IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURTOF FIJI

CIVIL APPEAL NO ABU0067 OF 2000S
(Original Lautoka High Court Action No. HBC274 of 2000)

BETWEEN: 1. SAILOSI SAQALU
JOSEFA WAQELIA
MARIKA L.

2. TFJ BULLDOZING COMPANY LIMITED

Appellants

AND: ARULA INVESTMENT COMPANY LIMITED

Respondent

Coram: Eichelbaum, JA
Gallen, JA
Smellie, JA

Hearing: Tuesday, 6th May 2003, Suva

Counsel: Mr Gavin O'Driscoll for the Appellants
Mr V. Maharaj for the Respondent

Date of Judgment: Friday, 16th May 2003

JUDGMENT OF THE COURT

It will be convenient to refer to the parties as the plaintiff and the defendants. In brief, before the High Court the plaintiff's allegations were as follows. The plaintiff company entered into a logging contract with the Mataqali represented by the first defendants. The second defendant duly granted and later extended a logging licence. Work commenced but ceased owing to heavy rainfalls. Although the terms of the contract were that it was to continue until logging the particular area had been completed the first defendants decided they would prefer the third defendant to continue with the logging and in effect purported to rescind the contract with the plaintiff.

There were allegations, denied by the plaintiff, about the standard of the plaintiff's workmanship. The plaintiff obtained an injunction ex parte restraining the first defendants from stopping the plaintiff from carrying out the logging operation, restraining the second defendant from suspending or changing the licence and restraining the first and third defendants from any logging work in the area otherwise than by the plaintiff.

After the papers had been served there was a fully contested hearing at which all parties were represented. On 18 October 2000 the judge delivered an oral ruling granting the interlocutory injunction sought by the plaintiff, and later the

judge gave full reasons for that conclusion. Before the court is an appeal against that decision.

On the appeal it has not been disputed that, as the judge found, there are serious issues to be tried. Of various points taken by the defendants, a procedural issue relating to the absence of a statement of claim was withdrawn, and a stamp duty point was not pursued. The defendants argued that the original injunction ought not to have been granted ex parte, as no sufficient urgency had been shown to justify that course. Given however the full hearing held subsequently that issue is now water under the bridge.

The main focus of the defendants' argument on appeal was that the judge ought to have regarded damages as an adequate remedy. Reliance was placed on a provision in the contract that if either the plaintiff or the first defendants defaulted in performance of the terms of the agreement "each shall be at liberty to claim damages against the other for loss suffered as a result". This provision however does not imply that other legal remedies are excluded.

Under this heading the real issue is the ability of the defendants, or some of them, to meet any award of damages. There was scant evidence of the ability of any of the parties, including the plaintiff, to meet an award; indeed in the case of the second defendant it was non-existent. A party giving an undertaking as to damages needs to provide evidence of its financial position with reasonable

particularity or run the risk that its undertaking will not be regarded seriously. Likewise, if a party seeking an injunction wishes to argue that defendants will be incapable of meeting an award of damages, more than bare assertions about their financial position will usually be required to sustain such a submission.

In the present case the judge expressed concern about the ability of the first and second defendants to meet awards of damages. In the case of a Mataqali whose only asset, so far as the evidence went, was native land, there are obvious potential difficulties about the enforcement of any award of damages. The available evidence supported the judge's reservations in regard to the first and second defendants, and we see no reason to differ from the judge's conclusion in this regard. Accordingly this ground of appeal fails.

Not being persuaded by any of the grounds argued, we dismiss the appeal. Counsel asked us to give a direction for an early hearing of the substantive action. The Court is aware, in a general way, of the congestion of High Court cases in Lautoka. We do not think it would be appropriate to give the direction sought, not because we hold any reservations about the proposition that the case ought to be tried at an early date (clearly it should), but because we consider the giving of priority to particular cases, necessarily at the expense of others, is a matter better dealt with by the High Court itself.

Formal Orders

1. Appeal dismissed.

2. Appellants to pay $750.00 costs to respondent.

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Eichelbaum, JA

FIJI COURT OF APPEAL

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Gallen, JA

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Smellie, JA

Solicitors:

Messrs M.K. Sahu Khan & Co., Ba for the Appellants
Messrs A.K. Narayan & Co., Ba for the Respondent