

FEDERAL COURT OF AUSTRALIA

**Lady Crown and on Behalf of Ngati Rangihou Corrangie Hapu Dbā Office of the
Crown v Parramatta City Council, in the matter of Parramatta City Council**

[2019] FCA 1668

File number: NSD 711 of 2019

Judge: **GLEESON J**

Date of judgment: 14 October 2019

Catchwords: **CORPORATIONS** – application for order that Parramatta City Council be wound up in insolvency – whether council is a “body corporate” within the meaning of the *Corporations Act 2001* (Cth)

PRACTICE AND PROCEDURE – application for summary dismissal – no basis for entitlement to relief sought – originating process summarily dismissed

Legislation: *Corporations Act 2001* (Cth) ss 9, 112, 119, 459A, 459E, 459G, 459P, 459Q
Judiciary Act 1903 (Cth) s 78B

Local Government Act 1993 (NSW) ss 7(a), 219, 220

Date of hearing: 21 August 2019

Registry: New South Wales

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 33

Counsel for the Plaintiffs: The first plaintiff appeared in person

Solicitor for the Defendant: A White of Sparke Helmore

ORDERS

NSD 711 of 2019

IN THE MATTER OF PARRAMATTA CITY COUNCIL

BETWEEN: **LADY CROWN AND ON BEHALF OF NGATI RANGIHOU
CORRANGIE HAPU DBA OFFICE OF THE CROWN**
First Plaintiff

**NGATI RANGIHOU CORRANGIE HAPU DBA OFFICE OF
THE CROWN**
Second Plaintiff

AND: **PARRAMATTA CITY COUNCIL**
Defendant

JUDGE: **GLEESON J**

DATE OF ORDER: **14 OCTOBER 2019**

THE COURT ORDERS THAT:

1. The proceeding be summarily dismissed.
2. The plaintiffs pay the costs of the proceeding.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GLEESON J:

1 This proceeding commenced with an originating process filed by two plaintiffs named as Lady
Crown and Ngati Rangihou Corrangie Hapu dba Office of the Crown.

2 The relief sought on the first page of the originating process is:

- (1) A winding up order and liquidation against the defendant, identified as Parramatta City Council (ABN 49 907 474 773) (**Council**), pursuant to ss 459E, 459G, 459P, 459Q of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- (2) Seizure of “company’s assets to pay debt and total obligation from” the Council.
- (3) Termination of the Council “by its eventual dissolution”.

3 In addition, the originating process sets out claims for compensation and damages in connection with lands referred to as “rangihou lands”, and allegations of unlawful conduct by the Council and other bodies including State and Commonwealth governments. Under the heading “Interim orders are sought as follows” are claims for the return of “rangihou lands” apparently comprising lands in the Parramatta area.

4 Although the originating process identifies Rik Hart as a respondent, that name is deleted in several places in the documentation and I do not understand relief to be sought against that individual.

5 By interlocutory process dated 27 June 2019, the Council applied for summary dismissal of the proceeding on the basis that the originating process failed to disclose a reasonable cause of action; had no reasonable prospects of success; and or was an abuse of the Court’s process.

RELIEF SOUGHT BY PLAINTIFFS

6 The particular provisions of the Corporations Act mentioned in the originating process are ss 459E, 459G, 459P and 459Q. Section 459E permits a creditor to serve a statutory demand on a company. Section 459G permits a company to apply to the Court for an order setting aside a statutory demand served on the company. Section 459P identifies who may apply to the Court for a company to be wound up in insolvency (whether with or without the Court’s leave). Section 459Q sets out requirements if an application for a company to be wound up in insolvency relies on a failure by the company to comply with a statutory demand.

7 Having regard to these references to the Corporations Act, I infer that the winding up order sought is an order under s 459A.

8 Section 459A provides:

On an application under section 459P, the Court may order that an insolvent company be wound up in insolvency.

9 The Council contends that the Court does not have power to make an order against it under s 459A because it is not a “company” within the meaning of the Corporations Act.

