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IN THE COURT OF APPEAL
FIJI ISLANDS
CIVIL JURISDICTION

Civil Appeal No. ABU 0006 of 2006
[On appeal from the High Court of Fiji at
Lautoka in Civil Appeal No. HBA 002 of 2004]

BETWEEN : **COURTS (FIJI) LIMITED**

Appellant (Original Defendant)

AND : **RAVINDRA DEO SHARMA**

Respondent (Original Plaintiff)

JUDGMENT

Of: **J. Byrne, President**
S. Inoke, JA.

Counsel Appearing: **Mr S Valenitabua for the Appellant**
Mr S K Ram for the Respondent

Solicitors: **Sherani & Co for the Appellant**
Samuel K Ram for the Respondent

Date of Hearing: **3 November 2009**
Date of Judgment: **6 November 2009**

INTRODUCTION

[1] This is an appeal from a Judgment of the High Court exercising its appellate jurisdiction.

[2] On **19 November 2003**, the Ba Magistrates Court delivered a judgment in favour of the Plaintiff, the Respondent in this appeal, totalling \$2,118.55. The Defendant, the Respondent in this appeal, appealed to the High Court and on **2 December 2005**, Finnigan J dismissed the appeal and awarded costs of \$500 to the Plaintiff. The Defendant now appeals to this Court the decision of Finnigan J.

[3] The substantial portion of the Magistrates Court award is for damages under the **Fair Trading Decree** of \$2,000. The rest of that award was not seriously contested in this appeal so the Magistrates Court award in that respect stands. This Judgment deals with that part of the award for damages under the Decree.

GROUND OF APPEAL

[4] The Appellant filed an Amended Notice of Appeal containing 9 Grounds of Appeal. Mr Valenitabua, Counsel for the Appellant, in his written submissions, conveniently grouped these grounds into 3 heads, Exemplary Damages, Relief Not Pleaded and Award of Damages.

[5] At the commencement of the hearing, Mr Valenitabua was alerted to **ss 12(1)(c)** of the **Court of Appeal Act** which limited his appeal to questions of law only. Each of his Grounds of Appeal stated that the "Learned Judge erred in law **and in fact**". He was directed to amend the Grounds by deleting the words "and in fact" in all of the nine.

[6] In the course of the hearing it became apparent that there was only one ground of appeal and that was: **that both the Learned Judge and Magistrate erred in law by allowing an award of damages under the Fair Trading Decree when the Statement of Claim did not specifically plead that the Plaintiff claimed damages under ss 126 and 127 of the Decree.**

COMMENTS ON THE GROUNDS OF APPEAL

[7] Before we deal with the appeal, we wish to remind practitioners once again of the need to clearly and precisely state the Grounds of Appeal. The "catch all" approach in drafting Grounds of Appeal is unacceptable. It unnecessarily prolongs the hearing of the appeal and puts the Respondent to unnecessary submissions.

In this case, the Appellant's solicitors and Counsel had 6 weeks from the date of the judgment of Finnigan J to draw up and file the Notice of Appeal containing the Grounds. The original Grounds were subsequently amended and filed on 27 January 2009. The matter had been through one appeal already in the High Court. The Grounds of appeal should have crystallised well before and not left to be done at the hearing. Practitioners are reminded that in such cases their clients will be penalised in costs.

THE ISSUE

[8] The Grounds of Appeal raised only one single issue before this Court, and that is whether the Statement of Claim in the Magistrates Court in respect of the claim for damages under the **Fair Trading Decree** complied with **Order XVI** of the **Magistrates Court Rules**, more specifically, **Order XVI(3)(c)** which provides:

Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief...

[9] The Statement of Claim in this case stated:

12. The defendant made representations that were false and misleading and the defendants conduct was misleading or deceptive and/or the defendant was guilty of unconscionable conduct.

13. Further the defendants were guilty of breaches of certain statutory duties

PARTICULARS

(a) The defendant failed to comply with section 54, 55 and 56 of the Fair Trading Decree 1992 by their conduct as mentioned herein.

14. As a result of the above the plaintiff suffered loss and damages.

...

