

SUNCOURT (WHOLESALEERS) LTD v FIJI ISLANDS REVENUE AND CUSTOMS AUTHORITY (HBJ0026 of 2004S)

HIGH COURT — CIVIL JURISDICTION

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WINTER J

10 January 2005

10 **Practice and procedure — injunctions — Applicant sought continuance of injunction as threat of execution on full tax remained — balance of convenience — serious question to be tried — Income Tax Act ss 62(7), 70.**

15 The Applicant sought the continuance of injunctive relief as the threat of execution on full tax remained. The Respondent claimed that the right of the Commissioner of Inland Revenue (CIR) to receive payment continues and only the CIR has the authority to suspend penalty. These penalties were within the jurisdiction of the CIR. The Applicant also sought an administrative amendment to the name of the Respondent to the CIR. The Court of Review granted such amendment by consent. The CIR argued that the right to impose penalties was absolutely discretionary and the Income Tax Act (the Act) provided 20 for a review of his exercise of discretion under s 70 of the Act. The CIR challenged the injunction and its extension.

Held — The Court of Review has no power to stay the execution of the penalty tax that was levied. That power rests with the High Court. The CIR has to act within the principles of natural justice when exercising its discretion and s 70 does not assist as these particular 25 penalties are not subject to that statutory review. If there was the possibility of a s 70 review, a stay of execution of tax penalty should apply until the s 70 procedure has been completed. The extension of the injunction was necessary as:

- 30 (1) there was serious issue to be tried;
 (2) the balance of convenience favored maintaining the status quo to protect the tax payer from possible imposition of harsh penalties; and
 (3) damages were not an inadequate remedy.
 Application allowed.
 No cases referred to.

35 *Cameron and Parshotam* for the Applicant

S. Tagicaki and L. Kabakoro for the Respondent

Winter J.

Amendment

40 [1] The Plaintiff seeks an administrative amendment to the name of the Respondent to “The Commissioner of Inland Revenue”. Granted by consent.

Plaintiff continuing injunctive relief

[2]

- 45 (1) FIRCA has lodged papers this morning that Plaintiff needs to consider.
 (2) Court of Review has scheduled a further mention for 28 February 2005 and accompanied this with timetabling orders.
 (3) Threat of execution on full tax remains.

Defendant

50 [3] *Section 62(7)*
 CIR *right to* receive payment continues.

Only suspension of penalty authority rests with CIR.

Section 70

Disc Review Board: has powers to review exercise of CIR discretion.

Penalties are at discretion of Commissioner (Supreme Court decision).

5 (BUT no review on penalties for disallowed objection.)

FIRCA needs time. Adjourned for instructions. Resumed.

[4] FIRCA not in a position to consent. No further submissions.

Decision

10 [5] It is clear that matters are progressing to a hearing before the Court of Review.

The next mention is on 28 February 2005; timetabling orders have been made.

The threat of execution remains.

The same principles apply as in my earlier judgment.

15 The CIR argues that his right to impose penalties is absolutely discretionary and the statute provides for a review of his exercise of discretion (s 70). I disagree. The CIR has to act within the principles of natural justice when exercising his discretion AND s 70 does not assist as these particular penalties are not subject to that statutory review. In any event, even if there was the possibility
20 of a s 70 review, a stay of execution of tax penalty should apply until the s 70 procedure has even completed. Therefore, the arguments advanced on behalf of the CIR do not assist his position in challenging the injunction or preventing its further and necessary protection of the tax payer.

25 The fact of the matter is that the Court of Review is seized of the matter and has no power to stay the execution of the penalty tax levied. That power rests with the High Court.

The situation remains as it was in early December.

(i) There is a serious issue to be tried.

30 (ii) The balance of convenience favours the status quo protection of the tax payer from the imposition of possibly harsh penalties.

(iii) Damages are not an inadequate remedy.

(iv) The Court of Review has no injunctive powers.

Orders

35 (1) Accordingly, the injunction is extended until midnight on 4 March 2005.

(2) The matter will be recalled for mention before me that day on 4 March 2005 at 9.30.

(3) General leave to the Applicants to respond to the CIR's affidavits by the filing and service of documents on or before 28 February 2005.

40 (4) Costs reserved.

Application allowed.

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