

THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBT 8 of 2018

IN THE MATTER OF PACIFIC  
BEACH INVESTMENT  
LIMITED

AND

IN THE MATTER of Section  
28(7) of the Tax Administration  
Decree 2009

BETWEEN : FIJI REVENUE AND CUSTOMS SERVICE

AND : JOSEPHINE SINGH

PETITIONER

RESPONDENT

Coram : The Hon. Mr Justice David Alfred

Counsel : Ms S. Devan for the Interested Party  
Ms R. Malani for the Petitioner.

Date of Hearing : 12 October 2018

Date of Decision : 30 November 2018

## DECISION

1. This is the Summons of the Interested Party (Seagram Group Limited) (Seagram) seeking the following orders:
  - (1) That leave be granted to Seagram to intervene and be joined as a party to this action.
  - (2) That the Order dated 18 July 2018 as far as it affects the property held under lease No.357644, Lot 1 on S511 (the property) be set aside.
  
2. The application is supported by the affidavit of Neel Shivam (Shivam) who deposed as follows:
  - (1) He is the proprietor of Neel Shivam Lawyers who act for Seagram and is authorised by Seagram to make this affidavit.
  - (2) Circa 31 December 2013 Seagram filed civil action HBC No. 372 of 2013 (the Action) in the High Court seeking injunctive orders against Pacific Beach Investments Limited (the Defendant).
  - (3) Seagram obtained an interim injunctive order on 3 February 2015 restraining the Defendant from disposing of the property.
  - (4) An order for sale was granted by this Court on 18 July 2018.
  - (5) They have reasons to believe that the Defendant together with the Petitioner (Revenue) is attempting to circumvent the Action so that no order for specific performance is granted by the Court.
  
3. Revenue's reply to the affidavit in support is by the affidavit of Timaima Rayawa who deposes as follows:

- (1) The CEO of Revenue is aware there was a caveat on the property. The CEO has the duty to collect tax by suit pursuant to section 23(1) of the Tax Administration Act 2009 (Act) and any unpaid tax may be sued for and recovered in any court by the CEO.
  - (2) The CEO placed a charge on the property on 8 April 2014. The Defendant was informed that its failure to pay the tax would result in Revenue enforcing the charge pursuant to s.28(7) of the Act.
  - (3) Revenue has no intention to circumvent the Action. Its only interest is the tax liability the Defendant owes to the State.
4. The hearing commenced with Ms Devan submitting. She said Seagram filed a legal action which has heard by Kumar J whose judgment is awaited on an application for specific performance. Seagram's caveat was lodged on 17 October 2013 and Revenue's charge was lodged on 8 April 2014. The caveat has priority over the charge. There is an injunction by consent and the Defendant cannot sign the transfer and Revenue has no power to transfer. Seagram will pay Revenue the tax payable by the Defendant if they succeed in their action i.e purchase the property. The Respondent is improperly joined as the application should be against the taxpayer, the Defendant.
5. Ms Malani then submitted. She said the letter from Neel Shivan was received on 20 July 2018 but the order had been granted on 18 July 2018. The Revenue is not circumventing the action but is only interested in recovering the debt from the taxpayer to Revenue.
6. Ms Devan in her reply said the charge was placed in 2014 but the sale by Revenue was only in 2018.



7. At the conclusion of arguments I said I would take time for consideration. Having done so I shall now deliver my decision.
8. The sole issue for consideration at this juncture is whether Seagram has the locus standi to intervene in this proceeding. I shall have to first consider whether there is any proper application by Seagram to that effect. There is an affidavit by a legal practitioner who says he is from the firm which acts for Seagram.
9. So I shall deal with this affidavit. In my considered opinion it cannot be admitted in this proceeding, as Shivam was not and is not a director of Seagram. He was not and is not its attorney either. The letter of authority signed by one director only is not a resolution of the Board of Directors of Seagram.
10. I rely here on the Ruling made on 4 October 2004 by Jitoko J in Suva High Court Civil Action No. HBC 0011 R.2004S: No Jae Chul AND Doo Wan Industrial (FIJI) Ltd and Ors. His lordship said in para 2 "Any action taken on behalf of the Company including this present application can only be done by a director under the seal of the Company".
11. This authority is cited in my decision in : One Hundred Sands Limited AND Te Arawa Limited : High Court Suva Civil Action No HBC 112 of 2014.
12. Consequently I hold there is no proper application before this Court.
13. Further the injunction granted by Kumar J on 3 February 2015 only restrains the Defendant, its servants or agents. According to the Oxford Dictionary of Law, 9<sup>th</sup> edn, an injunction is "A remedy in the form of a court order addressed to a

particular person that either prohibits him from doing or continuing to do a certain act or orders him to carry out a certain act”.

14. It certainly cannot prohibit the Chief Registrar from signing the transfer pursuant to a valid and subsisting order of Court dated 18 July 2018. And it certainly cannot prohibit the Revenue from recovering the tax due to the State from a taxpayer, the Defendant.
15. In the result:
  - (1) I shall dismiss the Summons filed on 10 August 2018.
  - (2) I decline to grant leave to Seagram Group Limited to intervene and be joined as a party in this action.
  - (3) I refuse to set aside the Order for Sale dated 18 July 2018 in so far as it affects the property or at all.
  - (4) And I order Segram Group Limited to pay Fiji Revenue And Customs Service the costs of this Summons summarily assessed at \$1,000.

Delivered at Suva this 30<sup>th</sup> day of November 2018.



David Alfred

JUDGE

High Court of Fiji