IN THE SUPREME COURT OF SAMOA

HELD AT APIA

C.P. 153/92

IN THE MATTER	of an application pursuant to Rule 140 of the Supreme Court (Civil Procedure Rules) 1980 and section 19 of the Judgment Summons Act 1965:
BETWEEN:	FUIMAONO POLOMA ETEUATI, Private Secretary and ELISAPETA ETEUATI, Office Supervisor both of Motootua:
	Applicants/Judgment Debtors
A N D:	THE PACIFIC FORUM LINE a duly incorporated company having its registered office at Matautu-uta:
	Respondent/Judgment Creditor

Counsel: R T Faaiuaso for applicants
S Leung Wai for respondent

Hearing: 29 July 1998

Judgment: 31 July 1998

JUDGMENT OF SAPOLU, CJ

The applicants contracted a debt with the respondent. On 3 August 1992, a judgment was entered against the applicants in favour of the respondent in the sum of $21,852.74 plus costs to be fixed by the Registrar. In terms of rule 126 of the Supreme Court (Civil Procedure) Rules 1980, every judgment for an amount exceeding $200 carries interest at

8%p.a from the date of the judgment until the date of satisfaction. Thus the judgment against the applicants for $21,852.74 was liable to accruing interest of 8% p.a under the Supreme Court (Civil Procedure) Rules 1980.

It appears from the affidavit evidence that an arrangement was made between the applicants and the respondent's solicitor that the applicants would pay instalments of $150 per fortnight towards satisfaction of the judgment. However, the applicants had some problems in keeping up with that arrangement and the fortnightly payments stopped at one time. When their payments resumed on 28 June 1996, the second-named applicant offered to increase the fortnightly payments from $150 to $200. The respondent's solicitor then made a judgment summons application and obtained a judgment summons order on 1 July 1996 against each of the applicants.

The present application is to set aside those judgment summons orders against the applicants and for this whole matter to be reheard. The basis of the application is founded in estoppel and it goes like this. The respondent as judgment creditor had represented to the applicants as judgment debtors by virtue of the judgment summons orders that the balance of the judgment debt owing was $8,349.34. The applicants in reliance upon the representations in the judgment summons orders were led to believe that the judgment debt was $8,349.34 and accordingly made fortnightly payments of $200 pursuant to those orders. They believe they had been paid the full amount of those orders in February 1998. However, the applicants are complaining that the respondent is now claiming interest at 8% p.a pursuant to rule 126 Supreme Court (Civil Procedure) Rules 1980 such that the total amount which now appears to have been owing by the applicants on 1 July 1996 was $14,097.30 and not $8,349.34 as stated in the judgment summons orders which the applicants have paid in full. The applicants are

therefore saying that the respondent should be estopped from claiming interest prior to the judgment summons orders because the judgment summons orders had led the applicants to believe that the only outstanding amount of the judgment debt they were still liable to pay was $8,394.34.

The response from counsel for the respondent to these complaints from the applicants is that the interest claimed is provided by law under the rules of Court. There is no provision in the standard judgment summons application forms or judgment summons order forms for interest accrued on a judgment and that is the reason why there is no amount for interest shown in the judgment summons application and order forms. The solicitor for the respondent in her affidavit and oral testimony also testified that she had told the second-named applicant in one of their meetings after judgment was entered for the respondent that the judgment carried interest at 8% p.a pursuant to the rules. She also, in accordance with her practice, made a note in her file of what she had told the second-named applicant about the interest. On the other hand, the second-named applicant in her oral testimony testified that she could not recall being advised by the solicitor for the respondent about interest accruing on the judgment. I have decided to accept the testimony by the respondent's solicitor that she told the second-named applicant about the accruing interest on a judgment as provided in the rules. That testimony is specific and definite. It is also quality evidence. It is just that the second-named applicant does not recall being told about the interest.

To return to the issue of estoppel, it is clear that the kind of estoppel that is expressly relied on is estoppel by representation. This kind of estoppel is included in what has been called as estoppel in pais. In ***Legione v Hateley (1983) 152 CLR 406***, Mason and Deane JJ in the High Court of Australia jointly stated at p.430 :

"It is customary to recognise three general classes of estoppel, namely, of record, of "writing and in pais (e.g., *Coke's Littleton*, 3529)".

