

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

MISC. ACTION 22 OF 2006S
(High Court No.HBC155 of 2002L)

BETWEEN:

TOTA RAM SHARMA

Appellant/Applicant

AND:

AKHIL PROJECTS LIMITED

Respondent

In Chambers:

Hon Justice Gordon Ward, President of Court of Appeal

Hearing:

Friday, 19th January 2007, Suva

Counsel:

A K Singh for the Appellant/Applicant
K C Ramrakha for the Respondent

Date of Ruling:

Friday, 26th January 2007, Suva

RULING

- [1] This is an application for a stay pending appeal of an order by Phillips J dissolving a Mareva injunction.
- [2] The principal action in which the injunction was ordered involves thirty three acres of land purchased by the appellant from the respondent in three separate transactions in 1995, 1996 and 1998 for a total of \$99,000.00.

- [3] The action was commenced in May 2002 but it appears that, on 25 April 2002, the appellant had lodged caveats on all the land of the respondent; a total of 953 acres or about 358 hectares. On 23 November 2004, Singh J removed the caveats because they covered far too much land and, instead ordered a mareva injunction pending trial in respect of one lot measuring 85 hectares only.
- [4] On 1 May 2006 the respondent applied to strike out the claim and to dissolve the injunction. It was dismissed by Finnigan J on 23 June 2006. The learned judge ordered that the action must be set down for early trial. A date was fixed and the trial started before Phillips J on 29 November 2006. It appears counsel for the defendant made an oral application on the second day to dissolve the injunction. A little after that the plaintiff felt ill and the trial was adjourned. I am advised by counsel that the trial continued on 15 January 2007 and the defence case closed on 17 January 2007. As the learned judge had another case to start the next day, she set a timetable for written submissions. The case is fixed to continue on 23 March 2007 when presumably judgment will be given.
- [5] This application is therefore to stay the interlocutory ruling by Phillips J and, if granted, will only to allow the injunction to continue for a month or two more before judgment in the principal action.
- [6] In a carefully reasoned judgment, Phillips J directed herself on the proper test to be applied and considered the history of the case. She concluded that "the allegation that the defendant is likely to dispose of or dissipate assets so as to become judgment proof is tenuous. I am far from satisfied that the defendants proposed intentions to develop the subject land are aimed at dissipating the assets so as to render itself judgment proof. The fact the defendant may be dealing with assets is not, of itself, sufficient."
- [7] She further considered that the plaintiff had failed to prosecute the action with any urgency and that the continuance of the injunction was an incentive to delay

further. She pointed out that the plaintiff has a duty to prosecute his claim without undue delay. "He should not be permitted to sit on his hands after obtaining what is essentially interim injunctive relief. The history of this case shows that the plaintiff did not prosecute his claim with the urgency required having obtained a Mareva injunction." She also considered that the undertaking as to damages was inadequate.

- [8] It is hard to escape the feeling that this interlocutory appeal in itself is a means to delay the case further.
- [9] It has been suggested by Mr Singh that the plaintiff's case has considerable merit. I do not consider that at this stage. This is an appeal against the order dissolving the injunction and I do not consider the grounds of challenge to the judgment on that aspect of the case are such that a stay should be granted. The learned judge considered the risk of lifting the restriction and came to a conclusion she was entitled to reach. Even if that were not so, I am satisfied that the proximity of the final judgment is sufficient to prevent any real dissipation of assets.
- [10] The application for a stay is dismissed with costs of \$200.



Gordon Ward

Justice Gordon Ward
President
COURT OF APPEAL, FIJI