10 “Company” is defined in s 9 of the Corporations Act to mean:

...a company registered under this Act and:

(c) in Parts 5.7B and 5.8 (except sections 595 and 596), includes a Part 5.7 body; and

(d) in Part 5B.1, includes an unincorporated registrable body.

11 Section 112 specifies the types of companies that can be registered under the Corporations Act, namely:

- (1) proprietary companies being companies limited by shares and unlimited with share capital; and
- (2) public companies being companies, limited by shares, limited by guarantee, unlimited with share capital and no liability companies.

12 Section 119 of the Corporations Act provides:

A company comes into existence as a body corporate at the beginning of the day on which it is registered. The company’s name is the name specified in the certificate of registration.

13 Based on s 119, a company within the meaning of that Act is a “body corporate”.

14 The Council did not rely on evidence that it had served to demonstrate as a matter of fact that it is not a company within the meaning of the Corporations Act. Instead, it argued that the originating process must fail by pointing to laws concerning the nature of a local council in New South Wales.

15 The *Local Government Act 1993* (NSW) (**LGA**) provides the legal framework for the system of local government for New South Wales (see s 7(a)). Under s 7 of the LGA, the purposes of the Act include, relevantly:

(b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government,

(c) to provide for governing bodies of councils that are democratically elected,

...

16 Section 219 provides that a council is constituted by the LGA for each area as established under Pt 1 of Ch 9 of the Act. Section 220 provides relevantly:

(1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.

(2) A council is not a body corporate (including a corporation).

17 The first plaintiff noted that the Council has an Australian Business Number. However, it is not necessary to be a company within the meaning of the Corporations Act to have an ABN: see s 8 of the *A New Tax System (Australian Business Number) Act 1999* (Cth).

18 In the face of the legal framework established by the LGA, and without any evidence that the Council is a company within the meaning of the Corporations Act (particularly that it is one of the types of companies that can be registered under the Corporations Act), I accept that the plaintiffs have no reasonable prospect of demonstrating that the Council is such a company.

19 It follows that the plaintiffs have no reasonable prospects of demonstrating that the Court has power to order that the Council be wound up in insolvency pursuant to s 459A or that they are entitled to apply to the Court for the Council to be wound up in insolvency pursuant to s 459P.

20 It also follows that the plaintiffs have no reasonable prospects of demonstrating that they are entitled to serve a statutory demand on the Council pursuant to s 459E: as noted earlier, s 459E permits service of a statutory demand on a “company” within the meaning of the Corporations Act. In the absence of service of a demand which meets the requirements of s 459E, the plaintiffs are unable to demonstrate that the Council is insolvent. Insolvency, whether presumed by failure to comply with a statutory demand or otherwise proved, is a precondition to the exercise of the power conferred by s 459A.

21 Finally, I note that, on the face of the demand upon which the plaintiffs rely, it does not relate to a debt that is owed by the Council to either of the plaintiffs (as required by s 459E(1)), and the relevant demand is not signed by or on behalf of either of the plaintiffs (as required by s 459E(2)(f)).

22 In the affidavit of service of demand, affirmed by the first plaintiff on 7 May 2019, the first plaintiff states that she is:

[T]he creditor and tribal leader of the Ngati Rangihou Corrangie Hapu, the creditors in respect of debt obligation now payable to the sum of *AUD\$495,538,896,968,259.00 (Four Hundred and Ninety Five Trillion, Five Hundred and Thirty Eight Billion, Eight Hundred and Ninety Six Million, Nine Hundred and Sixty Eight Thousand and Two Hundred and Fifty Nine Dollars AUD) owed by CEO Rik Hart and Parramatta City Council, relating to compensation for damages and profiteering from 112 acres, rangihou lands Parramatta, dating back to the gifting of the land in 1811.

23 Annexed to the affidavit is a document entitled “Creditor’s Statutory Demand for Payment of Debt in the Matter”. This demand is addressed to Mr Hart, acting CEO of the Council and states relevantly:

1. The company owes Paremata Sovereign Nation State & Embassy, New Zealand Street, Rangihou, PO Box 9144 Harris Park NSW 2150 (aka Office of the Crown dba Tino Rangatiratanga Foundation) the total amount of damages and obligation as at 1st April 2019 (which includes interest of 25% incurred monthly) debt now payable to the sum of *AUD\$495,538,896,968,259.00 (Four Hundred and Ninety Five Trillion, Five Hundred and Thirty Eight Billion, Eight Hundred and Ninety Six Million, Nine Hundred and Sixty Eight Thousand and Two Hundred and Fifty Nine Dollars.
2. The amount of damages and obligation is due and payable by the Corporation and Payment must be paid to Tino Rangatiratanga Foundation, Bendigo Bank BSB 633000 Acc 161850599 and receipt of acknowledgement forwarded by registered post to Office of the Crown, New Zealand Street, Rangihou PO Box 9144, Harris Park NSW 2150.
3. The Office of the Crown dba Tino Rangatiratanga Foundation requires the company, within 21 days after service on the company of this demand:
 - (a) to pay the *amount of the debt/*total of the amounts of the debts; or
 - (b) to secure or compound for the *amount of the debt/*total of the amounts of the debts, to the Tino Rangatiratanga Foundation reasonable satisfaction; or
 - (c) Failure to pay the sum due; or
 - (d) Enter into a compromise under Section 459C of the Corporations Act 2001; or
 - (e) Give a charge over all lands, properties within, above, below and abutting the CITY OF PARRAMATTA borders including and not limited to Australia Lands to secure payment of the debts to the REASONABLE SATISFACTION of the Office of the Crown dba Tino Rangatiratanga Foundation within 21 working days after the date of service of this Notice on the company (or such longer period as the Court or Prosecutor may order) the amount being greater than the prescribed amount of \$2,000.00, the Office of the Crown dba Tino Rangatiratanga Foundation Chief Advisor may apply to the Supreme Court for an order that you be put into liquidation pursuant to Section

459C of the Corporations Act 2001 and Usufruct Levy.

4. The Office of the Crown dba Tino Rangatiratanga Foundation may rely on a failure to comply with this demand within the period for compliance set out in subsection 459F (2) as grounds for an application to a court having jurisdiction under the Corporations Act 2001 for the winding up of the company.

24 The demand is signed by Pokapu Pungawerewere (Chief Advisor) “FOR AND ON BEHALF OF THE OFFICE OF THE CROWN”.

25 The demand does not make any reference to a person named Lady Crown, nor does it refer to Ngati Rangihou Corrangie Hapu, nor to Ngati Rangihou Corrangie Hapu dba Office of the Crown.

26 Although the demand refers to “Office of the Crown”, this appears to be a reference to a different entity, namely, Paremata Sovereign Nation State & Embassy.

27 Accordingly, even if it were arguable that the Council is a company, the statutory demand does not provide a basis for the plaintiffs to seek the Council’s winding up.

28 There is no reasonable basis for thinking that the plaintiffs may be entitled to any of the other relief sought in the originating process.

29 It follows that the originating process should be summarily dismissed.

NOTICES OF A CONSTITUTIONAL MATTER

30 On 2 September 2019 and 24 September 2019 the plaintiffs filed two documents entitled “Notice of a Constitutional matter under section 78B of the Judiciary Act 1903”. The second document states that the earlier document “is no longer relevant of active. This Notice of Constitution Matter dated 22nd September 2019 is now standing in its place”. The second document contends that the Corporations Act “is not currently in force leaving the Federal Court [n]aked”.

31 The plaintiffs’ principal claim is that they are entitled to an order winding up the Council under the Corporations Act. This claim does not involve a matter arising under the *Constitution* or involving its interpretation within the meaning of s 78B of the *Judiciary Act 1903* (Cth).

32 Otherwise, the proceeding does not involve any discernible matter arising under the *Constitution* or involving its interpretation.

33 Accordingly, there is no matter that activates the requirements of s 78B.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gleeson.

Associate:

Dated: 14 October 2019