Their Honours then go on to explain what is included in estoppel in pais by saying :

> "***Estoppel in pais includes*** both the common law estoppel which precludes a "person from denying an assumption which formed the conventional basis of a "relationship between himself and another or which he has adopted against "another by the assertion of a right based on it and ***estoppel by representation "which was of later development with origins in Chancery***. It is commonly "regarded as also including the overlapping equitable doctrines of proprietary "estoppel and estoppel by acquiescence or encouragement". (italics mine)

At pp 435, 436 of their joint judgment Mason and Deane JJ go on to say :

> "[It] has long been recognised that a representation must be clear before it can "found an estoppel in pais.... 'Every estoppel, because it concludeth a man to "'alledge the truth, must be certaine to every intent, and not to be taken by "'argument or inference' (*Coke's Littleton*, 3526). In ***Western Australian "Insurance Co. Ltd v Dayton (1924) 35 CLR 355, at p.375***, Isaacs A.C.J., "referring to the requirement that a representation must be 'unambiguous' if it "is to found an estoppel in pais said :
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> > "The word 'unambiguous' is explained by Kay L.J., in ***Low v Bouverie "[1891] 3 Ch at p.113***, the word and its explanation occurring on the "same page. The Lord Justice says : 'It is essential to show that the "statement was of such a nature that it would have misled any "reasonable man, and that the plaintiff was in fact misled by it'. Bowen "L.J says at p.106 : 'It must be such as will be reasonably understood "in a particular sense by the person to whom it is addressed'. This is "confirmed in ***George Whitechurch Ltd v Eavanagh [1902] A.C at "p.145*** by Lord Brampton and in ***Bloomenthal v Ford [1897] A.C at "p.166*** by Lord Hersehell".

Their Honours then referred to ***Woodhouse A.C., Israel Cocoa Ltd S.A. v Nigerian Produce Marketing Co Ltd [1972] A.C 741*** where Lord Hailsham of St. Marylebone L.C said in the House of Lords at p.759 :

> "Counsel for the appellants was asked whether he knew of any case in which an "ambiguous statement had ever formed the basis of a purely promissory estoppel, as "contended for here, as distinct from estoppel of a familiar type based on factual "misrepresentation. He candidly replied that he did not. I do not find this "surprising....".

Even though this statement was made by Lord Hailsham in relation to promissory estoppel, it is clear from the joint judgment of Mason and Deane JJ in ***Legione v Hateley*** (supra) that it also applies to an estoppel in pais which includes estoppel by representation. In ***Woodhouse's*** case when it was before the Court of Appeal, Lord Denning MR said in [1971] 2 QB 23 at p.60 :

> "If the representation is put forward as a variation, and is fairly capable of one or other "of two meanings, the judge will decide between those two meanings and say which is "right. ***But if it is put forward as an estoppel, the judge will not decide between the "two meanings. He will reject it as an estoppel because it is not precise and "unambiguous.*** There is good sense in this difference. When a contract is varied by "correspondence, it is an agreed variation. It is the duty of the Court to give effect to "the agreement if it possibly can : and it does so by resolving ambiguities, no matter "how difficult it may be. ***But when a man is estopped, he has not agreed to "anything. Quite the reverse. He is stopped from telling the truth. He should not "be stopped on an ambiquity. To work an estoppel, the representation must be clear "and unequivocal. That is clear from Low v Bouverie [1891] 3 Ch 82 and Canadian "and Dominion Sugar Co Ltd v Canadian National (Western Indies) Steamship Ltd "[1947] A.C. 45***". (italics mine)

For a representation, including a promise, to found an estoppel, its meaning must be clear, unambiguous, unequivocal, and precise. Its meaning must not be vague, ambiguous,

equivocal, or imprecise. This initial requirement, as the authorities show, is essential to the success of a claim or defence founded on an estoppel.

