

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

**I TE KŌTI MATUA O AOTEAROA  
NGĀMOTU ROHE**

**CIV-2021-443-11  
[2021] NZHC 1838**

UNDER the Companies Act 1993

IN THE MATTER of the liquidation of Clarence William Withers (Professional Swindler) Sting Operation Ltd

BETWEEN CLARENCE WILLIAM WITHERS  
Plaintiff

AND CLARENCE WILLIAM WITHERS  
(PROFESSIONAL SWINDLER) STING  
OPERATION LIMITED  
Defendant

Hearing: 16 July 2021

Appearances: T Wano for plaintiff  
Defendant unrepresented but Mr Dennis Smith, director, in attendance

Judgment: 20 July 2021

---

**JUDGMENT OF ASSOCIATE JUDGE JOHNSTON**

---

*This judgment was delivered by me on 20 July 2021 at 4.00 pm,  
pursuant to r 11.5 of the High Court Rules*

*Registrar/Deputy Registrar*

*Date:*

[1] This is an orthodox application by the plaintiff, Clarence Withers, for an order for the appointment of a liquidator over the defendant company, which, although cited in the originating documentation as “2004 Holdings Ltd”, has changed its name to “Clarence William Withers (Professional Swindler) Sting Operation Ltd. For the avoidance of any doubt, I formally amend the pleadings to reflect the judgment debtor company’s change of name.

[2] The background can be summarised briefly. In November 2020 the District Court entered judgment by default in Mr Withers’ favour against the judgment debtor company for approximately \$300,000.<sup>1</sup> The judgment debt was unpaid. In February 2021 Mr Withers served a statutory demand on the judgment debtor company for \$311,200.60. The very day on which the statutory demand was served — 15 February 2021 — the company changed its name as already described (though of course there is no reason to think that Mr Withers was aware of this at the time). The statutory demand was ignored. In March 2021 Mr Withers commenced this proceeding, citing the judgment debtor company by its former name.

[3] On or about 30 March 2021, the judgment debtor company’s managing director, Dennis Smith, purported to enter a defence on its behalf by filing (and presumably serving) a statement of defence (together with an accompanying memorandum). Initially, the New Plymouth Registry accepted the defence over the counter, and it was forwarded to Wellington. On receipt in Wellington the Registry identified that it had not been filed by a solicitor and rejected it, quite correctly in my view.

[4] The proceeding was set down for hearing before me at 2.15 pm on 16 July 2021. Mr Wano appeared for Mr Withers in support of his application. Mr Smith was in attendance (via AVL from Taumaranui). From my preliminary discussion with Mr Smith I am quite satisfied that he appreciates that a company may only be represented in Court by a solicitor or counsel and that, accordingly, his statement of defence has no formal status, and nor was he entitled to address the Court on the

---

<sup>1</sup> *Withers v King Country Roofing Ltd* DC New Plymouth CIV-2018-043-421, 17 November 2021.

company's behalf.<sup>2</sup> Nevertheless, I granted Mr Smith the indulgence of allowing him to address the Court, which he did.

[5] It is unnecessary to go into any detail as to the formalities of Mr Withers' application because no challenge is mounted to this. It is sufficient to record that all necessary material is before the Court. Prima facie then, Mr Withers is entitled to the order he seeks.

[6] When he addressed the Court Mr Smith effectively read the memorandum that he had purported to file and serve alongside the statement of defence expanding on aspects of this and answering questions that I put to him.

[7] Having read his memorandum and listened to Mr Smith I am confident that I understand the key points that he sought to make on the judgment debtor company's behalf in resisting Mr Withers' application. There were a series. It does not seem to me that it would be a useful exercise to try and record all of them. Below are what appear to me to be the points that Mr Smith emphasised with the most vehemence.

