

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

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. F. Haniff, Mr C Yee with him, for the Defendant

Date of Hearing : 28 August 2018
Date of Ruling : 13 September 2018

RULING

Upon Hearing Mr C. B Young of Counsel for the Plaintiff and Mr C. Yee of Counsel for the Defendant and upon reading the Summons seeking an Order for Amendment of the Statement of Claim and the Affidavits in Support and Opposition thereto, my Ruling is as follows:

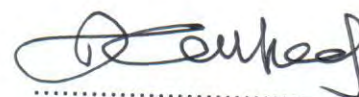
1. The Plaintiff's Application is made pursuant to Order 20 rule 5 of the High Court Rules (HCR). This provides – and I am paraphrasing now – that the Court may at any stage of the proceedings allow the plaintiff to amend his writ, on such such terms as to costs or otherwise as may be just.
2. The Plaintiff in para 3 of the Statement of Claim says this action is brought against the Defendant pursuant to s.91(1)(b) of the Tax Administration Decree (now Act) 2009 (TAA) to hear and determine the Plaintiff's claims arising from the Defendant's decision dated 31 October 2013 to dismiss the Plaintiff's objections to the Amended Assessments for the year ended 2010.
3. A perusal of the Minutes of the Pre-Trial Conference dated 3 July 2017 discloses that among the Issues to be Determined is 8. Whether this action can be brought against the Defendant pursuant to s.91(1)(b) of the TAA.
4. To my mind this clearly show that the parties themselves are doubtful if this is the proper way for the Plaintiff to go about appealing against the objection decision, which should be more appropriately proceeded with under the "General Provisions Relating to Objections and Appeals" - s.21(2) TAA.
5. Without prejudging the issue above, there can be no gainsaying that this action is in reality an objection and appeal against the Amended Assessments as the Plaintiff's claim (i) is for an order to set aside the Amended Assessment and to determine the VAT and Tax liability of the Plaintiff which is surely a review of the objection decision.
6. If this is so, then what is applicable is s.21(2) of the TAA which states that in an application for review the person objecting (the Plaintiff here) is limited to the

grounds stated in the objection unless the Tribunal or Tax Court grants the person leave to add new grounds.

7. As this action is in the Tax Court, the issue is whether the HCR provision or the TAA provision is to prevail. The issue is resolved by applying the maxim of public policy, *generalia specialibus non derogant* which in English is the specific prevails over the general or in other words the general provision yields to the special provision (see Sulluvan and Driedger on the Construction of Statutes 4th edition). In the event the TAA provision prevail.
8. Thus it is incumbent on the Plaintiff to persuade the Court to grant it leave to add new grounds. However the Plaintiff has not provided any cogent argument why this Court should do so. All the matters that the Plaintiff now seeks to raise in its proposed Amended Statement of Claim could have been raised quite easily in its Statement of Claim filed on 2 December 2013.
9. I am fortified in the decision I am reaching by the judgment of the Supreme Court of Appeal of South Africa in : HR Computek (Pty) Ltd AND The Commissioner for the South African Revenue Service : Case No 830/2011 delivered on 29 November 2012. Ponnar JA (with whom the other 4 judges concurred) quoted from another judgment that in terms of s.83(7)(b) the appellant in an appeal against the disallowance of his objection is limited to the grounds stated in his notice of objection and that this limitation is for the benefit of the Commissioner and may be waived by him and went on to state: "It is naturally important that the provisions of a s.83(7)(b) be adhered to, for otherwise the Commissioner may be prejudiced by an appellant shifting the grounds of his objection to the assessment in issue."
10. In the result, the Plaintiff's application to amend its Statement of Claim cannot succeed and the Summons filed on 13 July 2018 is hereby dismissed with no order as to costs.

11. The action will therefore continue for hearing on a date which I shall now fix.

Delivered at Suva this 13th day of September 2018.



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David Alfred
JUDGE
High Court of Fiji