

FIJI NATIONAL PROVIDENT FUND v NASINU TOWN COUNCIL

HIGH COURT — CIVIL JURISDICTION

5 SCOTT J

7 November 2003

[2003] FJHC 26

10

Local government — duties — application for judgment on admission — refusal by Council to pay sum owed by predecessor Authority — judgment entered against Council — Fiji National Provident Fund Act (Cap 219) ss 13, 49(1)(b) — Local Government Act (Cap 125) s 5 — Local Government (Nasinu) (Interim Committee) Regulations 2000 (LN 99/2000) — Public Health Act s 9 — Public Health Regulations (Cap 111) reg 8.

15

Plaintiff sought a sum of money from Respondent Council owed by its predecessor Authority. Respondent alleged that the assignment of debts was prohibited by reg 8 of the Public Health Regulations (Cap 111) and that having successfully obtained judgment against the Authority, the Plaintiff was now estopped from proceeding against the Council.

20

Held — (1) There is nothing in the Public Health Act or its Regulations or in the Local Government Act or its Regulations which prevent the transfer of assets and liabilities from one local Authority to another.

25

(2) Nothing had been received from the Authority although the Plaintiff had successfully prosecuted the Authority and had been rewarded with an order for compensation in the amount claimed. The Fiji National Provident Fund contributions now being sought to recover from the Council were in respect of persons previously employed by the Authority but now, in most cases, employed by the Council.

Application allowed.

30

No case cited.

S. Devan for the Plaintiff.

E. Veretawatini for the Defendant.

35

Scott J. This is an application for judgment on admission brought pursuant to O 27 r 6.

40

On 22 August 2000 the Nasinu Town Council (the council) was effectively brought into existence by the Local Government (Nasinu) (Interim Committee) Regulations 2000 (LN 99/2000) made by the minister under the provisions of s 5 of the Local Government Act (Cap 125).

Prior to the creation of the council the area falling within the boundaries of the new municipality was, for the greater part, administered by the Suva Rural Local Authority (the authority).

45

On or about 12 September 2000 the authority and the interim committee of the new council agreed that the authority would transfer certain of its assets and liabilities to the council.

50

On 12 September certain assets including a cheque for \$28,014.72, a motor car, some tables and chairs, an iron safe, a teaspoon and a cheese grater together with five staff and \$500,000 worth of uncollected arrears of garbage fees were transferred to the council. As will be seen from Annex F to the supporting affidavit of Veretariki Malani the council through its Clerk Mr A Khan also

accepted certain liabilities previously incurred by the authority including principally arrears of FNPF contributions amounting to \$30,705.73, the subject matter of the present dispute.

On about November 2001 when the FNPF contributions were still outstanding the Plaintiff requested payment from the council. According to Annex H of the supporting affidavit of 29 November 2001 Mr A Khan on behalf of the council wrote to the Plaintiff as follows:

Outstanding Payments — Suva Rural Local Authority

This is subsequent to our (Kem Sue/A Khan) telephone discussion regarding payments owed by Suva Rural Local Authority to Fiji National Provident Fund. I confirm that the Council will pay the outstanding sum owed by the Suva Rural Local Authority to Fiji National Provident Fund on or before 15/12/01. In the meantime please forward to me a copy of the Court Order which you obtained against the Council.

The last sentence of the letter quoted is an apparent reference to a conviction entered in the Suva Magistrates' Court on 18 September 2001 against the authority (not the council) for failing to pay \$30,660.06 in FNPF contributions, contrary to ss 13 and 49(1)(b) of the Fiji National Provident Fund Act (Cap 219).

By September 2003 the council had still not paid any part of the amount which it had promised to pay by December 2001 and the Plaintiff therefore commenced these proceedings by writ issued on 3 September 2003.

In the statement of defence and in the affidavit filed in answer to the Claim and this application the council advanced two arguments. The first was that the assignment of debts is prohibited by reg 8 of the Public Health Regulations (Cap 111). The second was that having successfully obtained judgment against the authority the Plaintiff is now estopped from proceeding against the council.

As to the first submission, I pointed out to Mr Veretawatini that reg 8 of the Public Health Regulations is concerned with the minutes of meetings of Local Authorities discharging their functions as Sanitary Districts (see s 9 of the Public Health Act). Mr Veretawatini was unable to point to any provisions either in the Public Health Act or its Regulations or in the Local Government Act or its Regulations which prevent the transfer of assets and liabilities from one local authority to another. Ms Devan knew of no such provision and neither have I myself been able to find anything of the kind. The first submission fails.

As to the second submission, Ms Devan confirmed that although the Plaintiff had successfully prosecuted the authority and had been rewarded with an order for compensation in the amount claimed, in fact nothing had been received from the authority. She also confirmed that the FNPF contributions which it is now being sought to recover from the council were in respect of persons previously employed by the authority but now, in most cases, employed by the council.

If the Plaintiff had in fact recovered the amount awarded to it by the Suva Magistrates' Court then this action would not have been initiated. While a Plaintiff cannot twice recover a sum owed to him there is no rule of law of which I am aware which prevents more than one attempt being made to recover the same sum. The second submission fails.

The Fiji National Provident Fund Act is a valuable, progressive and successful piece of social legislation designed to provide security for the elderly and the disadvantaged. The refusal by the council to pay the sum owed by its predecessor authority seems to me to be inexcusable both in law and on the merits. Judgment
5 will be entered against the council forthwith.

I will hear counsel as to costs.

Application allowed.

10

15

20

25

30

35

40

45

50