[8] First, Mr Smith plainly regarded it as unfair that when he had sought to enter a defence in the District Court proceeding, that had been rejected on the same grounds as the Registry ultimately rejected the defence he sought to enter in this proceeding, that is to say that a company must be represented by a solicitor or counsel and cannot be represented, without the Court's leave, by a director or officer. Mr Smith plainly put it down to the rejection of his statement of defence in the District Court proceeding that judgment by default was ultimately entered without his knowledge. The difficulty for Mr Smith in this context is that even if everything that he says is correct the appropriate remedy for that would have been an application to set aside the judgment entered by default. That step has not been taken. Whilst it is not out of the question to raise issues of procedural fairness in the context of an application for an order winding up a company, this Court would require a proper evidential foundation for that. All the Court has is what Mr Smith tells it. That is no evidence at all. This

---

<sup>2</sup> See *Re G J Mannix Ltd* [1984] 1 NZLR 309 where Cooke J said "... a corporation is not a natural person and so cannot appear in person; and that, apart from statutory exceptions, no one has a right to present a case in any court unless in person or by a qualified lawyer."

ground for defending or resisting Mr Withers' application is without any foundation or merit.

[9] Second, Mr Smith tells me — and Mr Wano was able to confirm this — that at the time that the District Court entered the default judgment against the judgment debtor company (17 November 2020) the company was not registered. Apparently, at some stage, the company had been removed from the Register for failure to file an annual return or annual returns, and was not therefore in existence as at the date in which the District Court entered judgment by default against it. Although Mr Smith placed much emphasis on this, I fail to understand how it could be of any significance because, after judgment by default had been entered against the judgment debtor company, an application was made by Mr Withers through his solicitors for the restoration of the company to the Register and it was restored on 13 January 2021. Under s 330 of the Companies Act 1993 the restoration of a company to the Register has retrospective effect. In other words, having been restored, the company is treated as having been in existence throughout the period during which it was not registered. Mr Smith's point therefore seems to go nowhere.

[10] Third, Mr Smith also informed me that the District Court judgment by default was entered against the judgment debtor company under an earlier name, King Country Roofing Ltd, notwithstanding that by the date of that judgment the company had changed its name to 2004 Holdings Ltd. As I understood him, Mr Smith was suggesting that there was some fraud involved on the part of Mr Withers or his solicitors or counsel because, in documentation after the delivery of the District Court judgment, the new name, 2004 Holdings Ltd, was used. I struggle to follow this point. If the criticism is that Mr Withers' solicitors did not formally seek an amendment to the intituling, and if that is the position, I would regard that as a minor irregularity and certainly not as involving any fraud. Had such an application been made to amend the intituling it certainly would have been granted. It is in my view a complete irrelevance in the context of the proceeding before me.

[11] Fourth, Mr Smith complained that when the application was made by Mr Withers to restore the judgment debtor company to the Register he was not served. There is no evidence before this Court as to what did or did not take place at the time.

However, even if there had been some irregularity it is not at all obvious to me that it should have any bearing on the application I have to deal with.

[12] Fifth and finally, Mr Smith told me that this “proceeding is an abuse of the Court processes. It is frivolous and vexatious as all parties know full well that the company ceased trading, was struck off and has neither assets nor liabilities, and was only restored in order to attempt to cover for the fact that a judgment was entered against a non-existent entity”. I reject that assertion — or series of assertions. The simple fact of the matter is that Mr Withers secured a judgment against the judgment debtor company. That judgment has been enforceable at least since the company was restored to the Register. Mr Withers is entitled to pursue whatever remedies the law provides and is doing so.

[13] I see no merit in any of the arguments advanced in opposition to Mr Withers’ application by Mr Smith.

[14] On the application of Clarence William Withers there will be an order winding up Clarence William Withers (Professional Swindler) Sting Operation Ltd. The approved liquidator is Gregory John Sherriff of Waterstone Insolvency. Mr Sherriff is appointed on the terms and conditions set out in his Consent to Act dated 16 June 2021, subject to s 284 of the Companies Act 1993. The applicant is entitled to costs on a 2B basis in the sum of \$3,346.00 together with disbursements in the sum of \$1,102.51, those to be paid out of the assets of the defendant. That order is to take effect from the time and date entered on the cover sheet to this judgment.

Associate Judge Johnston

Solicitors:  
Norling Law Ltd, Auckland for the plaintiff