

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 30 of 2020
HBC 31 of 2020

**IN THE MATTER of NAWI ISLAND PTE
LIMITED**

AND

IN THE MATTER of an application by the
Plaintiff under section 516 and 517 of the
Companies Act 2015 to set aside the Statutory
Demand dated 14 May 2020 purportedly issued
by **G TAYLOR AND C PHILIP** trading as
COPRA SHED MARINA against **NAWI
ISLAND PTE LIMITED**.

BETWEEN: **NAWI ISLAND PTE LIMITED** a limited liability company having its registered
office at C/- PricewaterhouseCoopers, Level 8, Civic Tower, 272 Victoria Parade,
Suva.

PLAINTIFF

AND: **G TAYLOR and C PHILIP** trading as **COPRA SHED MARINA** having its
registered address at Naveria Balaga Road, Savusavu Town.

DEFENDANT

BEFORE: Honourable Justice V D Sharma

COUNSEL: **M. Chand M.:** - for the Plaintiff
Mr. Sharma T. (o/i of Natasha Khan & Associate): - for the Defendants
Mr. Bale A.: - for the Third Party

Date of Judgment: 7th March, 2024 @ 9.30 am

JUDGMENT

[Summons for Leave to Appeal the Ex-tempore Ruling by Lal Patel Bale Lawyers]

INTRODUCTION

1. Lal Patel Bale Lawyers filed an application/Summons on 16th September 2020 and sought for the following orders:
 - (1) That Lal Patel Bale Lawyers be granted leave to appeal to a Judge of the High Court from the Orders of the Extempore Ruling of the Madam Master S. F. Bull delivered by way of an Extempore Ruling on or about 2nd September, 2020 at the High Court of Labasa, whereby it was ordered that the hearing set for 2^{ns} September, 2020 be adjourned,
 - (2) That the hearing dated 20th October 2020 be vacate and that there be a stay of proceedings until such time as this Summons for Leave to Appeal the Extempore Ruling of the Master of on or about 2nd September, 2020 be heard.
 - (3) That the Costs of this application be paid by the Plaintiff and the Defendants respectively.
 - (4) Any others Orders made by this Honourable Court.

Upon the following grounds that:

- (1) That the Learned Master misdirected herself in Law and failed to exercise her discretion judicially and in accordance with established legal principles when she granted the Plaintiff and the Defendants application for adjournment. In doing so the Master failed and/or neglected to give adequate consideration to the well-established legal principles relating to writing to the Court and on adjournments.
- (2) That the Learned Master exercised her discretion and granted an application for adjournment on letters from the Plaintiff and Defendants to the Court of the High Court and on the evidence from the Plaintiff and Defendants agents from the bar table.
- (3) That the Learned Master exercised her discretion and granted an application for adjournment to the Plaintiff and Defendant where both the Plaintiff and Defendant had failed to comply with the Orders of the Master Madam Bull in the High Court of Labasa of on or about 14th August, 2020.
- (4) The Learned Master misdirected herself in law and failed to exercise her discretion judicially when she found that Natasha Khan was unfit to travel to Court when the Medical Certificate made no such finding and the Learned Master misdirected herself in law and failed to exercise

her discretion judicially when she allowed an improper Medical Certificate to be admitted into evidence on which she exercised her discretion.

2. The Defendants opposed the Application for Leave to Appeal and stay.
3. Lal Patel Bale Lawyers furnished Court with their written submissions on the Application relating to "Leave to Appeal the Masters Extempore Ruling" of the Learned Master delivered on 02nd September 2020.
4. Subsequently, the Plaintiff Nawi Island Pte Limited filed a written submissions on costs as ordered by the Court on 14th August 2020 for them to file a supplementary affidavit on costs.

