



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2025: No. 14

**IN THE MATTER OF HORIZON COMMUNICATIONS LTD.**

### **RULING** **(In Court)**

*In the matter of an application for an interim injunction or stay of petition by Mr Gilbert Darrell*

**Hearing Date**                      **21 February 2025**

**Ruling date**                        **25 February 2025**

**Appearances:**                      *Mr. Vaughan Caines* of Forensica Legal for Mr. Gilbert Darrell  
*Mr. Rhys Williams* of Conyers Dill & Pearman Limited for the  
Petitioner

### **RULING of Martin, J**

#### **Introduction and disposition**

1. At the hearing of the petition in this matter an application was made on behalf Mr. Gilbert Darrell, who is the former chief executive of Horizon Communications Ltd (“Horizon”), for an injunction and/or a stay of the winding up petition. The application was based on an affidavit sworn by Mr. Darrell which stated that he was owed unpaid

salary, redundancy pay and reimbursement of expenses by Horizon, which he sought the assistance of the Court to collect.

2. The Court dismissed the application and indicated that brief reasons for the dismissal would follow. These are those reasons.

## **Background**

3. In this case, in June 2023 Horizon admitted it was insolvent both on a cash flow and balance sheet basis, and the lenders declared a default under the loan documentation and appointed receivers under a debenture granted in favour of lenders to support a loan facility. Since their appointment, the receivers have realised all the assets and paid the proceeds to the secured creditors, leaving an unsecured shortfall of just over US\$3.5 million. What remains of the assets are some aged receivables which the receivers consider to be uncollectable. None of these facts are disputed
4. The secured lender is the petitioner and has sought the making of a winding up Order to facilitate the orderly winding up of Horizon's affairs and has agreed to fund the expenses of the liquidators to do so.
5. Mr Darrell's employment was terminated in June 2023 by reason of the appointment of receivers and he wants to preserve his claim for unpaid salary and benefits and redundancy payments.

## **Employment Act 2000**

6. Mr Caines submitted that the Employment Act 2000 (the "Employment Act") gave Mr. Darrell a statutory right to claims for redundancy pay and that this Act post-dated the Companies Act 1981 it had superseded the provisions of the Companies Act 1981, such that it took priority over the normal rules of priority in distribution of claims. He also made a submission that this raised (i) a constitutional issue and (ii) grounds for an application for judicial review.
7. This application reflects a misunderstanding of the effect of the Employment Act and the rights created under it (so far as they relate to employee claims against insolvent employers).
8. Section 33 of the Employment Act expressly provides a priority for claims to recovery of earned but unpaid wages, accrued but unpaid vacation pay and up to 32 weeks of severance pay as priority claims in an insolvent winding up. These claims rank after the expenses of the winding up (i.e. liquidation expenses) but ahead of the preferred claims listed in section 236 of the Companies Act 1981, including those of the Crown for unpaid taxes.

9. Therefore, there is no conflict between the Employment Act and the Companies Act and there is no question of one Act superseding the other as to its application. The rights under the Employment Act are preserved by the making of a winding up Order, subject to the imposition of a cap on the extent of the priority for redundancy pay.
10. There is likewise no basis for a constitutional claim nor a claim for judicial review.

### **Adjudication of claims**

11. If assets are recovered, then any creditor (including Mr. Darrell) can put in a proof of debt claim and seek to participate in any distribution of assets that are collected by the liquidators. In that process, Mr. Darrell's employee claims will have the priority assigned to them by the Employment Act.

### **Conclusion**

12. There is no claim that can be made by Mr. Darrell to enjoin the petitioner from presenting the petition, nor any ground for a stay of the winding up petition. The petitioner is entitled to a winding up order *ex debito justitiae*. The making of the winding up order will facilitate the determination of what claims can be pursued to recover assets to satisfy unsecured claims, including those of former employees.
13. Therefore, the applications made by Mr Darrell are dismissed.

Dated this 25th day of February 2025



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**THE HON. JUSTICE MR. ANDREW MARTIN**  
**PUISNE JUDGE**