
IN THE COURT OF APPEAL , FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0004 OF 2004S
(High Court Civil Action No. HBC 528 of 2003S)

BETWEEN:

ASHWIN PRASAD

Appellant

AND:

CARPENTERS (FIJI) LIMITED

Respondent

In Chambers : Justice Tompkins, JA

Hearing: Tuesday 16th March 2004, Suva

Counsel: Dr. M.S. Sahu Khan for the Appellant
Mr. S. Maharaj for the Respondent

Date of Decision: Tuesday 16th March 2004

JUDGMENT OF TOMPKINS JA

Background

[1] The respondent (the plaintiffs in the High Court) applied ex parte for a Mareva injunction. On 17 December 2003 the application was heard and granted by Jitoko J. The order was sealed that day. It was served on the appellant the following day.

[2] The appellant failed to comply with the orders. On 17 January 2004 the High Court granted leave to issue contempt proceedings. Those proceedings were issued and set down for hearing on 4 February 2004. On 2 February 2004 the appellant's solicitors filed a notice of change of solicitors and on the same day a notice of appeal to this

court. On 4 February 2004 the respondent filed in this court an application for the appellant's notice of appeal to be struck out.

The terms of the injunction

[3] The terms of the injunction are detailed. The following is a summary of the principal clauses:

- [a] An injunction restraining the appellant from dealing with disposing or removing from the jurisdiction his property including to named bank accounts and a named vehicle.
- [b] The appellant was required to disclose within 14 days details of all his assets.
- [c] The appellant was required to deliver his passport and any travel documents to the High Court unless he can provide assets to a total value of \$172,11 2. 21 plus interest and costs being the amount claimed by the respondent against the defendant the appellant
- [d] That a writ be issued authorizing the arrest of the appellant should he attempt to depart from Fiji.
- [e] An order that all the trading banks in Fiji provide to the respondent details of any bank accounts held by the appellant or his family.
- [f] That the appellant within 14 days file and serve an affidavit disclosing full details of commissions or payments received by him from suppliers including certain named parties.
- [g] That the matter be adjourned to 29 January 2004.

The application to strike out

[4] The application to strike out the appeal was brought on two grounds, namely that the notice of appeal was filed out of time and that in any event, being an appeal from an interlocutory order, leave was required. Having discussed both these grounds with counsel I am satisfied that neither can succeed.

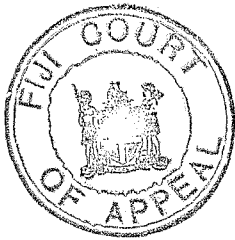
[5] When regard is had to the legal vacation, during which time shall not be reckoned in computing the time for giving notice of appeal, and to s 51 of the Acts

appeal from an interlocutory order, the 21 days for giving notice of appeal expired on 2 February 2004, the day on which the notice of appeal was filed.

[6] The second ground relates to s 12 (2) of the Court of Appeal Act (Cap 12). This subsection provides that that no appeal shall lie without the leave of the Judge or of the Court of Appeal from any interlocutory order. However there are four exceptions, one of which is where an injunction has been granted. There can be no doubt that in the present case an injunction was granted, so despite this being an appeal from an interlocutory order, leave is not required.

Result

[7] The application to strike out the appeal is dismissed. The appellant is entitled to costs which I fix at \$500.



A handwritten signature in cursive script, which appears to read "JA Tompkins".

Tompkins, JA

Solicitors:

Messrs. Sahu Khan and Sahu Khan, Ba for the Appellant
Messrs. Suresh Maharaj and Associates, Lautoka for the Respondent