Appellants Case

5. Lal Patel Bale Lawyers contention is that the Learned Master granted the Plaintiff and the Defendants application for Adjournment without any formal application.
 - The Adjournment was granted on Letters and on evidence adduced from the Bar table.
 - Vacated the hearing of this matter for the second time with no order as to costs.
 - Failed to properly analyse and consider the defects in the Medical Certificate provided by Natasha Khan.
 - Failed to consider the prejudice caused to Lal Patel Bale Lawyers as a result of the Plaintiff and the Defendant's ongoing failure to comply with Orders made by the Honourable Court of on or about 14th August 2020 and failure to appear at the hearing of the Plaintiff and Defendant's applications respectively.

Defendant's Contention

6. Rajneel Chandra in his capacity as the Litigation Clerk for Natasha Khan Associates deposed an affidavit -
 - Opposing the Application for Leave and Stay.
 - That Raina Lal Patel's affidavit dated 16th September 2020, none of the paragraphs require a response as they refer to the Court Record and/or Law which cannot be pleaded in an affidavit.

- Ms. Nora at Lal Patel Bale was spoken to after sending the faxed letter who confirmed receipt.
- Leave to appeal be refused.

Reply Affidavit of Raina Lal Patel

7. On 13th October 2020, Rajneel Chandra's affidavit was replied.
 - Chandra's Affidavit is irregular and not authorised to depose this affidavit, thus to be expunged and struck out.
 - Admits Ms Nora had confirmed receipt of Natasha Khan's Letter of 28th August 2020. The timing of the Letter is what is taken as an issue.
 - Master Bull's ruling of 02nd September 2020 Ruling raises a serious issue on grant of adjournments, and by this appeal a definitive pronouncement is being sought.
 - Seek an order in terms.

Determination

8. On 13th July 2020, the parties entered **orders by Consent** as follows:
 - (a) The 14th May 2020 Statutory Demand Notice served by the Defendants on the Plaintiff is set aside.
 - (b) Hearing on costs listed on 14th August 2020 at 10.30am.
9. The Consent Orders were made as a result of the Defendant's informing the Court that **Lal Patel Bale Lawyers had issued the Demand without the Defendants instructions.**
10. The Plaintiff then sought for costs on the grounds and filed their written submissions:
 - There was no reason why the Demand should have been issued and
 - Ample opportunity was given to the Defendants and/or to Lal Patel Bale Lawyers to withdraw the Demand before Nawi Island Limited (Plaintiff) incurred any costs.
11. The substantive issue for this Court to decide is:
 - (i) Whether the hearing date set on 02nd September 2020 should have been vacated and the case adjourned on furnished Medical Certificate of Natasha Khan in its current form; and

- (ii) Whether Lal Patel Bale Lawyers to show cause why an order for costs ought not to be made against it under order 62 Rule 11 of the High Court Rules 1988, and
 - (iii) Whether this Court on the above basis and the grounds on which the Leave to Appeal and Stay the Learned Masters Ruling of 02nd September 2020 be exceeded to accordingly.
- 12. The 14th August 2020 hearing could not proceed for 2 reason:
 - 1. Lal Patel Lawyers filed an affidavit showing cause on 21st July 2020, they withheld services on the Plaintiff and instead served on 29th July 2020. As a result the Plaintiff did not have time to file an answering affidavits.
 - 2. The Plaintiff exercised its rights to file an answering affidavit to Lal Patel Bale's affidavit. The High Court refused to accept the Plaintiff's affidavit and was asked to obtain Consent.
- 13. On 14th August 2020, due to Lal Patel Bale's delay with their affidavit, the Court vacated the Costs hearing to 02nd September 2020 allowing parties to file further affidavits.
- 14. Upon the perusal of the Court files HBC 30 of 2020 and 31 of 2020, the Plaintiff all along has been represented by the In House Counsel whilst the Defendants were represented by Ms Natasha Khan Associates.
- 15. On 13th July 2020, the parties entered into orders by consent that the 14th May 2020 Statutory Demand Notice served by the Defendants on the Plaintiff was set aside and the Hearing on costs was then listed to 14th August 2020 at 10.30am.
- 16. Further, the Defendants informed the Court that Lal Patel Bale Lawyers had **issued the Demand Notice without instructions**.
- 17. Does this mean that the Defendants had neither engaged nor instructed Lal Patel Bale Lawyers to Act and/or represent them? If this was the case, then why did Lal Patel Bale Lawyers issued the Demand Notice against the Plaintiff which was subsequently on 13th July 2020 by Consent of both parties to the proceedings was sought to be set aside?
- 18. There is no record on the Court Records to show that Lal Patel Bale Lawyers were representing any of the parties to the proceedings and there was no filing of any appointment of solicitors in terms of Order 67 of the High Court Rules 1988.
- 19. The Plaintiff was represented by the In -House counsel, whilst the Defendant represented by Natasha Khan & Associates.

