

IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Appeal No. 8 of 1980

Between:

ISLAND AIR EXPRESS INTERNATIONAL Appellant

and

MAL DI TESTA INCORPORATION First Respondent

and

N.P. URICHUK Second Respondent

and

GRAND PRIX NATURAL GAS LIMITED Third Respondent

Hearing: 14th February 1980

A.K. Singh for the Appellant

JUDGMENT

This application has already been dismissed and I now proceed to give reasons for that dismissal.

Although the names of three respondents are set out in the heading to the application, the argument put before me was ex parte and there was no representation of any respondent. The first respondent was originally cited as the only defendant in the action before the Supreme Court, but second and third respondents were subsequently added as defendants.

This present application purports to be an appeal against the decision of the Supreme Court given on 7th February 1980, rejecting the ex parte application for an interim injunction restraining the first respondent "from removing from the jurisdiction or otherwise disposing of

any of their assets and in particular any salvaged lead alleged to be in the possession or control of the defendant or their servants or agents".

The facts are by no means easy to ascertain. The learned judge's findings in the Court below are in these terms:

" The facts now disclosed by the Affidavits indicate that the defendant and the plaintiff had proposed to enter into a joint venture to salvage the lead from the 'Southbank' and signed a Letter of Intent dated February the 14th 1979. The defendant at the time owned the salvage rights as regards the lead in the wrecked vessel. On the 4th June, 1979 the defendant purported to assign its rights in approximately 1,000 tonnes of lead aboard the sunken vessel to a company called Grand Prix Natural Gas Limited a corporate company registered in Alberta, Canada. The President of this company is a Mr. Urichuk who is also the President of the defendant company. Subsequently the Grand Prix Natural Gas Limited entered into a joint venture agreement with Salvage Pacific Limited, a company having its registered office at Suva, to salvage the lead. Salvage Pacific Limited was successful in salvaging approximately 900 tonnes of lead and this lead was brought to Fiji and at the present time is in the custody of that company. Under the joint venture agreement, Salvage Pacific Limited and Grand Prix Natural Gas Limited after payment of all expenses share the proceeds of the lead equally."

Mr. Singh contended strongly, as he had done before the Supreme Court, that the Court was not entitled to take the agreement into account as it had not been stamped; and referred to sections 39 to 42 of the Stamp Duties Ordinance. But whether or not the validity of that assignment is treated as established, the onus still lies on the appellant to prove that at the present time the salvaged lead, which he seeks to have prohibited from leaving Fiji, forms part of the assets of the first respondent. The evidence before the Court falls far short,

in my opinion, of establishing that. That being so, the principles leading to the grant of an injunction in the cases cited by counsel for the appellant, and known as the Mareva and Nippon Kaisha cases, have no application. Mr. Singh also quoted a judgment of the English Court of Appeal in Rasu Maritima v. Pertamina (1977 3 All E.R. 324); but in the Pertamina case one of the reasons for refusing the injunction was, as is stated in the headnote on page 325, "the lack of certainty as to title" to the goods sought to be restrained. Which, in my view, is the case here.

For these reasons I am of opinion that no grounds have been put forward for reversing the decision of the learned judge in the Court below.

In any event I am of the opinion that I have no jurisdiction to hear this application, which amounts to an appeal against that decision. The appeal is expressed as being brought under section 20 of the Court of Appeal Ordinance. Under section 20 a judge of the Court of Appeal may exercise the powers of the Court in any matters referred to in the section "not involving the decision of the appeal". Under the present application an order could not be made granting the injunction sought except by reversing a judgment of the learned judge of the Supreme Court; and, as has been pointed out any such appeal must be determined by the Court of Appeal and not by a single judge acting under section 20.

For the reasons given the application has been dismissed.

W. S. S. S.

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JUDGE OF APPEAL

18th February 1980