

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 39 OF 2018

BETWEEN : **PARADISE TRANSPORT LIMITED** a limited liability
Company having its registered office at Nayawa, Sigatoka, Fiji.

PLAINTIFF

AND : **LAND TRANSPORT AUTHORITY** a body corporate
established under Section 6 of the Land Transport Act 1998.

1ST DEFENDANT

AND : **SUNSET EXPRESS LIMITED** a limited liability Company
having its registered office at Multispares Building, 26 Sonoma
Street, Walu Bay, Suva.

2ND DEFENDANT

Appearances : Mr R. Singh for the plaintiff
Mr N. Kumar for the first defendant
Ms V. Lidise for the second defendant

Date of Hearing : 3 May 2018

Date of Judgment : 3 May 2018

J U D G M E N T

Introduction

[01] This judgment concerns an interlocutory summons to enter an interlocutory judgment against the defendants (*the application*). The application is made pursuant to Order 19, Rule 7 of the High Court Rules 1988 ('HCR'). Rule 7 (1) says:

"7 (1) Where a plaintiff makes against a defendant or defendants a claim of a description not mentioned in Rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his or her statement of claim."

[02] By their application filed in conjunction with an affidavit in support, the plaintiff seeks the following orders:

- a) An order restraining the 2nd defendant from operating a public service RRL 12/10/107.*
- b) General damages for breach of statutory breach against the 1st defendant.*
- c) Damages against the 2nd defendant.*
- d) Costs of this action on solicitor/client indemnity basis.*
- e) Any other relief this Honourable court seems just.*

[03] Mr Kumar, counsel appearing (without filing any notice of appointment on behalf of the first defendant) for the first defendant says that: the Land Transport Authority ('LTA') accepts granting a temporary route permit to Sunset Express Limited, the second defendant for operating the bus-service, which has now expired. They must stop operation. If not, LTA has to issue show cause notice to the second defendant to stop the bus operation.

[04] Ms Lidise, counsel appearing (she is appearing without any notice of appointment on behalf of the second defendant) for the second defendant submits that she has no instructions regarding the interlocutory application. She, however, asked for time to file a statement of defence.

[05] Counsel for the plaintiff, Mr Singh submits that: we have filed our application seeking the relief sought in the writ of summons. They did not file a statement of defence. The first defendant filed acknowledgement only. The second defendant did not file anything. He said he was ready to proceed with his application.

[06] The hearing on the application proceeded. The plaintiff relied upon the affidavit filed along with their application.

The Background

[07] The brief background facts are that: Paradise Transport Limited ('PTL'), the plaintiff operates bus service from Suva-Lautoka-Suva Route under Route Licence 2017 2/3/13. Sunset Express Limited ('SEL'), the second defendant is another omnibus operator. On 23 August 2017, the Land Transport Authority ('LTA'), the first defendant issued a temporary route permit to the SEL to be valid for a period of 3 months for operating its omnibus from Suva-Lautoka-Suva, departing Suva at 6am. The SEL has another valid route licence for operations at other times than the times authorised under the temporary permit. The PTL departs Suva Bus Stand at 5.30am and reaches Lautoka at 10.10am and thereafter departs for Suva from Lautoka Bus Stand at 2.30pm. The temporary permit issued to the SEL expired on 23 November 2017. The SEL still operates despite the expiration of the temporary permit. The PTL complained to the LTA of the SEL's illegal operation. The LTA failed to stop the illegal operation. The PTL issued a writ against the LTA and the SEL seeking injunction and damages. Both the LTA and the SEL did not serve a defence on the PTL. The PTL filed an interlocutory summons to enter judgment against the LTA and the SEL.

The Evidence

[08] In support of the application, the plaintiff relies on the affidavit sworn on 22 February 2018 and on 23 February 2018 in support of the application for injunctive relief against the defendants. On that affidavit, the plaintiff states that:

" ...