20. Instructed Counsel for the Plaintiff and the Defendants appeared before the Learned Master on 14th August 2020 and sought for an adjournment. The matter was adjourned to 02nd September 2020. It is not disputed that there was a formal application made by Natasha Khan & Associates for adjournment. However, there appears a Medical Certificate on the Court file. Which according to Lal Patel Bale Lawyers that it has defects and the matter should not have been vacated and adjourned.
21. The Learned Master did cover the above reasonings in her Ex-tempore Ruling of 02nd September 2020 and further stated that "she was required to Act in fairness and in the interest of justice that requires an adjournment." Accordingly, she granted an adjournment.
22. Order 35 Rule 3 of the High Court Rules 1988 deals with the **Discretion to adjourn** a trial in the interest of Justice which provides as follows:

"The Judge may, if he thinks Expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit."
23. I find that Lal Patel Lawyers failed to secure instructions from the Defendants under the terms of engagement. Hearing received Munro Leys 19/05/2020 Letter, disputing the Demand and having formed the view that they were not instructed by the Defendants, Lal Patel Bale Lawyers failed to withdraw as Counsel representing the Defendants, withdraw the Demand as they were listed as the authorised lawyers on the Demand Notice [which was on 13th July 2020 by consent orders, the 14th May 2020 Statutory Demand Notice served by the Defendants on the Plaintiff was set aside accordingly.
24. Despite Lal Patel Bale Lawyers having formed the view that they are no longer instructed, entered their appearance as solicitors on Record for the Defendants and did not inform the Court or Counsel that they were not instructed by the Defendants.
25. The Court Records of HBC Action No. 30 of 2020 and 31 of 2020 does not show that Lal Patel Bale Lawyers are representing the Defendants nor do I find any appointment of Solicitors in terms of Order 67 of the High Court Rules is filed by them.
26. That being the case, Lal Patel Bale Lawyers do not have any *locus* to make any appearance for the Defendants in the both case filed.
27. If there was any relationship between Lal Patel Bale Lawyers and the Defendants was (if it did) instructed to issue the Demand Notice, that is all, and not to proceed any further with any applications thereafter.
28. I find that the Learned Master had correctly granted the adjournment since the Counsels/parties to the proceedings were physically represented in Court and made the

necessary representation seeking for adjournment, which was accordingly granted by the Learned Master.

29. Hence, Lal Patel Bale Lawyers summons for Leave to Appeal and seeking stay of the proceedings as per the Extempore Ruling of the Learned Master fails and accordingly dismissed.
30. Bearing in mind, that although the Parties [Plaintiff and the Defendants Counsels] on 13th July 2020 entered into Consent Order for the 14th May 2020 Statutory Demand Notice served by the Defendants onto the Plaintiff to be set aside, it is only justified that the Plaintiffs seeking for costs be accordingly dismissed at the discretion of this Court.

Orders

- (i) Lal Patel Bale Lawyers Summons for Leave to Appeal and Stay of Proceedings as per the Learned Master's Extempore Order of 02nd September 2020 is dismissed in its entirety.
- (ii) The Plaintiff's submissions seeking for costs order against Lal Patel Bale Lawyers and/or the Defendants is dismissed in its entirety.

Dated at Suva this 7th day of March, 2024.



Vishwa Datt Sharma
JUDGE

cc: Nawi Island -In house Legal, Savusavu
Natasha Khan Associates, Lautoka
Lal Patel Bale Lawyer, Labasa