

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

CIVIL APPEAL NO. ABU 24 OF 2017

(High Court No. HBC 10 of 2015)

BETWEEN : **LINCOLN REFRIGERATION LIMITED**

Appellant

AND : **NAVNEET VISHAL PRASAD**

Respondent

Coram : Basnayake, JA
Almeida Guneratne, JA
Jameel, JA

Counsel : Mr. A K Narayan (Jnr) for the Appellant
Mr. A Kohli for the Respondent

Date of Hearing : 19 September, 2018

Date of Judgment : 5 October, 2018

J U D G M E N T

Basnayake, JA

[1] I agree with the reasons and conclusions of Almeida Guneratne, JA.

Almeida Guneratne, JA

- [2] This appeal arises from the Judgment of the High Court dated 24th February, 2017 (hereinafter referred to as the ‘impugned judgment’) affirming the Master’s ruling / judgment dated 22nd March 2016 dismissing the Appellant’s application by summons to strike out the Respondent’s (the original plaintiff) claim made in pursuance of Orders 33 Rule 7 read with Order 18 Rule 18 of the High Court Rules. The Respondent’s claim was a claim as a workman, admittedly in the employment of the Appellant, at the time he (the Respondent) suffered the injury in question.
- [3] That being no doubt the broad issue, there was in the context of the case, the impact of the provisions of the Workmen’s Compensation Act (WCA) (Volume 14) thereon, particularly Section 16 of the said Act.

Background Facts

- [4] The Respondent whilst in the Appellant’s employment was injured. The Respondent reported the injury to the Labour Officer (LO) attached to the Ministry of Labour followed by a notice as requisite by Labour Department rules. After investigations the Labour Officer on behalf of the Respondent issued a Notice of Claim addressed to the Appellant dated 19th November, 2014 seeking compensation in a sum of \$9,100.00 or to state grounds of dispute if the claim is not admitted.
- [5] The Appellant then entered into an agreement under Section 16 of the WCA and paid the said Claim by cheque which was received by the Labour Officer. (vide: LM4 and LM5 at pages 43 and 45 of the Record of the High Court (RHC). The Labour Officer however failed to provide the said Section 16 agreement and the Respondent instituted a common law action by writ of summons (page 21 of the RHC). The statement of claim is at pages 23 to 27 of the RHC).

[6] The Appellant filed its statement of Defence (pages 132 to 134 of the RHC) and subsequently filed an application by way of summons in terms of Order 18 Rule 18 and Order 33 Rule 7 of the High Court Rules to strike out the Respondent's Action on the basis that (a) the Respondent was estopped from resiling from the representations made to him and (b) that the Respondent's common law action was statute barred under Section 25 of the Workmen's Compensations Act.

[7] After hearing, the Master dismissed the Appellant's application under the said Orders and Rules of High Court, holding in the main that,

"although a representation was made by the Respondent letter dated 19th November, 2014 (referred to above at paragraph [4], the principles of estoppel could not apply to a statutory authority and/or body." (pp. 115 to 131 of the RHC).

[8] In the Appellant's appeal to the High Court (single Judge jurisdiction), against the Master's decision the learned High Court Judge, after hearing, held that,

"Parties to a section 16 agreement could not cancel the Agreement within 3 months of execution if they had second thoughts. ..." and that, "... a section 16 Agreement can only be set aside pursuant to the grounds provided in Section 16(3). In the event that a section 16 Agreement is not challenged, then it can become a bar to further proceedings."

[9] The learned High Court Judge though finding that, "equitable estoppel can be raised against the state and statutory bodies (vide: Attorney General [NSW] v. Quinn (1991) 70 CLR 1 at 17) dismissed the appeal on the ground that equitable estoppel (had) not been established."

