
BETWEEN: ROYCO AMALGAMATED COMPANY LIMITED
- **Plaintiff**

AND : LIU JIANSHENG
- **Defendant**

L.M. Niu for the Plaintiff (Applicant)

Mrs P. Tupou for the Defendant (Respondent)

DECISION

[1] On 6 May 2011 an agreement was recorded as having been reached for the supply of coral by the Plaintiff "for the reconstruction of roads at Vaheloto Tongatapu under the Tonga National Road Improvement Project funded by the People's Republic of China". A copy of the agreement is Exhibit A to an affidavit filed by the Plaintiff's managing director on 23 February 2012.

[2] The writ and statement of claim were filed on the same day. The Plaintiff alleges that the agreement has been breached by the Defendant with the result that the Plaintiff has suffered substantial loss of profits. The Plaintiff seeks an order for specific performance of the agreement which it states is a valid and binding contract.

[3] This is an application seeking an interim order preventing the Defendant from carrying out any further work on the National Road Improvement Project pending the outcome of the action.

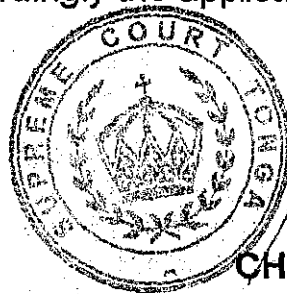
[4] The grounds for the application are set out in detail in the application and need not now be repeated. Briefly, Mr Niu submitted that the Defendant has no assets in Tonga against which a judgment could be enforced; he could return to China at any moment. Meanwhile, if the Defendant is allowed to proceed with the road re-construction project using coral derived from some source other than the Plaintiff, the Plaintiff will suffer irreparable damage, in particular it will suffer the repossession of equipment purchased to perform the agreement in reliance on the promise that the agreement would be adhered to.

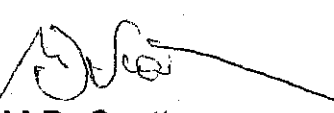
[5] The principles governing the grant of Interim injunctions are well known and are conveniently set out in the 1988 Edition of the Supreme Court Practice, paragraph 29/1/2 they are:

- (1) The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect;
- (2) The Court must not attempt to decide the claim on the affidavits; it is enough if the Plaintiff shows that there is a serious question to be tried; and
- (3) If the Plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the court's discretion, on the balance of convenience.

[6] Central to the Plaintiff's application are the suggestions a) that there was a binding contract between the parties and b) that if the

- [6] Central to the Plaintiff's application are the suggestions a) that there was a binding contract between the parties and b) that if the Defendant leaves Tonga then the Plaintiff will suffer irreparable loss. In my view both of these submissions are questionable. In my opinion taking the whole context in which the body of the agreement is recorded it seems doubtful that, as suggested by Mr Niu, the Defendant was a contractor in person. He is described in Exhibit A as "Acting Team Leader" while the "Team" is described as "Chinese Technical Team, Ministry of Works, Nuku'alofa".
- [7] In my opinion the papers suggest the likelihood that the Defendant is an agent of the Technical Team while there is nothing to suggest that if the Team Leader were to be replaced, the work of the Team would come to an end, or it would cease to have a presence in Tonga.
- [8] Mrs Tupou suggested that the balance of convenience was strongly against bringing the whole road reconstruction project to a stop until this action is disposed of. I agree.
- [9] I do not find that the Plaintiff has satisfied the tests set out in paragraph [5] above. Accordingly the application is refused.




M.D. Scott
CHIEF JUSTICE

DATED: 22 June 2012.

N. Tu'uholoaki
22/6/2012