

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

CIVIL APPEAL NO. ABU0006 OF 2004S
(High Court Civil Action No. 19 of 2004L)

BETWEEN:

CORAL SUN LIMITED

Appellant

AND:

FIJI SUGAR AND GENERAL WORKER'S UNION

Respondent

In Chambers:

Justice Ellis, JA

Hearing:

Wednesday, 17th March 2004, Suva

Counsel:

Mr G.P. Lala and Mr S. Devan for the Appellant
Mr K. Vuataki for the Respondent

Date of Decision:

Friday, 19th March 2004

DECISION

I have been asked by Coral Sun Limited the appellant to order a stay of two mandatory interlocutory injunctions made by the High Court on 11 February 2004. The application is urgent but because of the extent to the list for the Court of Appeal this session I was unable to afford counsel a full opportunity to present argument.

The respondent Union claims that Coral Sun unlawfully locked out some 41 of its members in November 2003. This would be contrary to the provisions of the Trade Disputes Act 1978 (Cap 97) which has penal provisions. The Minister of

Labour Industrial Relations and Productivity made an order under the Act on 4 December 2003 declaring the lockout unlawful and prohibiting its continuance, and on 24th December referred the dispute to conciliation. The workers have not returned to work and Coral Sun contends there was no lockout and the Minister's Orders are unlawful.

This litigation is in Suva and similar litigation is in Lautoka involving only 3 workers. Jitoko J refused interlocutory relief in the Lautoka case in a reasoned judgment dated 14 January 2004.

The relief in the present case was granted by Connors J on 11 February 2004. His orders were:

- b. ***"Until further of the Court the defendant by its servants or its agents is restrained from falling and/or refusing to comply with the Minister for Labor, Industrial Relations and productivity's Order of 24th day of December, 2003.***
- c. ***Until further Order of the Court the Defendant by its servants or agents is restrained from falling and/or refusing to pay the 41 employees referred to in the Minister for Labor, Industrial Relations and Productivity's Order on 24th day of December 2003 their wages and benefits due to them from 18th day of November 2003."***

As to the first order (b) I observe that it is a mandate to observe the law as it stands in a situation where the Trade Disputes Act itself provide penalties. It is usually undesirable to add sanctions for contempt as a pressure on a litigant in such a case.

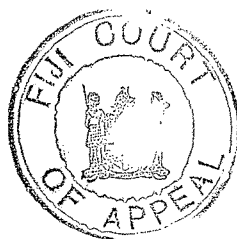
As to the second I am uncertain as to the employment situation of the 41 employees, but on the other hand the Union has undertaken to pay damages from its own resources its wages are paid to its members.

I was told by counsel that funds to do so could be found. I do not consider this satisfactory and am not persuaded that in order to pay monies to persons not parties to this litigation is appropriate.

As a result of my two brief encounters with counsel, counsel for Coral Sun informed me that the Union and the Minister are or will be made parties to both the Suva and the Lautoka actions and the challenge to the legality of the orders will be brought before the High Court as a matter of urgency.

I therefore order stay of both orders until further order of this Court. The current appeal against the orders of Connors J must be made ready for hearing without delay. I reserve leave to the parties to apply further as to the stay on short notice.

I fix costs at \$500.00 and disbursement if any to the fixed by the Registrar if not agreed. The incidence I reserve.



A handwritten signature in black ink, appearing to read "A. Ellis", is written over a horizontal line.

Justice Ellis, JA

Solicitors:

Messrs. G.P. Lala and Associates, Suva for the Appellant
Messrs. Vijay Naidu and Associates, Lautoka for the Respondent