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IN THE SUPREME COURT OF TONGA

CV 80 of 2008

CIVIL JURISDICTION

NUKU'ALOFA REGISTRY

16/05/12

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SHORELINE GROUP LIMITED & ORS

V

NATIONAL PACIFIC INSURANCE (TONGA) LIMITED

BEFORE HON. JUSTICE CATO

**Counsels : Mr. Bloomfield for the plaintiff**

**Mrs. Tupou for the defendant**

**Directions Hearing**

This matter was considered in chambers on today's date. I had read the previous memoranda of counsel for the plaintiff and the defendant that had been filed recently and also the minute of the Chief Justice relating to the directions hearing dated the 11<sup>th</sup> of August 2011.

I had considered various dates and also the difficulties that were faced by Mr. Ring QC who had been the New Zealand counsel for the defendants ( it has been suggested that fresh counsel might be engaged for the 29 the October, 2012 ) and also the plaintiff 's counsel who is Mr McLellan. Accordingly I suggested to Mr. Bloomfield and Mrs. Tupou that there could be a possibility

of dates commencing in or around November 2012 wherein the matter could be finalized before the vacation at Christmas. I adjourned the hearing so that steps could be taking to ascertain whether or not this was suitable to New Zealand counsel.

I was informed in the afternoon there had been a consideration of the issues by New Zealand counsel and that there was agreement that the original date suggested of the 29th of October 2012 would be appropriate.

I am grateful to both counsels for accommodating the court because this is a busy court and a month trial is demanding. Accordingly I have set down the matter for one month commencing the 29 October.

I am mindful of the fact that sometime trials where interpretation is required take longer than expected and accordingly whilst the matter is set down for a month, I do not propose to take any significant matters in the 5<sup>th</sup> week should the trial go beyond 4 weeks.

I have ordered a further mention of this matter on 23<sup>rd</sup> of May 2012 at 9:00am.

I have informed Mrs. Tupou and Mr. Bloomfield that I would want their instructions as to the recording and transcription of proceeding. This matter had been raised by the Chief Justice in a previous hearing. It is to be anticipated that the parties would want daily transcription of proceeding to facilitate their case. That would not be possible here. It is the practice to transcribe only when an appeal has been filed. Accordingly it has been suggested and I agree that the parties should confirm whether suitable arrangements could be provided by them for transcription and recording facilities. Accordingly I would invite urgent input on this question.

I am most anxious to ensure that steps are made or that steps are taking for the purposes of interviewing witnesses to ensure that there are either statements or affidavit provided on a timely basis. I have read the memorandum of Mr. Ring concerning the May date and the fact he was prepared for trial, and I anticipate that there has to date been a considerable amount of work completed by the defendant for trial.

In any event, I would want a timetable agreed upon whereby either statements or affidavits are exchanged prior to trial in a timely and sensible manner. I want to be advised of the number of likely witnesses; the likely extent of their evidence and any possible problems that may arise even if at this stage precision is not possible. I am not expecting witness statements to be provided or exchanged at this stage but it would be of assistance if some précis could be provided. This is to assist the Court as well as the parties manage the case for trial.

I have suggested that the plaintiff may want to file affidavit evidence on the issue of damages and I have been told there may in any event be agreement about quantum. Obviously if so this will expedite matters.

It appeared during my reading of the previous memoranda that there may be some difficulties with interviewing witnesses and securing co-operation. I would expect subpoenas to be issued to relevant witnesses as soon as possible now that the trial date has been fixed.

In so far as there are difficulties in securing the cooperation of witnesses, if there are difficulties counsel are invited to refer this matter to the court to see whether and what if any steps can be taken to avoid this, and manage the trial.

It would assist if there could be a common statement of agreed fact in so far as this is possible.

Counsel has also been advised that the court would expect a common bundle of documentary exhibits to be provided.

It was also to be expected that a common bundle of relevant authorities would be provided prior to the trial.

I look forward to making a further firm timetable direction on the 23<sup>rd</sup> May next.

I should add that in chambers I confirmed with Mr. