

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 251 of 2013

BETWEEN : **THE ISLANDER GROUP OF COMPANIES LIMITED** a company incorporated in Fiji and carrying on business as a Resort Developer having its place of business at level 7, Ernst & Young Chartered Accountants, Pacific House, Suva

PLAINTIFF

AND : **LE GROUP des INSULAIRES LIMITED** a company having its registered office at Avarua, Raratonga, Cook Islands

FIRST DEFENDANT

: **CHRISTIAN JOGODZINSKI** of 81 Washington Aveune, Suite 300, Maimi Beach, Florida, FL 33139, Investor

SECOND DEFENDANT

BEFORE : **Master Thushara Rajasinghe**

COUNSEL : **Ms. R. Naidu** for the Plaintiff
Mr. R. Singh for the first Defendant
Mr. Solanki for the second Defendant

Date of Hearing : **11th April, 2014**

Date of Ruling : **8th August, 2014**

RULING

A INTRODUCTION

1. This is the Summons filed by the Plaintiff seeking following orders inter alia;
 - i. The Plaintiff be granted extension of time to file its statement of claim,
 - ii. That the costs of this application to be costs in cause,
 - iii. That the service of this Summons be abridged,

2. Both the Defendants did not object for the extension of time; however the learned counsel for the first Defendant raised an objection that the court is *functus officio* to grant extension of time to the Plaintiff to file its statement of claim after the Order of Justice Kumar dated 24th of January 2014 being sealed and perfected. In view of this preliminary legal objection raised by the first Defendant, I invited the counsel to make their respective submissions on 11th of April 2014. The learned counsel for the Plaintiff and the first Defendant made their oral submissions and later tendered their respective written submissions on this issue. Having carefully considered the respective oral and written submissions of the parties, I now proceed to pronounce my ruling as follows.

B. BACKGROUND

3. The Plaintiff instituted this action by way of an Originating Summons filed on 21st of August 2013. Justice Kumar having heard the counsel for the Plaintiff and for two Defendants ordered the parties as follows, that;
 - i. The Plaintiff to file and serve Statement of Claim by 21/02/2014,
 - ii. The Defendants to file and serve Statement of Defence & counter claim by 21/03/2014
 - iii. The Plaintiff to file and serve reply to defence & counter claim by 4/4/2014,

This order of Justice Kumar was then sealed and signed on 11th of March 2014.

4. However, the Plaintiff failed to file its statement of claim as per the directions given by the said order and filed this Summons seeking an order to extension of time to file the statement of claim. Though, the first Defendant informed the court that they are not specifically objecting this Summons, raised this preliminary legal issue.

5. The contention of the counsel for the first Defendant is mainly founded on the decision of Justice Scutt in **Naigulevu v National Bank of Fiji (No 2) (2009) FJHC 65; Civil Action 598.2007 (10 March 2009)**, where her ladyship observed that;

*“the court found authority in Harrison v Harrison, Williams v Richardson and Ropner v Ropner (1955) 1 Ch 260 and Anare Robinson v Joseph Shackely and Lautoka City Council (HBC No 002/90L, 18 march 1996 (Supplementary judgment) saying:
...an order pronounced by a judge, whether in open court or in chambers, can always be withdrawn, altered or modified by him, either on his own initiative or on the application of a party, until such time as the order has been drawn up, passed and entered”.*

6. The learned counsel, though he did not dispute the jurisdiction of this court to grant leave for extension of time pursuant to Order 3 rule 4 (1), submitted that in view of the judicial precedent expounded in the abovementioned passage in **Naigulevu (supra)**, the court is *functus officio* to grant leave for extension of time subsequent to the sealing and perfecting of the order.

7. Having carefully considered the principles enunciated in **Naigulevu (supra)**, I find that Justice Scutt has extensively discussed the instances and the principles where the court is allowed to alter, change, modify or call back a judgment after it was pronounced, but before it is sealed and perfected.

8. In the meantime, Order 3 rule 4 (1) of the High Court Rules states that;

“ the court may, on such terms as it think just, by order extended or abridge the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceedings”.

9. The court is allowed to exercise its discretionary power to extend or abridge the time within which a party is required or authorized to do any act in any proceedings either by the rules of the High Court or by any judgment, order or direction. It appears that the

court is permitted to exercise this discretionary power only to do any act in the proceedings.

10. The principles discussed in **Naigulevu (supra)** are in relation to judgments or orders in the nature of finality and delivered after the hearing of both parties. Accordingly, any specific order granted in such judgments undoubtedly, could not be considered as an order to do any act in the proceedings. In fact it could be considered as an order to do any specific act to effect the conclusion or decision reached by the court. Under such circumstances, I indeed concur with the learned counsel's contentions that the court is *functus officio* after the judgment or order being sealed in order to bring the conclusion or the finality to the dispute heard by the court.
11. However, the Judgments and orders as referred under Order 3 rule 4(1) are not in the nature of finality. Any specific directions given in these judgments or orders are to do any specific act in the proceedings within an authorized or required period of time. Hence, the Judgment and order as referred under Order 3 r 4(1) is distinct from the judgments and orders as discussed in **Naigulevu (supra)**.
12. In pursuant of Order 3 r 4 (1), the court is allowed to extend the period within which a party is required or authorized by any judgment or order to do any act in the proceedings on the ground of "interest of justice".
13. The orders given by Justice Kumar on 24th of January 2014 constitute the directions given to the parties to file their respective pleadings, which indeed falls within the scope of Order 3 r 4 (1). Accordingly, I do not find that the court is *functus officio* to grant extension of time in respect of the orders given by Justice Kumar on 24th of January 2014.
14. In the absence of any other objection apart from this legal objection, and having determined that the court is not *functus officio* to grant an extension of time subsequent to the order being sealed and perfected, I make following orders that;

- i. The Plaintiff is hereby granted extension of time to file its statement of claim within 14 days of this order,
- ii. Parties are ordered thereafter, to follow the direction given by Justice Kumar in his order dated 24th of January 2014 in respect of their respective pleadings,
- iii. The cost of this application be the cost of this cause,

Dated at Suva this 08th day of August, 2014.



.....
R.D.R. Thushara Rajasinghe
Master of High Court, Suva