

IN THE TAX COURT OF THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBTC 1 of 2013

BETWEEN : GENERAL MACHINERY HIRE LIMITED

Plaintiff

AND : THE CHIEF EXECUTIVE OFFICER OF FIJI REVENUE AND
CUSTOMS AUTHORITY

Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr C. B. Young for the Plaintiff

: Mr. V. Filipe for the Defendant

Date of Hearing : 11 October 2018

Date of Decision : 16 October 2018

DECISION

1. This is the Plaintiff's Summons seeking the following Orders:
 - (1) That leave be granted to appeal against the Interlocutory Judgment (sic, Ruling) delivered by me on 13 September 2018.
 - (2) That the execution of the said Interlocutory Judgment (sic, Ruling) with the order for the trial to proceed on 29 and 30 October 2018 be stayed.
 - (3) The time for filing and service of the Notice and Grounds of Appeal be extended by 7 days from the date of the leave.

2. The Summons is supported by the affidavit of Alvin Kumar Singh a director of the Plaintiff who deposes as follows:
 - (1) The effect of the refusing of the Plaintiff's application for leave to amend will be that the Plaintiff will not be able to raise at the continuation of the trial the additional claims exceeding \$5m in the (proposed) amended statement of claim.
 - (2) The Defendant's response to the Plaintiff's objections were not referred to the Tax Tribunal because the amount involved exceeded \$50,000 and hence the action was filed in the Tax Court.
 - (3) There has to be an interpretation of what section 91(1)(b) means, particularly the words "any action".
 - (4) If the matter proceeds to trial and if leave is granted to appeal, the continued hearing would be a waste if the Plaintiff were to succeed before the Court of Appeal with regards to the judgment.

3. The Defendant's affidavit in answer is deposed by Raijieli Gukisuva, a senior auditor, who says as follows:
 - (1) On 21 January 2013 the Plaintiff filed objections to the amended audit assessment. The matter was then referred for an audit review and an objection finalization letter dated 31 October 2013 was prepared based on the objections filed by the Plaintiff.
 - (2) As such there was no decision of the Commissioner on the issues that are being raised on the proposed amended statement of claim.

- (3) The Plaintiff did not make the (alleged) failure of the FRCS to consider the expenses relating to the development of the land and/or directors salary deductions, an issue at the 3 July 2017 Pre-Trial Conference.
 - (4) The Plaintiff had adequate time to raise in its statement of claim the issues proposed in the amended statement of claim. Five years and 8 months had lapsed since the FRCS sent the Plaintiff the schedule of VAT audit discrepancies and Income Tax related discrepancies and more than 4 years had lapsed since the Plaintiff had initiated proceedings in the Tax High Court and yet the Plaintiff failed to raise the proposed issues until the first day of the trial had almost concluded.
 - (5) There was no explanation and no reason given why the Plaintiff did not raise these issues prior to trial.
 - (6) There will be prejudice to FRCS because the new grounds were never raised and/or dealt with by FRCS.
 - (7) The deponent is advised that the grounds of appeal are unlikely to succeed and no important questions of law or fact arise.
4. The hearing commenced with Mr Young submitting there were 2 issues viz:
- (1) Whether there was a breach of a substantive right.
 - (2) And/or was there an unjust effect against the party concerned.
- He said the amendment point was raised in the objection. The taxpayer filed its objection on 21 January 2013 and the Revenue reassessed the director's salaries on 24 September 2013. He could not answer why the directors did not object when the writing appeared on the wall. He asked for leave and the vacating of the dates of hearing.
5. Mr Filipe then submitted. He said the courts seldom entertain appeals against interlocutory orders. For such an appeal to be entertained there must exist most exceptional circumstances and the burden is on the party applying. Based on the fact that the Plaintiff is seeking to raise new grounds not raised in its objection, it is unlikely to succeed in the Court of Appeal. No explanation for the lateness of the application to amend has been provided in its affidavit. Here

the trial has started and the Plaintiff's witness has given evidence. The application should be dismissed and the hearing should proceed.

6. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision.
7. I shall start with the decision of the Fiji Court of Appeal delivered on 18 July 1995 in *Kelton Investments Ltd v Civil Aviation Authority of Fiji* [1995] FJCA 15. Sir Moti Tikaram P said "I am mindful that Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals....Even where leave is not required the policy of appellate courts has been to uphold interlocutory decisions and orders of the trial Judge".
8. Sir Moti further said "In my view the order did not determine substantive rights.....In my view the intended appeal against the interlocutory order of 10 May 1995 does not raise any point of law of any general importance, at least none which should be decided at this state by the Court of Appeal".
9. Sir Moti finally said "The Courts have thrown their weight against appeals from interlocutory orders or decisions for very good reasons and hence leave to appeal are not readily given. In my view the intended appeal would have minimal or no prospect of success if leave were granted. I am also of the view that the Applicants will not suffer an irreparable harm if stay is not granted."
10. I adopt and apply Sir Moti's reasoning to this application. At the end of the day the Plaintiff is seeking an amendment which is of monetary value only to it and which has no other significance or importance. Further it seeks at the hearing, this Court's interpretation of the words "any action" which the Court will be considering at the trial. Consequently dismissing this Summons will not cause any injustice to the Plaintiff.

11. A maxim of public policy comes to mind. In Latin it is expressed as “interest reipublicae ut sit finis litium” and in English as “It concerns the State that lawsuits be not protracted”.
12. With this firmly in view I shall dismiss the Summons filed on 20 September 2018 and make the following orders:
 - (1) Leave to the Plaintiff to appeal against the interlocutory Ruling on 13 September 2018 is refused.
 - (2) The application for stay of the Ruling and the continued trial of the action is dismissed.
 - (3) The Plaintiff shall pay the Defendant the costs of this Summons summarily assessed at \$1,000.
13. Thus this 2013 action shall, after this hiatus, continue for hearing at 9am on 29 and 30 October 2018.

Delivered at Suva this 16th day of October 2018.



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David Alfred

JUDGE

High Court of Fiji