Now the estoppel by representation relied upon in this case is based on the judgment summons orders which were made by this Court against the applicants in 1996. The first difficulty here for the applicants is that the judgment summons orders are not representations by the respondent to the applicants. The orders are orders of the Court and were made by the Court. It is, of course, true that the judgment summons orders were made by the Court on the application of the respondent's solicitor. But that does not make the judgment summons orders issued by the Court, representations by the applicants. The orders are still the orders of the Court, and not representations by the applicants to the respondent. The Court also had the discretionary power to grant or refuse the judgment summons application which was presented by the respondent's solicitor. The exercise of that discretionary power is an act of the Court, not of the applicants. It also cannot be said that the Court when issuing the judgment summons orders was acting as an agent for the respondent so as to make the act of the Court that of the respondent.

I am, therefore, of the view that the judgment summons orders against the applicants cannot be described as, or held to be, representations made by the respondent to the applicants so as to form the basis of a claim founded in estoppel by the applicants against the respondent. The orders of the Court are not representations made by the respondent as judgment creditor to anyone including the applicants as judgment debtors. It would be wrong if the orders made by the Court are held to be the representations of the applicants.

The second difficulty with the estoppel claimed in this case is that there is no evidence that the respondent or its solicitor ever made any clear, unambiguous, unequivocal, or precise statement or representation to the applicants, or any one of them, that the judgment debt did not carry interest. To the contrary is the evidence by the respondent's solicitor, which I accept, that she did tell the second-named applicant in one of their meetings that the judgment debt was liable to accruing interest of 8% p.a. There has also been no representation, oral or written, made by the respondent or its solicitor to the applicants that the amount stated in each of the judgment summons orders meant that that was the only amount the applicants were liable to pay without having to pay any accrued interest on the judgment. The solicitor for the respondent explained that the standard forms for judgment summons applications and judgment summons orders contain no special provision for interest and that is why there is no interest shown in judgment summons applications or orders in this case.

This state of affairs, in my view, cannot amount to a clear and equivocal statement, or to a precise and unambiguous representation, by the respondent or its solicitor to the applicants that they were not liable to pay the 8% p.a interest provided in the rules, or that the amount shown in each of the judgment summons orders was the only outstanding amount the applicants had to pay without having to worry about any interest on judgment. There is too much vagueness, ambiquity, imprecision, and room for arguments and differences in interpretation, regarding the judgment summons orders, their contents, and the meaning they convey so as to found an estoppel by representation.

A further illustration of the ambiquity and imprecision in the circumstances of this case which makes it difficult to found an estoppel is where the applicants are saying that they have acted in reliance on the terms of the judgment summons orders and paid $200 per

fortnight in the belief that the amount in the orders was the only amount they had to pay. Whilst that may be so, it is clear from the evidence that before the judgment summons orders were issued, the second-named applicant had already agreed with the respondent's solicitor to pay $200 per fortnight. It is also quite arguable that the condition of seven weeks imprisonment imposed in the judgment summons orders if the applicants defaulted in their fortnightly payments was a powerful threat and probably the real reason that kept the applicants paying $200 per fortnight until the amount in the orders was paid in full.

Finally, there was some suggestion in this case that because the interest which is in dispute is authorised and provided by law under the Supreme Court (Civil Procedure) Rules 1980, estoppel does not apply. I must point out that the present trend in the modern development of the doctrine of estoppel is to set it free from its traditional restriction to a representation or assumption of existing fact. The modern developments in the doctrine of estoppel has seen its field of operation being extended to representations and assumptions of fact and law, present or future : ***Lyle-Meller v A. Lewis & Co Ltd [1956] 1 All ER 247*** per Denning LJ; ***Moorgate Ltd v Twitchings [1976] 1 QB 225*** per Lord Denning MR; and the judgments by Mason CJ and Deane J in the High Court of Australia in ***Legione v Hateley (1983) 152 CLR 406***; ***Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387***; ***Foran v Wight (1989) 168 CLR 385***; ***The Commonwealth of Australia v Verwayen (1990) 170 CLR 394***. In the light of the modern developments, it will now not be right to approach a question of estoppel with the preconceived idea that estoppel applies only to a representation of existing fact. The scope of operation of the law of estoppel has been extended to apply, in appropriate circumstances, to both representations as to fact and the state of the law, present or future.

All in all, I am of the view that the present application to set aside the judgment summons orders against the applicants must be denied. It is denied accordingly.

TFM Sapolu
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CHIEF JUSTICE

Solicitors:
Faaiuaso, of Tamaligi, for applicants
Drake & Co, of Apia, for respondent