

In the matter of the Companies Act 1995

And

In the matter of Maxam Gold Bank Ltd

And

In the matter of an application by Laidlaw Holdings Ltd

BEFORE THE HON. CHIEF JUSTICE WARD

Hearing: 11 and 13 April 2000

Ruling: 1 May 2000

Counsel: D Garrett for the applicant, Laidlaw Holdings Ltd
L Foliaki for the respondent, Maxam Gold Bank Ltd

Ruling

Maxam Gold Bank was registered and a certificate of incorporation issued by the Registrar of Companies on the 8 July 1999.

Although, on the limited evidence before the court, it would appear that there has not been proper compliance with the requirements of the Act, section 18 provides that the certificate of incorporation is conclusive proof of the incorporation and that the requirements of the Act as to registration have been complied with.

The application for registration was made by Fuiva Kavaliku as sole applicant. The application on Form 1 names herself and Giovanni Kavaliku as the directors and herself as the sole shareholder. Following that, in the column for the number of shares, the entry is written as "100%". That is not a correct entry but, as the company was registered on the basis of the information on

this form, I can only assume that it has been taken by the Registrar as meaning 100 shares.

Laidlaw Holdings Ltd was registered and incorporated on 23 March 2000.

On that day, Fuiva Kavaliku signed a share transfer form transferring 100 shares to Hemaloto 'Alatini for One dollar and, on 29 March 2000, he signed a share transfer form transferring the shares to Laidlaw Holdings Ltd for ten dollars.

On 29 March, in accordance with section 85 (2), the forms were delivered to the company office with a covering letter asking that they be entered on the company share register. The company secretary replied on 30 March "refuting your claim to shares" in the company and threatening various actions if the claim was pursued.

The Act requires the company to enter the name of the transferee on the share register "forthwith" and that has not been done.

As a result Laidlaw Holdings has come to the court seeking a determination of its entitlement to have the transfer entered on the register.

The company has produced evidence claiming that the shares were transferred by Fuiva Kavaliku to Christopher Pedras. It has produced a copy of a resolution passed on 9 July 1999, that, as of 13 July 1999, she authorised the "transfer of all corporate stock and all other rights of ownership and management to Mr Christopher A. T. Pedras".

Christopher Pedras has filed an affidavit exhibiting a number of resolutions of the directors at a meeting apparently held on 9 July 1999 and the minutes of a meeting of the Board of Directors on 23 July 1999.

It would be reasonable to describe those documents as remarkable. They are frequently incomprehensible and, in a number of critical aspects, appear to be mutually contradictory. They also reveal an ignorance of the Act and even of its correct name and failure to comply with many of its provisions. However, I do not consider I have sufficient evidence upon which to reach any final conclusion about their contents at this stage and neither do I need to do so.

Mr Foliaki for Maxam does not deny that the company has failed to comply with many mandatory requirements of the Act. The method of suggested transfer of the shares disclosed in the resolutions of the company is not, in itself, in accordance with the Act. In particular, he admits there has never been any attempt to register the suggested transfer of the shares from Fuiva Kavaliku to Christopher Pedras.

The requirements of the Act should have been complied with and, in the absence of any such registration following a suggested transfer nine months previously, the court can only conclude that the shares were not transferred in the manner claimed by Christopher Pedras. The evidence on Form 1 is that the shares at the time of registration and incorporation of the company were all held by Fuiva Kavaliku and there is no proper evidence of that having changed.

In accordance with section 91 (3), I consider it necessary to decide the meaning of the statement on Form 1 that Fuiva Kavaliku holds 100% of the shares in Maxam and the entitlement of Laidlaw to have its name entered in the register.

I am satisfied that the statement on Form 1 that the number of shares held by Fuiva Kavaliku as the sole shareholder is 100% means that there are 100 shares, all held by her. I am equally satisfied that she was entitled to transfer those shares to Hemaloto 'Alatini and he was subsequently entitled to transfer the shares to Laidlaw.

In those circumstances, in accordance with section 91, I order that the company rectify its share register by entering the transfers of 100 shares from Fuiva Kavaliku to Hemaloto 'Alatini on 23 March 2000 and from Hemaloto 'Alatini to Laidlaw Holdings Ltd on 29 March 2000.

I am not satisfied that I have the power to make the third order requested by Laidlaw and the application for that order is refused.

This application has been necessary because of the failure of the company to follow the requirements of the Act and it must pay the applicant's costs.



A handwritten signature in black ink, appearing to be "W. W. W.", is written to the right of the seal.

NUKU'ALOFA: 1 May 2000.

CHIEF JUSTICE