

IN THE FIJI COURT OF APPEAL
(AT SUVA)

CIVIL APPEAL NO. ABU0021 OF 1998

(On Appeal from High Court
of Fiji at Lautoka in Civil
Appeal No. 417 of 1996/L)

BETWEEN: BUBBLE UP INVESTMENTS LIMITED a limited
liability company having its registered
office at Kings Road, Sorokoba, Ba, Fiji

Appellant/Plaintiff

AND : NATIONAL MBF FINANCE (FIJI) LIMITED a
limited liability company having its
registered office in Suva, Fiji

Respondent/Defendant

R. Prakash for the Applicant, Bank of Baroda

G.P. Shankar for the Respondent/Defendant

Dates of Hearing and
Submissions : 2nd, 23rd November, 8th December 1998,
6th July 1999

Date of Decision : 5th August 1999

D E C I S I O N

I have before me an application by Bank of Baroda to be joined as a party to this appeal which is from the interlocutory order of the High Court at Lautoka in Civil Action No. 417 of 1996/L whereby Mr. Justice Sadal granted an injunction against the Appellant. The Appellant/Plaintiff had applied for an order

against the Respondent/Defendant restraining it from disposing of any of the chattels and/or items subject to a certain lease Agreement with the Defendant. The Defendant also sought an order restraining the Plaintiff from obstructing, hindering or stopping the Defendant from seizing the chattels, vehicles and goods referred to in the lease Agreement.

Purporting to act under the order of Sadal J. the Respondent seized items and chattels held under securities to the Applicant Bank of Baroda. I am satisfied on the material that the Respondent has at all times been fully aware of the interests of Bank of Baroda in the items and chattels seized. However, the Bank of Baroda was not made a party to the proceedings in the High Court action nor was any notice of those proceedings served on it. The Applicant only became aware of the High Court action when items and chattels held under its securities were seized.

On the 22nd of June 1998 the Applicant applied to Madraiwiwi J. for an order joining the Bank of Baroda as a party to the action and the Judge made such an order on the 7th of May 1999.

THE LAW AS TO THE JOINDER OF PARTIES

The application is made under the Court of Appeal Act and Rule 6 of the Court of Appeal Rules. Under this rule the High Court Rules are applicable. The application is made under Order 15 Rule 6(2) of the High Court Rules which is in the following terms:

"Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application -

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely -
 - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
 - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter."

The scope of this rule and its predecessor has been considered in numerous cases, the earliest of which appears to be Attorney-General v. Corporation of Birmingham 15 Ch.D 423 and in later cases such as Amon v. Raphael Tuck & Sons Ltd. (1956) 1 Q.B. 357, The Result (1958) P. 174 and Re Vandervell Trusts (1969) 3 ALL E.R. 496 which was over-ruled by the House of Lords in Vandervell Trustees Ltd. v. White And Others (1971) A.C. 912.

Order 15 Rule 6 was amended in England by R.S.C. (Amendment No. 4 of 1971) and R.S.C. (Amendment 1981) after the decision of the House of Lords in Vandervell Trustees Ltd. v. White. In that case the House of Lords disagreed with the interpretation of the then rule given by Lord Denning in the Court of Appeal where at (1963) 3 ALL E.R. 499, quoting Rule 6(2) as it then stood he said these words should be given a liberal construction. He cited with approval the remarks of Lord Esher, M.R. in Byrne v. Brown (1889) Q.B.D. 657 at p.666 who said:

"One of the chief objects of the Judicature Acts was to secure that, wherever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence, and the main inquiry, will be the same, and the Court then has power to bring in the new parties, and to adjudicate in one proceeding upon the rights of all the parties before it."

According to the Supreme Court Practice 1993 at p.202, Para. 2(b)(ii) confers on the Court the wider jurisdiction which it was thought the Court had under the former para. 2(b) but which the House of Lords in Vandervell's case held that it did not. It is clear to me that the amendment was intended to give effect to the remarks of Lord Denning in the Court of Appeal. The White Book at p.203 remarks that in the later case of Tetra Molectric Ltd. v. Japan Imports Ltd. (1976) R.P.C. the English Court of Appeal expressly held that para 2(b)(ii) widened the Court's power consequent upon the decision in Re Vandervell and that the Court has power to add a party between whom and one of the parties to the action there is an issue. The question before me is whether there is such an issue in the present case.

The evidence in the form of an affidavit by Pramod Kumar Keshav the Manager for the Bank of Baroda, Ba Branch sworn on the 19th of October 1998 is that the Bank has a substantial interest in the items and chattels seized. Moneys are due and owing by the Appellant in excess of \$430,000.00 and details are given of the actual securities held by the Bank of Baroda. Exhibited to the affidavit are solicitor's certificates stating that the subject securities constitute a first charge and there is no dispute that the items and chattels seized by the Respondent are held under securities by the Bank of Baroda which has a prior interest. The Bank seeks to be joined as a party in this appeal

so that its position and interest is protected. It desires to contend in the appeal that the interlocutory decision of Sadal J. be set aside or varied thus rejecting the right of the Respondent to seize the items and chattels and seeking the return of them to the Bank.

The Respondent objects to the joinder of the Bank in the appeal although the Appellant does not object.

I have received submissions from the parties and for convenience deal first with those of the Respondent which were delivered before the order of Madraiwiwi J. on the 7th of May 1999. First the Respondent submits that to allow the application will not only set up an undesirable precedent but will probably open the floodgates for original causes under the disguised form of interveners.

I reject this submission which seems to me to be pure speculation.

Then it is submitted that the Applicant has no legal interest in the proceedings but purely a commercial or some other (not stated) interest.

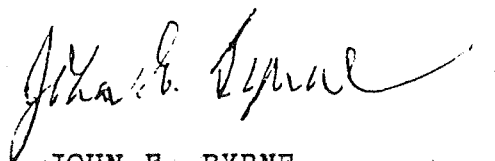
Again I disagree. In my judgment, as matters stand the Applicant's legal position has been put at risk. Furthermore I am satisfied the Applicant has a legal interest because its securities are properly registered and any transfer of ownership may well have to be subject to these existing securities. I am satisfied that the order by Sadal J. directly affects the Bank and its securities and in my view it should be heard and allowed to participate in the appeal. I therefore hold that under Order 15(6)(2)(b)(ii) it is just and convenient to allow the Applicant to be joined to this appeal. I also base my decision on the inherent jurisdiction of the Court and following the decision of Brandon J. in The Mardina Merchant (1974) 3 ALL E.R. 749 I consider that the Applicant should be allowed to intervene

because to refuse the application would in my judgment be likely to cause it serious hardship, difficulty or damage.

The application is therefore granted and I make the following consequential orders:

- (1) that all documents and papers in this appeal be served on the Bank of Baroda or its solicitors;
- (2) that the Applicant be granted leave to file a Respondent's or Interested Party's Notice specifying the grounds of its contention and that such notice be served on the parties within 14 days of the delivery of this decision.

I also order that the Respondent pay the Applicant's costs of this application to be taxed in default of agreement.



JOHN E. BYRNE
JUSTICE OF APPEAL