

THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Judicial Review No.: HBJ 02 of 2010

BETWEEN : PROLINE BOATING COMPANY LIMITED

PLAINTIFF

AND : 1. THE DIRECTOR OF LANDS
2. THE REGISTRAR OF TITLES
3. DOMINION FINANCE LIMITED
4. PROLINE MARKETING LIMITED (in Receivership)

DEFENDANTS

Counsel : Mr. S. Valenitabua for the Plaintiff
Mr. D. Sharma for the 3rd Defendant
Mr. J. Sherani for the 2nd Defendant

Dates of Hearing : 26th August, 2016

Date of Ruling : 30th September, 2016

RULING

INTRODUCTION

1. The Plaintiff sought an order for contempt against all the Defendants but later upon objection by the 1st and 2nd Defendants decided not to proceed against the 1st Defendant. At the stage of obtaining leave the Plaintiff's counsel did not reveal that identical application for contempt was made when the matter was seized with another judge. At the hearing of the contempt application the counsel for the Defendants took the objection that the present application is an abuse of process.

FACTS AND ANALYSIS

2. The application for contempt refers to violation of interim injunction orders made on 2nd July, 2010. The said orders were made before the Applicant obtaining leave for judicial review. The leave for Judicial Review was refused by the High Court on

26.7.2010 and the matter was appealed to the Fiji Court of Appeal. The Fiji Court of Appeal quashed the refusal of Judicial Review and granted leave for Judicial Review. The Judicial Review application was dealt by the High Court, and judgment was delivered.

3. The Plaintiff's previous application was to the judge who initially refused the leave for Judicial Review. The said application seeking leave for committal was dealt on 25th August 2014.
4. While refusing to grant leave for contempt the learned judge held that since the leave for Judicial Review was refused the interim injunction granted by the court on 2/7/2010 had lapsed. So, the basis of rejection of the application for leave for contempt was that there was no injunction order in operation at the relevant time for the contempt orders sought.
5. This order was never appealed and the basis of the rejection of the leave for committal remained an order of the High Court. In my judgment the Plaintiff cannot now invoke the jurisdiction of the court for contempt again in the High Court without setting aside the order of this court, made on 25.8.2014.
6. There was no such order setting aside the order for refusal of the leave for committal. This was not revealed at the time of the ex-parte application seeking leave for committal made before me dated 3.5.2014 and 2.12.2015. The ex parte order for leave was granted without the revelation of previous application. So the grant of leave by ex parte should be set aside, and I do not need to go beyond that for the refusal of this application.
7. The Plaintiff stated that their previous application for leave for committal was rejected without hearing them. Perusing the record indicates that Plaintiff had not appeared on 25.8.2014. But the counsel for 3rd Defendant had appeared and said that there was no injunction to grant leave for committal proceeding. When leave for committal was sought the application was made ex parte and Plaintiff made an ex parte application. So how the counsel for 3rd Defendant made appearance for such an ex parte application is not clear. At the hearing I was told that they appeared after they saw the

matter was listed in the causelist. This does not explain how they made submission to ex parte application. In any event the order for refusal of the leave for committal was made on 25.8.2014 and the Plaintiff did not take action to set aside said order.


8. Considering the circumstances of the case I do not award costs.

FINAL ORDERS

- a. The application for contempt is struck off.
b. No costs.

Dated at Suva this 30th day of September, 2016




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Justice Deepthi Amaratunga
High Court, Suva