IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Appeal No. 17 of 1984

Between:

TRANSPORT PUBLICITY FIJI LTD. — APPELLANT

- and -

VISHNU DEO SHARAN
s/o Devi Sharan — RESPONDENT

G.P. Lala for the Appellant
Hemant Patel for the Respondent

Date of Hearing: 21st November, 1984
Delivery of Judgment: 21st November 1984

JUDGMENT OF THE COURT

Speight V.P. (Orally)

The respondent issued a writ with Statement of Claim attached in the Supreme Court at Lautoka on 21st June, 1983. It claimed damages for breach of contract by appellant in failing to produce and place signs advertising the respondent's business - the Statement of Claim alleged loss of profits sustained as a consequence of the alleged breach.

An affidavit of service dated 5th July, 1983, sworn by a law clerk was filed, claiming service on 30th June, 1983, by personally serving :

> ".....Sambhu H. Prasad, Accountant of Transport Publicity Fiji Ltd. at Suite 9 Epworth Arcade, Corner Nina and Marks Street, Suva Fiji".

No appearance having been entered and no Statement of Defence having been filed, judgment by default was entered on 18th July, 1983, for liability only - with damages to be assessed.

The following day the appellant's solicitors endeavoured to file a Statement of Defence but this was refused by the Court as judgment had already been entered.

On 19th July, 1983, appellant's solicitors moved for the judgment by default to be set aside, and for leave to file a Statement of Defence.

The grounds in support were that the Writ had not been served, as the address of Mr. Prasad at Epworth Chambers was not the registered Fiji address of the Company. This is the case. At that date the registered office was care of a firm of solicitors in Victoria Parade. At a later date (30.5.84) the address was changed to Mr. Prasad's office.

The matter came before Dyke J. at Lautoka on 21st October, 1983. Counsel for appellant cited Section 347(1) of the Companies Act - as at that date - which read:

> "347(1): A document may be served on a company by leaving it at or sending it by post to the registered office of the company in Fiji".

Counsel for the respondent then indicated that he would consent to the matter being set aside, provided security was lodged. He suggested $6,000.

It was sometime later, and doubtless due to the extreme workload at Lautoka, before Dyke J. made a ruling.

He was very critical of matters of hearsay, and inaccuracy of expression, which had found their way into the supporting affidavits in support of appellant's

motion. He was quite right. There were many better sources for the information than those put forward. Doubtless remembering counsel's suggestion, the Judge then accepted the suggestion of granting leave to defend on payment of $6,000.

It is against this condition that appellant comes before this Court.

We find ourselves bound to hold in the circumstances that this condition, which can be imposed in setting aside a judgment, under Order 13 Rule 9, was inappropriate. Such terms are often imposed on an applicant who is granted the indulgence of having judgment set aside when he has been at fault in failing to file a defence in time - or some similar slip.

But here, through no fault of the Court, the judgment by default should not have been entered at all. The plaintiff had not, as it now appears, served the company in the only way which the Companies Act recognises. Section 347(1) was mandatory. Accordingly,as the evidence now shows, the appellant was entitled to have the judgment set aside as of right.

To that extent the Order of the Supreme Court at Lautoka stands. That part which refers to leave being given to enter an appearance, and the condition as to security of $6,000 is deleted. The plaintiff will have to start again.

Appeal is allowed in part to the extent defined above.

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Vice President

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Judge of Appeal

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Judge of Appeal