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CV 50 of 2016

#1
17/05/18

BETWEEN: LEE LATU

'ISILELI LATU

Plaintiffs

AND: GOVERNOR OF VAVA'U

GOVERNMENT OF KINGDOM OF TONGA

Defendants

BEFORE THE LORD CHIEF JUSTICE PAULSEN

Counsel: Mr. S. Taione for the plaintiffs
✓ Mr. 'A. Kefu SC for the defendants

Date of Hearing: 16 May 2018
Date of Ruling: 16 May 2018

RULING

The application

[1] The plaintiffs allege that the first defendant falsely and negligently represented to them that they would be granted a lease of Hinakauea beach for a tourism business as a result of which they incurred large costs that they seek to recover from him. The second defendant is said to be vicariously liable for the negligence of the first defendant.

rec'd 17/05/18
JKC

- [2] On 14 March 2018 the plaintiffs obtained judgment by default against the defendants with damages to be assessed.
- [3] On 5 April 2018, the defendants applied to set the judgment aside.
- [4] Further documents in support of that application were filed on 20 April 2018 setting out the basis of the defendants defence to the claim.
- [5] The application to set aside the judgment came before me today for hearing.
- [6] Mr. Taione acknowledged that on the papers the defendants have an arguable defence and that it would be difficult in those circumstances to maintain any opposition to the application. Whilst he did not consent to the setting aside of the judgment he could not actively oppose it.
- [7] I am satisfied on what is before me that the grounds for setting aside the judgment as required by O.14 Rule 4 are made out. The defendants' failure to file a defence was due to inadvertence. The defendants have an arguable defence and deny that any misrepresentation was made to the plaintiffs. There is nothing to suggest that the plaintiffs will suffer irreparable harm if the judgment is set aside.

Result

- [8] The judgment in default of defence obtained by the plaintiffs against the defendants' in this action on 14 March 2018 is set aside.
- [9] The plaintiffs shall have costs of this application in the sum of TOP\$500.
- [10] The plaintiffs are to file a reply to the defendants' statement of defence by 13 June 2018.

[11] There shall be a further conference at 9am on 15 June 2018.



A handwritten signature in black ink, appearing to read "O.G. Paulsen", is written over the seal.

NUKU'ALOFA: 16 May 2018

O.G. Paulsen
LORD CHIEF JUSTICE