

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CIVIL APPEAL NO. ABU0048 OF 2003S
(High Court Civil Action No. 23 of 2003S)

BETWEEN:

EASTERN EXPRESS LIMITED

Appellant

AND:

CREDIT CORPORATION LIMITED

Respondent

In Cambers:

Tompkins, JA

Hearing:

Monday 25 August, 2003, Suva

Counsels:

Mr V. Kabadia for the Appellant
Mr G.P.Shankar for the Respondent

Date of Decision:

Tuesday, 26 August 2003

DECISION

[1] The appellant is in receivership consequent upon the appointment of a receiver by the respondent as debenture holder. The second defendants in the High Court are the receivers duly appointed.

[2] On 16th May, 2003 the appellant, acting through Vinay Chand purporting to be a director of the appellant, filed a writ of summons together with a summons for an

interlocutory injunction against the respondent and the second defendants, seeking to prevent the second defendants from transferring the appellant's road route service permits.

[3] On Thursday 30 July 2003 the appellant through Vinay Chand filed a further summons seeking orders that the application for transfer of the permits before the Land Transport Authority be stayed and an injunction restraining the Authority from hearing or determining the application.

[4] By a judgment delivered on 17th August, 2003 Jitoko J dismissed the applications of 16 May and 30 July 2003 and struck out the proceedings on the grounds:

1. That Vinay Chand is not a director of the company and therefore does not have the capacity nor the authority to bring these proceedings on behalf of the company.
2. Even if Vinay Chand were to assume such an authority, he would still need leave from the receivers and managers to bring these proceedings. He is yet to receive the authority.

[5] From that judgment the appellant has appealed. It has also, on 21 August 2003, filed in this court a summons seeking orders restraining the transfer of the appellant's road route permits to Parmod Enterprises Ltd by the Land Transport Authority, or an order staying the transfer of the road permits until the final decision on the appeal.

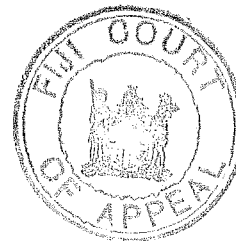
[6] The affidavit filed by Mr Patel, a joint receiver and manager of the appellant, deposes that on 19 August 2003 the Land Transport Authority at its public meeting held at Nabasa heard the application for transfer of the road route permits to Parmod Enterprises Ltd. That application was granted with effect from that date.

[7] When I pointed this out to Mr Shankar, he then suggested that an order should be made for stay against the transferee of the permits. However clearly that cannot be done since, even if otherwise there were valid reasons for doing so, the transferee is not a party to these proceedings.

[8] In these circumstances the summons filed in this Court seeking an injunction and stay is dismissed.

[9] Mr Kapadia sought an order for costs against Mr Chand. It is apparent from the affidavits and the judgment in the High Court that Mr Chand has at all times been the instigator of these proceedings, purporting to do so as a director of the appellant. In these circumstances, as did the judge in the High Court, it is appropriate to order that the costs, which I fix at \$750 plus disbursements, be ordered to be paid by Mr Chand.

[10] On Mr Shankar's application I direct that this appeal be set down for hearing at the November sittings of this Court.




J.A. Tompkins, JA