

Sollicitor General

Sean Sika

13/03/15

**IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY**

CV 91 of 2013

BETWEEN: RUI SHENG MA - Plaintiff

AND: HONG HUI YANG - Defendant

BEFORE LORD CHIEF JUSTICE PAULSEN

Mr. L. Niu SC for the plaintiff/applicant

Mr. 'O. Pouono for the defendant/respondent

RULING

1. This is an application to set aside an Order striking out this claim for want of prosecution.
2. The plaintiff commenced the claim on 19 December 2013 seeking to recover money that he alleges was borrowed by the defendant amounting \$87,000. He was then represented by Mr Sione Fifita.
3. The defendant filed a defence on 15 January 2014 in which he says that he did not borrow the money and that the sum claimed is not

Rec'd 13/03/15
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recoverable as it represents alleged winnings from wagers between the parties.

4. The defendant then sought further particulars of the claim and an Order was made by Chief Justice Scott on 8 May 2014 that the particulars were to be provided.
5. During 2014 the case was called before the Court for mention on a number of occasions where Mr Fifita failed to appear. The plaintiff also failed to provide the particulars of claim as had been ordered. It appears that Mr Fifita was seriously ill and indeed he subsequently died in around August 2014.
6. The plaintiff then engaged his present Counsel, Mr Nui SC, and attempts were made to uplift the file from Mr Fifita's widow but without success.
7. On 3 October 2014 the case again came before Chief Justice Scott for mention. There was again no appearance for the plaintiff as it appears that neither the plaintiff nor Mr Nui had notice of the hearing. At that hearing, in the face of the plaintiff's failure to provide particulars of the claim and the numerous non-appearances, Mr Pouono for the defendant made an oral application that the claim to be struck out for want of prosecution. Chief Justice Scott made that Order.
8. It was not until December 2014 that Mr Niu learned that the claim had been struck out and an application was immediately made to set aside the Order of the Chief Justice of 3 October 2014.
9. Although the application was initially opposed by the defendant, when it came before me it was agreed that by consent the Order of Chief

Justice Scott of 3 October 2014 should be set aside upon payment of costs by the plaintiff of \$600.

10. Counsel also agreed to a future timetable for the case to proceed to hearing.

The Orders made

11. The following orders are made by consent:
 1. The Order of Chief Justice Scott of 3 October 2014 striking out the plaintiff's claim is set aside with costs to the defendant of \$600 payable within 14 days (by 19 March 2015);
 2. The defendant is to file an amended statement of defence by 19 March 2015 (reflecting the fact that he now has particulars that had previously been sought);
 3. The parties are to complete discovery and inspection of documents by 16 April 2015;
 4. The parties are to file bundles of all documents they intend to rely upon at trial by 17 August 2015;
 5. The case is set down for hearing on 24 and 25 August 2015.

Dated: Nuku'alofa 6 March, 2015.



**O G Paulsen
CHIEF JUSTICE**