WHEREFORE THE PLAINTIFF CLAIMS:

...

(b) General, exemplary and punitive damages ...

[10] The learned trial Magistrate made it clear in his judgment that the award of damages did not include exemplary or punitive damages. His Worship came to the award of damages under the Decree as follows:

Compensation under Fair Trading Decree

I refer to page 25 of Frank R Eggers Junior v Blue shield (Pacific) Insurance Ltd (supra)¹ where it is stated as follows:

Powers of compensation are also provided for under the Decree. Section 127 (1) states:

"If in proceedings instituted under, or for an offence against, this Decree the Court is satisfied that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by reason of a contravention of this Decree, then whether or not any other order is made or relief granted in those proceeding, the Court may, for the purpose of compensating that person or preventing or reducing the extent of the loss or damage, make orders under this section against the person who committed the contravention of a person involved in the contravention."

Section 126 provides inter alia that a consumer, which Mr. Eggers clearly was, who suffers loss or damage as a result of an act or omission by the Defendant's contravention of Section 54 may recover for such loss or damage by the bringing of a civil action. The court is given powers to make an award by Section 127 (5) including an award of damages and refund of monies. Further proof of loss or damage as required under Section 126 is not a pre-requisite for the grant of relief under Section 127: Demagogue Pty. Ltd. v Ramensky & Anor. (1993) ATPR 41-203. In effect the Decree has created new rights and remedies as indeed had the Trade Practices Act for the Commonwealth of Australia.

For misleading and deceptive conduct I award a sum of \$2,000 to the plaintiff against the defendant.

[11] Mr Valenitabua, Counsel for the Appellant, argued that such an award was not open to the learned Magistrate because the Statement of Claim did not specifically plead the claim of damages under ss 126 and 127 of the Decree as required by **Order XVI(3)(c)** of the **Magistrates Court Rules**.

¹ [2002] FJHC 314; HBC0094.1997L (30 September 2002)

[12] Finnigan J in his Judgment of 2 December 2005 dealt with the point in this way:

I turn to the damages award under the Fair Trading Decree. From Counsel's submissions it is evident that the amount of the award concerns the Appellant less than the grounds for it. Intending no disrespect to the careful and reasoned submissions of Counsel for the Defendant it seems to me that the Magistrate was well within his jurisdiction to make the award on the grounds that he did. The amount itself was a matter for his assessment and I do not think I am competent to interfere with the assessment.

There could be no doubt in the mind of the Appellant during the preparation for the case in the Magistrate's Court that it faced a claim under the Fair Trading Decree. Submissions made to me based on The Supreme Court Practice 1985 can be given little weight. The Magistrate's Court is a peoples' Court and the rule upon which Counsel relies at Order XVI of the Magistrate's Courts Rules is more on point. That rule states that every statement of claim shall state specifically the relief which the Plaintiff claims either simply or in the alternative and that it may ask for general relief. The Plaintiff did that in the Court below and no more was required of it.

The burden of the submissions for the Appellant is that the Magistrate rejected the Appellant's submissions of law. In my view the Magistrate did not err in doing so. In all the Courts of Law, but in the Magistrates Court above all, the ultimate quest is for justice rather than for justification by the black letters of the law.

[13] We see no error in law in the approach taken by the learned Judge in upholding the Magistrates Court judgment of 19 November 2003. The Magistrates Court judgment therefore stands.

COSTS

[14] The Respondent is entitled to costs. As we have commented above, had the Appellant given serious thought to its Grounds of Appeal this hearing would not have been prolonged and the Respondent would not have been put to unnecessary submissions and expense. We think costs of \$4,000 is justified in the circumstances.

ORDERS

[15] The **Orders** are therefore as follows:

1. **The Appeal is dismissed.**
2. **The Appellant shall pay the Respondent's costs of \$4,000 within 21 days.**



A handwritten signature in cursive script, reading "John E. Byrne".

John E. Byrne

President, Fiji Court of Appeal

A handwritten signature in cursive script, reading "Sosefo Inoke".

Sosefo Inoke

Judge of Appeal