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IN THE FIJI COURT OF APPEAL

At Suva

Civil Jurisdiction

CIVIL APPEAL NO. 65 OF 1990
(Lautoka Judicial Review No. 7 of 1990

BETWEEN:

WESTERN WRECKERS LIMITED — APPELLANT

-and-

THE COMPTROLLER OF CUSTOMS & EXCISE
THE MINISTER OF FINANCE AND ECONOMIC PLANNING
THE ATTORNEY GENERAL OF FIJI — RESPONDENTS

Mr. A. K. Narayan and Mr. V. M. Mishra for the Appellant
Mr. A. Cope and Mr. P. Cowey for the Respondents

Date of Hearing : 2nd June, 1992
Date of Delivery of Judgment : 5th June, 1992

J U D G M E N T

This is an appeal from the dismissal of an application for orders of certiorari and mandamus and for a declaration.

The appellant business, inter alia, imports used vehicles but, in November 1989, the Minister of Finance & Economic Planning in his budget speech imposed a ban on all imports of vehicles over three years old with immediate effect. This placed the appellant and a number of other dealers in difficulty over committments already entered into with suppliers abroad and so requests were made to the Minister to lift the ban in relation to such specific orders.

As a result of one such request by the appellant, a letter dated 10th April 1990 from the Comptroller of Customs & Excise was sent to the appellant:

> *"Further to my even referenced letter dated the 13th of March 1990 I am pleased to inform you that the Minister of Finance and Economic Planning has now approved your application for importation of 50 units motor vehicles which are more than three years old.*
>
> *Please note that no further application for importation of motor vehicles which are more than three years old will be entertained after this."*

It was followed by a letter dated 23rd April 1990 signed by D. Jamnadas for the Comptroller:

> *"Further to my even reference letter of 13th March, 1990 I am pleased to inform you that in a review of your case the Minister of Finance and Economic Planning has allowed your company to import fifty (50) units more than three years old vehicles.*
>
> *Please note that no further application for importation of motor vehicles which are more than three years will be entertained after this."*

On 4th May 1990 D. Jamnadas signed another letter to the appellant:

> *"You were given a written approval for fifty (50) units more than three years old vehicles vide our letter 143 of 10 April 1990 the original of which was personally given by the Comptroller to your company representative. Under the circumstances our even reference letter of 23rd April 1990 on the same subject matter has been duplicated and is to be disregarded."*

The appellant claimed to have acted on the letter of 23rd April and sought in the High Court to have what it described as the Comptroller's and Minister's decision in the letter of 4th May quashed and an order that it be allowed to import 50 cars under the authority of the letter of 23rd April.

The learned trial Judge, Sadal J, had little difficulty in dismissing the application in a short judgment and his decision is now appealed on five grounds:

> *"1. That the Learned Judge erred in fact and in law and applied wrong principles in holding that the Appellant had not acted to its detriment.*
>
> *2. The Learned Judge erred in fact and in law in holding that there was no evidence of payment of $25,000.00.*
>
> *3. The Learned Judge erred in fact and in law in holding there was no question of estoppel and further erred in failing to consider that estoppel was raised to show the unreasonableness and unfairness of the decision to retract the second approval.*
>
> *4. The Learned Judge erred in fact and in law in holding that the Appellant was not entitled to be given a hearing before the letter dated 4th day of May, 1990 was written.*
>
> *5. That the Learned Judge erred in fact and in law in holding and applied wrong principles in holding that the letter dated 23rd April, 1990 was a "duplication" and should be disregarded."*

It is necessary to study the evidence before Sadal J in the affidavits and the correspondence exhibited. This shows two applications to the Minister were made by the appellant prior to the letters in April.

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The first was made by letter on 4th December 1989 explaining that a Japanese supplier had already purchased 50 out of 60 cars ordered by the appellant. The Minister refused permission on 28th December 1989 and the appellant wrote a further letter on 4th January pointing out; *"Licence to be granted which I seek is only for 50 cars and no more. I will not apply in future for cars which are more than three years old"*. By a letter dated 9th January 1990 the Minister relented and approved the importation of 50 cars on condition they were imported before 31st March 1990.

The second application was made three weeks later in a letter dated 29th January 1990. It begins:-

> *"In my last letter to you, in which I must thank you for your approval, I had stated that my Company will be importing for the last time more than three year old secondhand vehicles from Japan of which you approved 50 units.*
>
> *I did not take into account the secondhand vehicles which were to be imported from New Zealand consisting of 60 units."*

It continues that the order had been placed on 30th October 1989 and the company had received a solicitors letter demanding FJ$100,000. On 6th February 1990, the letter of 29th January was acknowledged by the Comptroller and referred to the Minister and on 13th March 1990, a letter from the Comptroller to the appellant stated:

"Further to my even reference letter of 6 February, 1990 I hereby inform you that the Minister of Finance and Economic Planning has declined your application for importation of 60 units motor vehicles which are more than three years old."

The subsequent reversal of this decision resulted in the letters of 10th April and 23rd April which, as has been seen, refer specifically to this letter of 13th March. This makes it perfectly clear that any approval given in these letters relates to the vehicles in New Zealand for which a specific request had been made.

