

IN THE RESIDENT MAGISTRATES COURT OF FIJI
CIVIL JURISDICTION
WESTERN DIVISION AT LAUTOKA

Civil Case No. 14 of 2010

BETWEEN : **Safety Supply Pty Limited** a limited liability company having its registered Office at Suite 4, 427 Blackburn Road, Mount Waverley, Victoria 3149, Australia.

PLAINTIFF

AND : **Four R Electrical & General Contractors Limited** a limited liability company having its registered Office at Kings Road, Yalalevu, Ba in the Republic of the Fiji Islands.

DEFENDANT

Before : **The Resident Magistrate**
Mr. Jeremaia N. Lewaravu

Date of Hearing: 21st of March, 2017

Counsel

Anil J Singh Lawyers for the Plaintiff
Messers Krishna & Co for the Defendant

Judgment

Introduction

1. The Plaintiff herein had filed a Writ of Summons dated 28th April, 2010 against the Defendant seeking Special and General Damages, Interest and Cost. A Notice of Intention to Defend and a Statement of Defence was filed by the Defendant on the 8th of September, 2011. A reply to Defence was filed on the 28th of September, 2011.

The Preliminary Issue

2. At the Hearing of the matter, the lack of legal authority of the witness called by the Plaintiff was an issue. The Court had noted the objections raised by the Defence. It ruled that the witness be allowed to adduce oral evidence but that proper weight be considered upon determination. I will first deal with this issue.
3. During the Hearing, Counsel for the Plaintiff tendered a document purporting to be an Authority dated 13th March, 2017. I note that the same does not provide the resolution to

appoint any party (person and/or individual) to act on its behalf, there is no company seal and there is only 1 signature of an individual claiming to be a Director/Secretary. I have my doubts as to the origins of this document. I can infer that it originated here in Fiji. It seems that the document was designed specifically for this case after issues were raised. I therefore hold that this document is not sufficient under the circumstances. I cannot therefore give any weight whatsoever to the same. Similarly, in the case of **Chul v Doo Won Industrial (Fiji) Ltd** [2004] FJHC 24, the Court held that:

The applicant himself is not a director. 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. A director is a creature of the articles of association of the Company, as well as the Act. His duties and responsibilities are specifically set out in the Act and in the articles. In my view, a director cannot, by the instrument of a Power of Attorney, cede his legal authority, duties and responsibilities imposed by law to another except than in accordance with the provision of the Act. But even if were possible to cede the powers vested in the directorship of a Company, to a third party, through a Power of Attorney, it can only be personal, the exercise of which if purportedly on behalf of the Company, will need the sanction of the Company'.

4. The issue raised is significant given that the Plaintiff is a company purported to be registered and based in Melbourne, Victoria, Australia. In the case herein, the Plaintiff has failed to tender documents pertaining to registration in either Australia and/or here in Fiji. This brings us to the next issue.
5. Section 2 of the Companies Act, Cap 247 (herein referred to as 'the old Act'.) defines a Company as a 'Company formed and registered under this Act or an existing Company'. Section 18(1) of the old Act state that the Registrar shall then certify that "the Company is incorporated". Section 18(2) states that from the date of incorporation, the company becomes a body corporate and is *inter alia* capable of suing and being sued and of exercising all the functions of an incorporated company.
6. In the case of **Guangzhou Huitao Real Estate Investment Company v Century Holding Limited** [2017] FJHC 477 the Court in reference to the Company Act, Cap 247, observed that:

'It appears from a reading of these provisions that corporate status is conferred by registration. Only upon registration, did a company acquire corporate status. A foreign company of course, is not formed under Fiji's Companies Act. Obviously then, the fact of its incorporation in a jurisdiction outside Fiji does not automatically guarantee its corporate status in Fiji which means that it will, amongst other things, not be able to sue.

To have corporate status in Fiji, a foreign company must re-register under Fiji's (old) Companies Act and comply with conditions in sections 366 to 368. Section 366 and 367 provide that companies incorporated outside Fiji which establish a place of business within Fiji shall,

within 30 days of the establishment of the place of business, deliver to the registrar for registration various particulars set out therein.

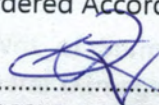
Once these particulars are registered, then section 368 comes into play in that the Registrar shall then give a certificate accordingly which shall then be conclusive evidence that the company is registered as a foreign company for the purposes of the Companies Act and, by section 368, can accordingly, hold land.

By implication, when read together with section 18, as I have said above, once these particulars are registered and the foreign company is registered under Fiji's old Companies Act, then, and only then, can that foreign company's corporate status be recognised in Fiji and accordingly, be entitled to do everything that local company can do inter alia, to sue.

Conclusion

7. It seems that the Plaintiff is a foreign company who is yet to be registered in Fiji under the old Companies Act. It therefore follows that any attempts to adduce evidence on its behalf would be an exercise in futility for lack of legal status to institute legal proceedings in Fiji. In light of the foregoing, the objection by the Defence is hereby upheld.
8. The Full Orders of the Court are as follows:
 - a. The Writ of Summons herein is hereby dismissed.
 - b. Parties to bear own costs
 - c. Any party aggrieved by this decision is entitled to lodge an appeal within 28 days.

Ordered Accordingly,


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JEREMAIA N. LEWARAVU
RESIDENT MAGISTRATE
23rd of November, 2018.