3. *That the 1st Defendant has issued a Road Route Licence RRL 12/12/45 to the plaintiff ('Exhibit A'). This licence permits the Plaintiff to operate a public service vehicle for reward in terms of the said permit.*
4. *That I also annex hereto mark as Exhibit B is an approval letter from the Sigatoka Town Council for the plaintiff's operations from the Sigatoka Bus Stand and Exhibit C is a copy of the approval from the Suva City Council for the Plaintiff's operations from the Suva Bus Stand.*

5. That the Plaintiff was awarded its route after a ruling of the Land Transport Appeals tribunal ('Exhibit D').
6. That the Plaintiff operates its omnibus and starts operations the Plaintiff departs Suva Bus Stand at 5.30 am and reaches Sigatoka at 8am, departs at 8.15 am from Sigatoka and reaches Nadi at 9.15am, departs at 9.20am from Nadi and reaches Lautoka at 10.10am and thereafter departs for Suva from Lautoka Bus Sand at 2.30 pm.
7. That the 2nd Defendant was issued a temporary permit to operate leaving Suva Bus Stand at 6.00am making its way to Lautoka by stopping in Sigatoka, Nadi and then getting to Lautoka. They leave at 2.40pm for Suva. The relevant permit was issued on the 23rd of August, 2017 for a period of 3 months ('Exhibit E').
8. That essentially the route that the 2nd Defendant operates on is in direct competition with the plaintiff's operations as it is at the same times. In fact, the 2nd Defendant will park their bus at the Suva Bus Stand from 5am and collect would-be passengers of the Plaintiff.
9. That the temporary permit issued to the 2nd Defendant has expired on the 23rd of November, 2017.
10. That despite the expiry of the temporary permit of the 2nd Defendant it continues to operate on the particular times.
11. That the 2nd Defendants are very abrasive and rough in the manner in which they operate their omnibus and have at times caused danger to our buses and passengers on the road as the 2nd Defendant's buses speed and overtake our buses to get passengers in the following bus stands.
12. That I annex hereto and mark as Exhibit F are a bundle of photographs which were taken by me from iPhone and later printed, from the Sigatoka Bus Stand starting from 22nd of December 2017 till 17th of February 2018. These photographs illustrate the time and date thereon.
13. That the 2nd Defendant does not hold any valid route permits to be stationed at the Sigatoka Bus Stand in the times that the photos have been taken.
14. That despite the expiry of their route permit the 2nd Defendant continues to operate on the said route without any fear of any action by the 1st Defendant.

15. That the Plaintiff and other operators have complained to the 1st Defendant in respect of the illegal operation of the 2nd Defendant however the 1st Defendant has refused to act in any manner whatsoever and the 2nd Defendant defiantly operated public service without a proper route licence.
16. That I annex hereto and mark as Exhibit G a copy of an email which has been sent to the 1st Defendant by other omnibus operators complaining about the illegal operation of the 2nd Defendant, however, no action has been taken against the 2nd Defendant by the 1st Defendant for some unknown reason.
17. That in fact to rectify the illegal operations as aforesaid, the 2nd Defendant had made certain applications with the 1st Defendant after the expiry of the temporary permit ('Exhibit H').
18. That the Plaintiff and I believe other operators had lodged their objections to these applications. I annex marked as Exhibit I is a copy of our objections through our solicitors, which were lodged to the 1st Defendant in relation to the application by the 2nd Defendant.
19. That in our objection we had raised the issue that the advertisement in the local daily referred to a Public Notice published on the 6th of January 2018 when there was no such notice published.
20. That the 1st Defendant later on the 19th of January 2018 withdrew the application/advertisement ('Exhibit J').
21. That illegal operations of the 2nd Defendant as aforesaid hereinabove is causing the Plaintiff financial loss as the 2nd Defendant is illegally taking the Plaintiff's passengers.
22. That the Plaintiff seeks that there be an order that the 2nd Defendant forthwith stop their operations illegally..."