The affidavit of Rahmat Ali, a director of the appellant, states that he went to Japan on 22nd April 1990 following receipt of the letter of 10th April. Whilst there, he was told of the letter of 23rd and as a result, confirmed an order for 100 cars and paid a deposit of $25,000 to secure the second 50 cars. That payment is the amount referred to in ground two.

Before leaving Rahmat Ali's affidavits, it is perhaps instructive to note that in paragraph 8 of his second affidavit he states the cars he imported under the authority of the letter of 10th April came from Japan. That would appear to be outside the permision the Minister had granted in that letter. It should have brought the cars out of New Zealand and we are not told the stage the $100,000 lawsuit has reached or the fate of

the vehicles apparently abandoned in New Zealand in favour of this unauthorised importation from Japan.

Grounds one and two were urged together and although ground three was argued separately, all three can conveniently be dealt with at the same time.

The learned trial Judge set out his conclusions in the following short passage of an equally short judgment:

> *"Plaintiff company's contention is that two firm decisions were made by the two letters - one dated 10th April 1990 and the second letter dated 23rd April 1990 and the Minister is bound by the second letter. The plaintiff company further contends that because of the second letter it has already made firm arrangements and concluded the purchase of a further 50 motor vehicles from Japan and has made payment of $25000 to the Suppliers in Japan. No evidence was produced of this payment of $25000 by the plaintiff company and it could not be said that the plaintiff company had acted to its detriment.*
>
> *There was only one decision by the Minister granting licence to the plaintiff company to import 50 motor vehicles that were more than three years old. This decision was conveyed to the plaintiff company - but conveyed twice by two respective letters - by letter dated 10th April 1990 and other letter of 23rd April 1990. The letters were written by two public servants - however senior and however closely identified with the Minister exercising his powers did not alter the fact that only one licence was issued to import 50 motor vehicles. No question of estoppel or the application of the contra preferentum principle could possibly arise in a case where the construction of a ministerial order was the matter for consideration. The argument that the plaintiff company was not given a hearing before the letter dated 4th May 1990 was written has no validity because that letter simply informed the plaintiff company that the letter of 23rd April 1990 was a duplication and should be disregarded."*

Although objection is taken by the appellant to the suggestion there was no evidence of payment of the $25000 because there is a bald statement to that effect by Rahmat Ali which is neither admitted nor denied in the respondent's affidavits, it seems clear to this Court the learned Judge was referring to the absence of any supporting documentary evidence supporting that statement.

The main thrust of grounds one to three is that the respondent should be estopped from denying the approval in the letter of 23rd April because the appellant acted on it and if the letter is now denied, it is to his detriment.

The general principle is that, where one person by his words or conduct causes another to believe in the existence of a particular state of affairs and by that induces him to act on that belief so as to change his situation, the first person is prevented from denying the existence of the state of affairs. It makes no difference that the statement made was a mistake if the other party believed it and acted on it before the mistake was rectified.

It is clear on the evidence before the Court that the second letter was a mistake. It is equally clear the appellant acted with considerable alacrity but the evidence does not support the claim it stemmed from a belief he was entitled to

import the fifty cars in Japan for which he deposited $25000. On the contrary, it suggests the appellant must have realised the letter of 23rd April was a mistake. It arose from an application to import a total of sixty cars from New Zealand of which he had already, on 10th April, received permission to import fifty. Nothing in that correspondence related in any way to imports from Japan.

In an undated letter to the Comptroller, Rahmat Ali refers to the fact he had sought approval so his company would not face threatened lawsuits from overseas suppliers (Exhibit 'D' to his first affidavit). He continues:-

> *"Whilst you may be of the view that the (letters of 10th and 23rd April) were duplication, the company was firmly of the view that its representation were accepted and the approval granted as per the company's request."* (our emphasis)

That is a revealing passage. The evidence shows only two requests over this period; one for 50 vehicles from Japan and the other for 60 vehicles from New Zealand. The former was allowed on condition they were imported by 31st March so that, by the time of the letters of 10th and 23rd April, the only request the company had before the Minister was for the New Zealand cars.

We find it inconceivable in those circumstances that the company could have believed the letters were giving permission to import vehicles from Japan or that, having requested 60 vehicles, the Minister would respond with permission to import a total of 100.

Faced with such evidence the learned Judge was entitled to find estoppel did not arise.

The appellant further suggests that the learned Judge's reference to a ministerial order was a finding estoppel does not bind the State. Such a finding would be wrong but we are far from persuaded that is what was being suggested by that passage. In any event, the decision we have reached in relation to the payment in Japan excludes estoppel and we need go no further.

Grounds four and five related to whether the remedy of Judicial Review will lie and whether the appellants should have been given an opportunity to be heard before the letter of 4th May was written.

This argument is misconceived. What was involved in the letter of 4th May was not a ministerial order or a change or cancellation of a ministerial order but the rectification of a mistake. Had it been the former, the rules of natural justice would apply and a failure to be heard could be a ground for Judicial Review. In the latter, if the appellant had acted on

a belief he could do so, his remedy lay in estoppel. However, there being ample evidence in our view that the appellant must have realised the letter of 23rd was a mistake, these grounds must also fail.

Appeal dismissed with costs.

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Justice Michael Helsham
President, Fiji Court of Appeal

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Sir Moti Tikaram
Resident Judge of Appeal

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Justice Gordon Ward
Justice of Appeal