

YEN HSI YEH v WEI-TING YEH

2023 SCJ 315

Record No. SC/COM/WRT/000014/2023

THE SUPREME COURT OF MAURITIUS
(Commercial Division)

In Chambers

In the matter of:

Yen Hsi YEH

Applicant

v

Wei-Ting YEH

Respondent

In the presence of:

- 1. Octtasia Investment Holding Inc.**
- 2. GENPRO Consulting (Mauritius) Inc.**

Co-Respondents

JUDGMENT

This is an application made by way of proceipe and affidavit under section 169 of the Companies Act which was made on an *ex parte* basis. I declined to issue the orders prayed for and instead it was ordered that a summons be issued for the respondent and co-respondents to show cause why the prayers at paragraphs E and F should not be granted. Whilst co-respondent No. 2 shall be abiding by my decision, co-respondent No. 1 has left default.

On 04 May 2023, the respondent has raised preliminary objection challenging the jurisdiction of the Judge in Chambers to entertain the present application which has been made under section 169 of the Companies Act and thereby challenging the powers of the Judge in Chambers to make final determinations under the said section of the law, which

powers the respondent claims, can only be exercised by the Bankruptcy Division of the Supreme Court.

Arguments on behalf of the respondent

It is the submission of learned Counsel appearing for the respondent that a reading of section 169 of the Companies Act shows that reference is made to the Court therein and the Court as defined in the interpretation section of the Companies Act in section 2 means the Bankruptcy Division of the Supreme Court. The case of **Samfat M.M.D.S. & Anor v Banyan Resorts Ltd** [\[2019 SCJ 210\]](#) has been heavily relied upon by the respondent to support the contention that the proper forum to be seized for an application under section 169 of the Companies Act is the bankruptcy Division of the Supreme Court and not the Judge in Chambers. It has been argued that the Court is called upon to make a final determination of an application when such application is made under that section of the law and that the Judge in Chambers is not vested with the power to make final determinations but can only issue interim and interlocutory orders in respect of injunctions. Furthermore, it has been submitted that summons have been issued on the respondent in relation to prayers E and F which if granted, would amount to final determinations.

Arguments on behalf of the applicant

It is the contention of the applicant that the preliminary objection raised by the respondent is misconceived as the applicant has seized the jurisdiction of the Judge in Chambers of the Commercial Court and under section 41D of the Courts Act, the Commercial Division of the Supreme Court is empowered to hear matters under the Companies Act. It has equally been contended on behalf of the applicant that the present matter has been entered before the Judge in Chambers pending the main case which the applicant intends to enter to seek a final determination. Learned Counsel for the applicant has relied on the case of **Woventex Ltd v Benichou Jacques Isaac & Ors** [\[2005 PRV 27\]](#) in support of the fact that in virtue of section 62(2) of the Courts Act, the jurisdiction of the Bankruptcy Division of the Supreme Court is exercisable by the Judge in Bankruptcy concurrently with the Judges. Further, relying on the case of **Fun World Co. Ltd v The Municipal Council of Quatre Bornes** [\[2008 PRV 46\]](#), it has been submitted that the Judge in Chambers sits as a Judge of the Supreme Court so that the present application can be heard by the Judge in Chambers.

It has also been submitted that the preliminary points raised are not ones of jurisdiction but ones of procedural propriety and I have been referred to the case of **Fun World Co. Ltd v The Municipal Council of Quatre Bornes (supra)** where a distinction between jurisdiction in the strict sense and procedural propriety was made. It has been argued that the point raised by the respondent is one of procedural propriety in that it questions whether the application should have been made before the Judge in Chambers rather than before the Bankruptcy Division or Commercial Division of the Supreme Court. It has been contended on behalf of the applicant that should the Judge in Chambers declare herself incompetent, then she has the duty to transfer the matter to a competent Court on the authority of **Woventex Ltd v Benichou Jacques Isaac & Ors (supra)** and the case of **CC/Devas (Mauritius) Limited & Ors v The Registrar of Companies** [\[2023 SCJ 216\]](#).

Findings

I have given due consideration to the oral as well as written submissions of learned Counsel.

A reading of prayers E and F shows that, if granted, they would in effect amount to final determinations which the Judge in Chambers is not habilitated to grant in an injunction case sought for as in the present matter. The matter should have been brought before the competent Court, that is, the Bankruptcy Division of the Supreme Court which is the Court that is empowered to pronounce itself under section 169 of the Companies Act. It is clear that the latter section refers to the “Court” which is the Bankruptcy Division of the Supreme Court as rightly pointed out by learned Counsel for the respondent.

On the other hand, learned Counsel for the applicant has argued that, having regard to Article 170 of the *Code de Procédure Civile* and upon the authority of **Woventex Ltd v Benichou Jacques Isaac & Ors (supra)**, the Judge in Chambers should refer the matter to the competent Court. Article 170 of the *Code de Procédure Civile* reads as follows –

“Si néanmoins le tribunal était incompétent à raison de la matière, le renvoi pourra être demandé en tout état de cause; et si le renvoi n’était pas demandé, le tribunal sera tenu de renvoyer d’office devant qui de droit.”

As pointed out in the case of **Woventex Ltd v Benichou Jacques Isaac & Ors (supra)**, the effect of Article 170 of the *Code de Procédure Civile* is that if a court declares itself incompetent for lack of jurisdiction, it nevertheless has the power and the duty to transfer the

matter to a competent Court; it does not, in my view, empower the *Juge en Chambre* to do so. I, therefore, cannot accede to the request of referring the matter to the competent Court. Further, I am also alive to what was stated in the case of **Fun World Co. Ltd v The Municipal Council of Quatre Bornes (supra)** whereby the Judicial Committee of the Privy Council stated that the Judge in Chambers had, in that case, jurisdiction to exercise all such powers and judicial jurisdiction as that of a Judge of the Supreme Court unless that jurisdiction was cut down by statute; in the present matter, I am cut down by statute - by sections 2 and 169 of the Companies Act.

In the light of the foregoing, the preliminary objection raised by the respondent is sustained and the application is set aside with costs.

I certify as to Counsel.

P. D. R. Goordyal-Chitto
Judge

08 August 2023

For Applicant	:	Mr. A. Robert, Senior Attorney
	:	Mr. A. Oozeer together with Mr. R. Bhookhun and Mr. M. Namdarkhan, all of Counsel
For Respondent No. 1	:	Mrs. D. Ghose-Radhakeesoon, Attorney-at-Law
	:	Mr. A. Sookhoo, of Counsel
For Co-Respondent No. 2	:	Mr. J. Gujadhur, Senior Attorney
	:	Ms. P. Gokhool, of Counsel