

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 250 of 2008

BETWEEN : **SUNFLOWER AVIATION LIMITED [FORMERLY KNOWN AS SUN AIR (PACIFIC) LIMITED]** a duly incorporated company having its registered office at Shop 1 , Beddoes Plaza, Namaka, Nadi.
1st PLAINTIFF

AND : **AIR FIJI LIMITED** a duly incorporated company having its registered office at Hangar Road, Nadi Airport.
2nd PLAINTIFF

AND : **CIVIL AVIATION AUTHORITY OF THE FIJI ISLANDS** a body corporate created under the Civil Aviation Act 1979, having its registered office at Nadi International Airport, Nadi, Fiji Islands.
1st DEFENDANT

AND : **AIRPORTS FIJI LIMITED** a duly incorporated company having its registered office at Nadi International Airport, Nadi, Fiji Islands.
2nd DEFENDANT

R U L I N G

INTRODUCTION

[1]. On 8 May 2015, I made some Orders for Security for Costs against QBE Insurance (Australia) Limited, the insurer which is pursuing a subrogated claim in this case. The Orders I made were:

The insurer is to file and serve within 35 days of the date of this Ruling (i.e. by 2.30 pm Friday 12 June 2015) a supplementary affidavit annexing the following;

- (i) a certificate from the appropriate Australian regulator re : the insurer's solvency status.
- (ii) an undertaking duly executed by the insurer that it will pay the defendants' costs if, in the event, the plaintiff (and/or the insurer) were to be so ordered.

[2]. Pursuant to the above Orders, QBE Insurance (Australia) Limited did file an affidavit of Sadia Stathis sworn on 10 June 2015. Stathis is a solicitor in the law firm of Carter Newell Lawyers based in Brisbane. In her Affidavit, Stathis explains the framework for the regulation of insurers in Australia.

The Australian regulator is the Australian Prudential Regulation Authority (APRA). According to Stathis, she has made telephone inquiries with APRA and has been told that APRA does not provide certificates of solvency for approved insurers. However, according to Stathis, APRA did refer her to a website which is, purportedly, being managed and maintained by APRA (<http://www.apra.gov.au>). The website lists all authorised insurers and provides links to their (insurers') financial performance, position, and capital base and capital adequacy.

- [3]. I do not know whether or not Stathis did make a formal request, let alone, whether or not she did inform APRA the purpose for which the certificate of solvency is required by this court. Perhaps, if she had made a formal written request to APRA, APRA would have responded in writing and either oblige to the request, or, formally decline the request and yet, direct Stathis in writing to their website. Perhaps, APRA would have simply advised in its letter that QBE Insurance (Australia) Limited is an authorised insurer and that it meets APRA's prudential regulatory criteria – as reflected in the website (<http://www.apra.gov.au>) that APRA maintains and manages. I would have accepted this as sufficient.
- [4]. Stathis has also produced a copy of QBE Insurance (Australia) Limited's Financial Report for Year Ending 31 December 2014 which was audited by Ernst & Young, as well as an undertaking signed by QBE Insurance (Australia) Limited's Claims Manager, Mr. Daniel Nash, to pay the costs of the defendants in the event. Both defendants argue that the affidavit of Stathis does not meet the requirements for security for costs as directed by this court. In their submissions, both counsel highlight the inconsistencies in the documents filed by Carter Newell as to the identity and/or description of the insurer. In some documents, the insurer is described as "QBE Insurance (Australia) Limited" whereas in Nash's undertaking, the insurer is described as "QBE Insurance (Australia) Pty Limited". Then, using this as their launch pad, counsel for the defendants question the financial report which relates to "QBE Insurance (Australia) Limited" and not "QBE Insurance (Australia) Pty Limited".

They also then attack Stathis' reliance on the website and argue that "QBE Insurance (Australia) Pty Limited" is not listed therein.

- [5]. I am grateful to counsel for highlighting the anomalies. Whether these are a result of a typographical error or intentional, I am not keen to resolve at this time. What I will say though is that the anomalies are sufficient to warrant any suspicion on the part of the defendants that, in the event they (defendants) are to succeed in defending the claim, that they will be put to great difficulty in recovering their costs from the insurer.
- [6]. Taking into account the insistence of the insurer that it is solvent and is one of the biggest insurers in the world, and in the interest of taking this matter forward, I will Order that QBE Insurance (Australia) Limited pay into Court security for costs in the sum of FJD\$500,000 only (five hundred thousand dollars) as security for costs for both defendants. This sum is to be paid into an interest bearing trust account of the Chief Registrar of the High Court of Fiji (Lautoka) within 28 days of the date of this ruling. The case is adjourned to **03 August 2015** for mention. In the event the insurer fails to comply with the above Order, I will be inclined to either strike out the claim and/or make further Orders for costs against the insurer.
- [7]. For the avoidance of any doubt, the amount of security for costs to be paid is FJD\$500,000 (for both defendants) and not \$500,000 towards each defendant).
- [8]. Costs to both defendants which I summarily assess at \$1,500 (one thousand five hundred dollars) each.



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Anare Tuilevuka
JUDGE
03 July 2015.