

IN THE COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No HBT 8 of 2018

IN THE MATTER OF PACIFIC BEACH  
INVESTMENT LIMITED

AND

IN THE MATTER of Section 28(7) of  
the Tax Administration Decree 2009

BETWEEN : FIJI REVENUE AND CUSTOMS SERVICE

PETITIONER

AND : JOSEPHINE SINGH

RESPONDENT

CORAM : The Hon. Mr. Justice David Alfred

COUNSEL : Ms J. Lal for the Applicant  
: Mr O. Verebalavu for the Petitioner

Date of Hearing : 01 March 2019

Date of Judgment : 17 April 2019

## JUDGMENT

1. This Summons for leave to appeal an Interlocutory Order and stay of proceedings is applied for by Seagram Group Limited (Seagram). Seagram seeks the following orders:
  - (1) *That Seagram do have leave to lodge an appeal against my decision (decision) on 20 November 2018 dismissing their application to intervene and join as a party to Action No. HBT 8 of 2018 (the action).*
  - (2) *That all the proceedings in respect of the action and the Order for sale dated 18 July 2018 in so far as it effects the property held under Lease No 357644, Lot 1 on S511 (the property) be stayed until the hearing and determination of Seagram's appeal to the Court of Appeal.*
2. The affidavit in support is sworn by Peter John Watt (Watt) who deposes as follows:
  - (1) *He is a director of Seagram.*
  - (2) *He says in para 6 that "given the Plaintiff's (?) intention to appeal the decision" he seeks a stay on the basis that if the Petitioner continues its sale and transfer of the property, Seagram will lose its interest in the property by virtue of a sale and purchase agreement (SPA) between it and Pacific Beach Investment Limited (Pacific) and in the legal proceedings it had filed against Pacific seeking specific performance of the SPA. If it succeeds it offers to pay the tax debt of Pacific.*
3. In the Petitioner's (Revenue) affidavit in opposition sworn by Seveci Rokotakala (Seveci) he deposes as follows:
  - (1) *He objects to Seagram's application as the Court has given the order for the sale of the property to which Seagram was not a party.*
  - (2) *The Revenue's charge was registered on the property before the caveat was registered.*
  - (3) *The taxpayer has substantial tax liability which is a debt due to the State and the Commissioner (Revenue) is mandated in the interest of taxpayers to collect this debt through statutory recovery measures under the Tax Administration Act 2009 and thus a stay order is strongly objected to.*
4. Ms Lal at the commencement of the hearing informed the Court they were not filing any affidavit in reply. She submitted the decision is an interlocutory one and requires my leave. As she is not the person in charge of the matter but Ms Devan is, she relies on her written submission.

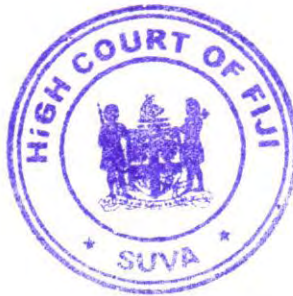


5. Mr. Verebalavu then submitted. He said they strongly object to a stay and repeat that Seagram was not a party to the original proceedings which were binding on Revenue and Pacific and only these 2 can apply for a stay of the order. He said Revenue has a public interest in the property and Revenue's charge has priority as it was registered on 8 April 2014 and Seagram's caveat registered on 3 October 2014.
6. Mr. Lal replied the caveat was lodged on 9 September 2013.
7. At the conclusion of the arguments I informed I would take time for consideration. In doing so I have perused Ms Lal's written submission and Bundle of Authorities.
8. The pivotal issue here is Seagram is not a party to the original proceedings and has not been given leave to intervene in these proceedings. It consequently has no locus standi to bring this summons for leave to appeal nor for a stay.
9. As I see it, Seagram has at best only a suppositious claim to the property as no documentary evidence was provided nor any oral claim made that Seagram had indeed obtained specific performance of its SPA with Pacific. Indeed, it is clear ab initio that Seagram's intervention or being a party in the proceedings was unnecessary "to enable an effectual adjudication" of the matters in dispute between Revenue and the Taxpayer. In the circumstances Seagram's application must necessarily fail.
10. Further, I have noted from the attestation clause in Watt's affidavit that it is sworn at Suva by him after the contents were read and explained to him by Arthur Loo, a Notary Public of Auckland, New Zealand. It has not been duly executed and therefore cannot be tendered in Court in these proceedings. This means the Summons is defective in that it is not supported by any affidavit.
11. In the light of the decision I am reaching it is inexpedient to consider the authorities cited by Counsel as they refer to applications by parties in the proceedings concerned not by strangers to those proceedings. The instant matter cannot be decided upon the general principle which applies to a case where the issue is between the appellant and the respondent and not, as here, where the issue is raised by a stranger.

12. In the result:

- (1) I shall dismiss the Summons filed on 20 December 2018
- (2) I shall decline to grant leave
- (3) I shall refuse a stay
- (4) And I shall order Seagram Group Limited to pay the Fiji Revenue and Customs Service the costs of this summons, summarily assessed at \$1,000.

Delivered at Suva this 17<sup>th</sup> day of April, 2019.



David Alfred  
**JUDGE**  
High Court of Fiji