

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC 155 of 2019

BETWEEN : **FIJI ROADS AUTHORITY**

APPLICANT

AND : **T F JAN BULLDOZING COMPANY PTE LIMITED**

RESPONDENT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Ms N. Tikoisuva for the Applicant**
Mr S. Deo for the Respondent

Date of Hearing : **1 November 2023**

Date of Decision : **2 February 2024**

DECISION

PRACTICE & PROCEDURE

Leave to appeal interlocutory decision –

Extension of time to file statement of defence

1. The applicant has filed an application seeking leave to appeal the interlocutory order of the master made on 25 April 2023 and for a stay of execution of the master's orders. The application was supported by an affidavit by Sonal Goundar, the applicant's chief financial officer. The affidavit states that the respondent initiated action by writ of summons followed by an amended statement of claim that was filed on 6 June 2019.
2. The deponent states that the statement of defence was not filed within time due to the oversight of an employee in not bringing the case to the notice of the chief executive officer and the applicant's board. The applicant's legal team became aware of the case when the respondent served summons to enter interlocutory judgment.
3. After summons for leave to enter interlocutory judgment was filed on 3 September 2019, the applicant filed an affidavit in opposition on 17 October 2019, and tendered its proposed statement of defence. The applicant states that there was no deliberate intention to avoid filing the statement of defence.
4. The applicant's defence is that the respondent's claims fall outside the limitation period of six years, that several of the claims are against an entity which is not a party to the action, that the applicant is not a party to a particular contract concerning the Valele bridge, that the respondent has made claims in respect of work that have not been approved and that certain claims lack particulars. The applicant also states that the parties are contractually obliged to resolve their disputes through arbitration, and for that reason the courts have no jurisdiction to hear this action. The applicant states that it is a statutory authority which receives funding from the government of Fiji, and there must be proper accountability and justification in using its funds. The applicant states that it has a good defence and that the respondent will not suffer irreparable harm if leave is granted to appeal the master's interlocutory decision.

5. Faiz Jan, a director of the respondent, filed an affidavit in opposition on 28 June 2023 and stated that although the writ of summons was served on the applicant on 7 June 2019, the applicant did not take steps to file an application for extension of time to file their statement of defence. The applicant, he said, acted only after the respondent filed summons for leave to enter interlocutory judgment. Mr. Jan states that the position taken by the applicant's proposed defence contradicts its earlier position that it has no records of transactions with the respondent. The affidavit states that the applicant is continuing to hold on to bank guarantees issued for various contracts. The respondent complained that the applicant has continued to delay payments and that this has caused considerable finance and reputational losses to the plaintiff. The respondent contends that the applicant has not provided adequate reasons for the delay in taking steps. Sonal Goundar filed an affidavit in reply and denied the positions taken by the respondent's affidavit.
6. The applicant's opposition to the respondent's leave application for interlocutory judgment was filed on 17 October 2019. This was the first step taken by the applicant after the amended statement of defence was filed on 6 June 2019. The applicant's affidavit in opposition asked that the respondent's summons for leave to enter interlocutory judgment be set aside and the defendant be allowed to file a statement of defence. The master did not agree with the applicant's contention, and granted leave to enter interlocutory judgment.
7. At the hearing, the applicant submitted that Order 19 rule 2 did not make provision for leave to be granted to enter interlocutory judgment in respect of an unliquidated demand. The applicant submits that where there is a liquidated demand, the rule provides for final judgment to be entered.
8. The respondent submitted that the applicant erred in filing an opposition to the summons to enter interlocutory judgment instead of seeking leave to extend time to file the statement of defence. As a result there was no application before the master seeking an extension of time. The respondent submits that the proper application would have been to file summons to set aside or vary the master's order under Order 19 rule 9 without seeking leave to appeal.

9. The amended statement of claim seeks judgment in respect of several claims. These concern alleged breaches of contract for \$2,069,921.65 under contract WSC 149/ 2011, \$1,191,313.64 under contract CTN 73/ 2011, \$66,122.59 under contract 14/ 2011, \$487,581.82 under contract 97/ 2011 and \$871,299.37 for reimbursement of costs relating to the Valele bridge.
10. The amounts claimed by the respondent are substantial sums, and are resisted by the applicant. The parties have raised matters of law that must be gone into. The delay has been explained as an oversight on the part of an employee. The granting of leave will cause some degree of prejudice to the respondent, but that can be compensated by the awarding of costs in appeal.

ORDER

- A. Leave is granted to appeal the master's decision made on 25 April 2023.
- B. The orders dated 25 April 2023 are stayed until the determination of the appeal.
- C. The parties will bear their costs.

Delivered at **Suva** on this 2nd day of **February, 2024**.



M. Javed Mansoor
Judge