, above n 1, at [6].

⁴ At [83].

⁵ At [56] and [59].

⁶ At [111].

complexity”.⁷ The Judge also described the claim related to the indemnity debt as “part of a pattern of ever-widening claims made in an attempt to defeat the liquidation application. This appears to be an evolving pattern.”⁸ Among his findings was a rejection of the assertion that the resort had been sold to *Sequitur* at an undervalue.⁹

[8] The Judge concluded that it is clear on the evidence that Satori is “deeply insolvent”, relying on a report from the interim liquidators.¹⁰

[9] The Court rejected the *forum conveniens* arguments.¹¹ This was on the basis that Satori is incorporated in New Zealand.¹² Its only asset is to be indemnified from the assets of the Satori Family Trust which is registered in New Zealand. The right of indemnification is a New Zealand asset.¹³ The relevant joint venture agreements are governed by New Zealand law.¹⁴ The previous decision of the High Court in *Sequitur Hotels Pty Ltd v Satori Holdings Ltd* did not assist Mr Griffiths.¹⁵

[10] The Court also decided that it was just and equitable to make the liquidation order sought. Even if there is some arguable basis that Satori is not responsible for the full extent of the debts, Island Grace had nevertheless demonstrated insolvency.¹⁶ The Judge also considered that there was a proper basis for investigation into Satori’s affairs in light of the circumstances of orders Mr Griffiths had obtained and sought from the Fijian Family Court and allegations of continued trading while insolvent.¹⁷

Court of Appeal decision

[11] The Court of Appeal dismissed the appeal against the High Court decision, holding that the High Court did not err in holding that Satori was unable to pay its

⁷ At [68].

⁸ At [92].

⁹ At [73]–[79].

¹⁰ At [94]. At [95] the Associate Judge noted that it was clear Satori had “no assets of material value” and Mr Griffiths had “elected not to provide any evidence to the contrary”.

¹¹ At [96]–[105].

¹² At [98].

¹³ At [99].

¹⁴ At [101] and [104].

¹⁵ At [102] citing *Sequitur Hotels Pty Ltd v Satori Holdings Ltd* [2020] NZHC 2032.

¹⁶ At [113].

¹⁷ At [109].

debts. Nor did it err in the conclusion that it was just and equitable to order liquidation.¹⁸

[12] The Court noted that only Island Grace as petitioning creditor and Satori as the subject company were party to the substantive proceeding. Any right of appeal is limited to them and neither exercised that right.¹⁹

Application for leave

[13] The applicants raise a large number of grounds in their application for leave to appeal, some of which were not raised in the Courts below.²⁰

[14] While some of the grounds may raise legal issues, the main thrust of the submissions is to ask this Court to take a different view of the facts. There is thus no issue of general public importance or commercial significance.²¹ Nor does anything raised mean that there is a risk of a miscarriage of justice.²² The Courts below have held that Satori is plainly insolvent.

[15] In addition, as the Court of Appeal noted, there is a real issue as to whether Mr Griffiths has standing to make the application either in his own right or on behalf of Satori.

Result

[16] The application for leave to appeal is dismissed.

[17] The first applicant must pay the respondent costs of \$2,500.

Solicitors:

Molloy Hucker, Auckland for Applicant

Buddle Findlay, Wellington for Respondent

¹⁸ CA judgment, above n 2, at [24].

¹⁹ At [34].

²⁰ This is generally inappropriate on a second appeal: see for example *Zhou v Commissioner of Police* [2023] NZSC 124 at [9].

²¹ Senior Courts Act 2016, s 74(2)(a) and (c).

²² Section 74(2)(b). In the sense required in civil cases: see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].