

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEALS NO. 49 OF 1992 AND NO. 50 OF 1992
(High Court Civil Actions Nos. 1024 & 1025 of 1983)

BETWEEN:

TURTLE AIRWAYS LIMITED Applicant

and

OWEN CLIVE POTTER 1st Respondent
KERRY FRANCIS THOMAS 2nd Respondent

Mr R.A. Smith for the Applicant
Mr V. Maharaj for the Respondents

Date and Place of Hearing: 22 February 1995, Suva
Date of Decision: 24 February 1995

DECISION OF THE COURT ON AN APPLICATION
FOR STAY ORDERS

This is an application by Turtle Airways Ltd (the original Respondent hereinafter referred to as the "Applicant") to stay High Court proceedings in Civil Actions Nos. 1024/83 and 1025/83 which were issued in Suva in 1983 claiming damages for injuries received in an aircraft accident in 1981.

By consent the Applicant's separate stay applications against the 1st Respondent in Civil Appeal No. 49 of 1992 and against the 2nd Respondent in Civil Appeal No. 50 of 1992 were consolidated and heard together by this Court consisting of 3 judges.

It is necessary to give a brief chronological background to the application before us.

On 18 September, 1992 the Suva High Court granted the Applicant's motion to dismiss proceedings in Civil Action No. 1024 of 1983 and Civil Action No. 1025 of 1983 for want of prosecution when the matter had reached only the summons for directions stage after a lapse of 7 years.

Then on 7 October 1992 the present Respondents filed an appeal against the High Court's decisions.

On 20 August, 1993 the Fiji Court of Appeal reversed the decisions of the Suva High Court and directed : "The applications for directions and every other step should now be pursued with alacrity by the appellants."

On 24 February, 1994 a Bench of 3 judges of the Fiji Court of Appeal refused the Applicant's applications for leave to appeal to the Supreme Court.

On 7 April 1994 the Applicant filed a petition in the Supreme Court for special leave to appeal.

On 2 June, 1994 the Applicant filed the present application in this Court for a stay of proceedings in the High Court pending outcome of the special leave application.

The petition for special leave is still pending before the Supreme Court. The President of that Court has by direction dated 11 August 1994 ruled that the application has to be dealt with by the Court itself and not by a single judge.

The present application first came before a single judge of the Court of Appeal on 17 June 1994. It was adjourned from time to time to await the outcome of the hearing of the "special leave" application in the expectation that a single judge of the Supreme Court would deal with it shortly. Later at one stage there was some prospect of the Supreme Court being constituted at an early date raising the expectation that the petition was likely to be heard within a reasonably short time. This was not to be.

There is now no indication at this stage when the Supreme Court will actually sit to deal with the special leave application and other matters pending before it. A stay order will, therefore, further delay finalisation of the substantive litigation which is already nearly 11 years old.

Mr Smith very properly drew to our attention a case which supported the Respondent's case, In re J.B. Palmer's Application In re Trade-Marks Registration Act 1875 (1882) 22 Ch.D. 88. There the Court of Appeal refused an application for stay of its judgment by which the matter had been remitted to the High Court for hearing. The applicant for the stay had appealed to the House of Lords against the judgment. In refusing the stay the Court of Appeal observed that the successful party had a right to proceed in the High Court pending the determination of the appeal to the House of Lords; "the mere fact of extra costs being incurred which [might] be useless if the House of Lords [decided] in favour of [the applicant], [was] no sufficient reason for restraining [the successful party]." Mr Smith attempted to distinguish that case on the basis that the appellants had been guilty of unreasonable delay in pursuing their actions. In our view, as there had been a delay of five years in Palmer's Case, the purported distinction is not a valid one.

As already noted, the Court of Appeal has refused leave and has given full reasons for its decision. In our view the prospect of the Applicant succeeding in its application for special leave before the Supreme Court is minimal. The fully considered opinion of the Court of Appeal was that the issues involved in the Applicant's intended appeal were not of "great general or public importance" as required by Section 8(1)(c) of the Supreme Court Decree, 1991.

The criteria for granting special leave at the Supreme Court level is clearly very stringent. Section 13(3) of the Supreme Court Decree, 1991 (Decree No. 47) reads as follows:

"13.-(3) With respect to its civil jurisdiction, the Supreme Court shall not grant special leave to appeal unless the case raises a far-reaching question of law or matters of great general or public importance or otherwise of substantial general interest to the administration of civil justice."

Even if special leave is granted the possibility of the Applicant succeeding on his appeal does not, prima facie, appear to be very high.

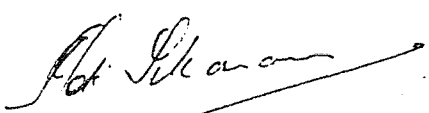
Be that as it may, in our view no injustice will be done if the stay application is refused at this stage.

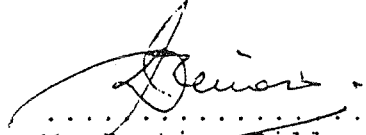
If the Applicant is unsuccessful in defending the High Court Actions it will have a right of appeal to the Court of Appeal from the substantive judgment. On the other hand we are of the view that to grant a stay in the present circumstances would cause the Respondents, who are the Original Plaintiffs, to suffer an injustice. If the order sought were granted, it would be tantamount to an indefinite stay. The balance of convenience and the interests of justice demand that no stay be granted in the circumstances currently prevailing. If a date is assigned by the

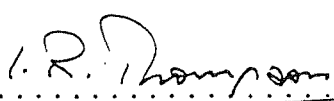
Supreme Court for the hearing of the petition for special leave and that date is before the commencement of the hearing of the civil actions then the Applicant may, if it thinks fit, apply afresh for a stay.

In the meantime the Chief Registrar is to assign an early date for the hearing of the Respondents' summonses for directions with a view to the High Court giving effect to the decision and directive of the Fiji Court of Appeal delivered on 20 August 1993.

The application for stay orders is refused with costs to the Respondents.


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Sir Moti Tikaram
President


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Mr Justice Dillon
Judge of Appeal


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Mr Justice Thompson
Judge of Appeal