Discussion

[09] The plaintiff issued a writ of summons endorsed with the statement of claim on 23 February 2018, and at the same time, the plaintiff also filed an *ex parte* application seeking urgent injunctive orders against the defendants. The court directed this application has to be heard *inter partes*. The writ of summons and the *inter partes* injunction application were served on the first defendant on 1 March 2018 and the second defendant on 6 March 2018, as evidenced by the

affidavit of Timaleti Adivanaikece Dutt sworn on 7 March 2018 and filed in court on 17 April 2018 on behalf of the plaintiff proving due service of the writ and the *inter partes* application for injunction.

- [10] The defendants had failed to serve a defence on the plaintiff within the time prescribed by the HCR. The second defendant did not even respond to the plaintiff's injunction application, either. The time limited for acknowledgement of service, in the case of the writ served within the jurisdiction, is 14 days after service of the writ (including the day of service) (see O.12. R. 4 (a), HCR). Only the first defendant filed an acknowledgement of service within the time limited but failed to serve a defence on the plaintiff. The second defendant neither filed an acknowledgement of service nor a defence on the plaintiff.
- [11] The application to enter judgment also has been served upon the defendants, first defendant on 27 April 2018 and second defendant on 30 April 2018, as evidenced by the affidavit of Timaleti Adivanaikece Dutt sworn on 2 May 2018 and filed in court on behalf of the plaintiff on 7 May 2018.
- [12] The plaintiff is entitled to make the application to enter judgment pursuant to O.19, R.7 as the defendants had defaulted in serving a defence on the plaintiff. Rule 7 (1) enables the plaintiff to apply to the court for judgment if after the expiration of the period fixed by or under the High Court Rules for service of the defence, and empowers the court, on the hearing of the application, to give judgment as the plaintiff appears entitled to on the statement of claim.
- [13] I am satisfied with the due service of the writ of summons, the *inter partes* application for injunction and the application to enter judgment on the defendant and the defendant had failed to serve a defence on the plaintiff within the time prescribed by the High Court Rules.

Injunction

- [14] The plaintiff seeks an injunction against the second defendant to stop their operation of a public service on the strength of the temporary permit, which

expired on 23 November 2017. The first defendant admitted that the temporary permit issued to the second defendant had already expired, yet the second defendant is operating the service. The first defendant said they are planning to issue show-cause notice to stop the illegal bus-operation. On the evidence, I am satisfied the second defendant is operating a public service without a valid route permit causing damages to the plaintiff. As such, the plaintiff appears entitled to the injunction it seeks in the statement of claim

Damages against the first defendant

- [15] The plaintiff claim damages against the first defendant for failing to the second defendant from illegally operating a public service. The plaintiff complains that the first defendant had breached their statutory duty by their inaction towards the second defendant's bus-operation after expiration of the temporary permit given to them. I accept the plaintiff's evidence that the first defendant's failure to stop the second defendant's illegal bus operation is causing damages to the plaintiff. On the evidence, I find that the first defendant is liable to pay damages to the plaintiff for causing loss to the plaintiff by their inaction towards the second defendant's illegal bus-operation.

Damages against the second defendant

- [16] Damages are also claimed against the second defendant. There is unchallenged evidence in court that the illegal operation of the second defendant is causing the plaintiff financial loss as the second defendant is illegally taking the plaintiff's passengers.
- [17] On the evidence, I find that the second defendant is liable to pay damages to the plaintiff for causing financial loss through their illegal operation of bus-service.
- [18] I would hold that the damages and the costs of these proceedings have to be assessed before the Master.

Conclusion

[19] I consider this application. The plaintiff seeks the relief sought in the statement of claim. There has been no defence for the claim. I, therefore, having satisfied with the affidavit evidence, the documents adduced and the submissions advanced in court, give judgment as the plaintiff appears entitled to relief on the statement of claim. Accordingly, the plaintiff is entitled to relief in (a) to (d) on the claim with damages and costs to be assessed before the Master.

M. H. Mohamed Ajmeer
3/5/18

.....
M. H. Mohamed Ajmeer
JUDGE



At Lautoka
3 May 2018

Solicitors:

For the plaintiff: Messrs Patel & Sharma Lawyers, Barristers & Solicitors
For the first defendant: Legal Department, Land Transport Authority
For the second defendant: Messrs Mamlakah Lawyers