Section 16 of the Workmen's Compensation Act provides as follows:

"16.(1)The employer and workman may, with the approval of the Permanent Secretary or a person appointed by him, in writing, in that behalf, after the injury in respect of which the claim to compensation has arisen, agree, in writing, as to the compensation to be paid by the employer. Such agreement shall be in triplicate, one copy to be kept by the

employer, one copy to be kept by the workman, and one copy to be retained by the Permanent Secretary:

Provided that –

- (a) The compensation agreed upon shall not be less than the amount payable under the provisions of this Act; and*
 - (b) Where the workman is unable to read and understand writing in the language in which the agreement is expressed the agreement shall not be binding against him unless it is endorsed by a certificate of a district officer or a person appointed by the district officer or Permanent Secretary, in writing, in that behalf, to the effect that he read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the Agreement.*
- (2) Any agreement made under the provisions of subsection (1) may, on application to the court, be made an order of the court.*
- (3) Where the compensation has been agreed the Court may, notwithstanding that the agreement has been made an order of the Court under the provisions of subsection (2), on application by any party within three months after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the Court may think just, if it is proved –*
- (a) that the sum paid or to be paid was or is not in accordance with the provisions of subsection (1);*
 - (b) that the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury; or*
 - (c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.*
- (4) All agreements made under this section shall be exempt from the payment of stamp duty."*

The Grounds of Appeal

- [10] The grounds of appeal urged (vide: p3 of the RHC), though several in number, stood reduced to one main issue viz: that, the Respondent's representative being the Labour Officer (L/O) having had ostensible authority to take whatever decisions he took in that capacity, and having taken the same, the representation made by the L/O in the

context of Section 16 of the Workmen's Compensation Act that had led to the "Agreement", the Respondent must be regarded as being bound. Mr. Narayan (Junior) on behalf of the Appellant raised the issue of law based on "Equitable Estoppel" on the basis that, the same stood established on the evidence on record and consequently the High Court had fallen into error.

What is "Equitable Estoppel"?

- [11] Connected as it is to the principle of promissory estoppel it is where X, by words or conduct, makes to Y an unambiguous representation his (X's) future action intended to affect the legal relationship between X and Y.

- [12] I have sought to extract the essence of the principle of "equitable estoppel" from several authorities which is succinctly laid down at page 159 in Curson's Dictionary of Law (6th ed., 2002).

- [13] It is true that the Representation was made by the Labour Officer on behalf of the Respondent when he made it, who had ostensible authority and statutory power to make it going through the procedural process envisaged under the Workmen's Compensation Act leading up to the Labour Officer accepting the monetary claim of \$9,100.00 on the Respondent's behalf in pursuance of "the Agreement" *vis a vis* "the Representation" referred to above in the context of Section 16 of the Workmen's Compensation Act.

- [14] Conscious of those facts, Mr. Kohli for the Respondent conceded that, he had been consulted by the Labour Officer prior to reading the said "agreement and representation" in question but argued that, the Labour Officer had practised duress on his client (the Respondent) in relation to the said "agreement and representation."

- [15] However, as pointed out by Mr. Narayan (Jnr.) for the Appellant, in the letter written on behalf of the Respondent dated 3rd December, 2014 (*vide*: p.54 of the RHC), there has not been even a token reference to any such duress or impropriety on the part of the Labour Officer.

- [16] In my view, that gives the lie to the Respondent's contention based on the said allegation of duress or impropriety on the part of the Labour Officer.

Justice must be done according to Law

- [17] Perhaps, the Respondent must have realised at some later point of time after the said "Agreement and Representation" that he was not getting justice, being limited to a claim of \$9,100.00. But, the law as in the Workmen's Compensation Act is designed otherwise, the Labour Officer being the statutory authority to act on behalf of a workman in a claim for injuries suffered in the course of employment. The allegations of duress or impropriety on the part of the Labour Officer being taken out of contention for the reason I have articulated above, I am unable to subscribe to and agree with Mr. Kohli's contention that, since his client (the Respondent) had not eventually signed the agreement, (although the claim of \$9,100 had been paid, his client having not appropriated it) he was not bound by it. The legal considerations of the "Agreement and Representation" as aforesaid overrode that, (the basic theme pursued by Mr. Narayan (Jnr.) on behalf of his client, the Appellant) and fell within the scope and content of the principle of "equitable estoppels".

Final determination and conclusion

- [18] For the aforesaid reasons, while sympathising with the Respondent's lament that he must be saddled with perhaps an under estimated claim, I cannot help but agree with the contention advanced on behalf of the Appellant particularly, the contention that, the learned High Court Judge erred when he held that, "payment was only to be made by the Appellant once Agreement was signed by the Respondent" and that it was an undisputed fact that, "the Respondent did not get paid by the Permanent Secretary for Employment and as such he himself did not benefit."
- [19] However the several factors that weighed with me in reaching my conclusion in setting aside the impugned Judgment are:-

- (a) there was no allegation by the Respondent that, there was any procedural flaw in regard to compliance with the requirements laid down in Section 16 of the WCA;
- (b) there was no dispute that, the L/O had no authority to make the representation and enter into the agreement on behalf of the Respondent;
- (c) the allegation levelled against the L/O that he had practised duress and/or undue influence was not established on the evidence and was not entitled to succeed;
- (d) Thus, the actions/decisions taken by the L/O remained as the actions/decisions of the Respondent in the context of the working of the WCA particularly, Section 16 of the said Act;
- (e) To read into the Act (indeed into Section 16 of it) as there being a requirement for the Respondent to sign the said “Agreement and Representation” would amount to a super added requirement not laid down in Section 16. To hold so would amount to judicial legislation, and would offend the doctrine of “Separation of Powers”. Consequentially, I cannot agree with the learned High Court Judge’s view contained at paragraph 3.17 of his Judgment (at page 7) when he held that *“The Agreement was to be reached ... and payment was only to be made by the Appellant once Agreement was signed by the Respondent.”*
- (f) Accordingly, I have no hesitation in agreeing with Mr. Narayan’s (Jnr.) concluding submission that, should the Respondent be aggrieved by the L/O’s actions, then his option would be to pursue a court action (if any) against him (the L/O) in which context I found the authority of **Visun Deo v. Niranjans Autoport Limited & Anor.** (Civil Action No. 122 of 2003) useful.
- (g) Even if one were to assume for argument sake that, the Respondent’s subsequent signing of the said “Agreement and Representation” was required to bind him that argument, is not entitled to hold water in the context of which I derived assistance by way of analogical reasoning from two established precedents which have withstood the test of time. They are:

- (i) The proposition laid down by Romer, LJ, in London City Council v. Vitamins Ltd. [1955] 2 QB 218, that,

“It is established in my judgment as a general proposition that at common law a person sufficiently signs a document if it is signed in his name and with this authority by somebody else and in such a case the agent’s signature is treated as being that of the principal.”

- (ii) The rule (perhaps widely stated) enunciated by Blackburn, J in Durrell v. Evans [31 LJ Ex. 345] that, “If the name appears on the contract (I intersperse the words ‘Agreement and Representation for the present purposes) and be written by the party to be bound or by his authority, and issued and accepted by him or intended by him as the memorandum of a Contract, that is sufficient.”

- (h) Thus, viewing the matter in that perspective, I accept Mr. Narayan’s (Jnr.) submission based on the doctrine of “equitable estoppel” in the context of facts of this case, bearing reference to both aspects of that doctrine as to (a) promissory estoppel and (b) proprietary estoppel, in consideration of which I paid regard to the several judicial authorities referred to by Curson’s Dictionary of Law (6th ed., 2002) as to the scope of that doctrine (at p.159 thereof).

[20] Consequently, I lay down as a proposition of law that, in the absence of evidence to establish duress /undue influence on the part of a person having *prima facie* authority to act on behalf of a party, such party would be bound by an “agreement or representation” made by such authorised person to act on his behalf without any further and/or super added act to be performed, unless such a super added act is expressly contemplated either by statute or common law.

[21] In laying down that proposition, I am conscious of the reminder by “Rupert Cross on Judicial Precedent” that, the ratio of a decision is to be extracted by a subsequent court or by a higher Court.

[22] Before parting with this judgment I must acknowledge the forensic efforts of both Mr. Narayan (Jnr.) for the Appellant and Mr. Kohli for the Respondent for the valuable assistance rendered to this Court by way of their submissions, both oral and written and the extensive authorities placed before us, although for economy of space I have not referred to them explicitly.

Jameel, JA

[23] I have read the draft judgment and agree with the reasons, conclusions and proposed orders of Almeida Guneratne, JA.

Orders of Court

1. *The Judgment of the High Court dated 24th February, 2017 is set aside and the Appeal is allowed.*
2. *In terms of Order 1 above, all consequential steps following therefrom are to take effect in respect of which parties are to advise themselves.*
3. *In view of the fact that, the scope of Section 16 of the Workman's Compensation Act was required to be interpreted, probably as a matter of first instance, this Court makes no order for Costs and each party may bear their own costs.*



Hon. Justice E. Basnayake
JUSTICE OF APPEAL

Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL

Hon. Madam Justice F. Jameel
JUSTICE OF APPEAL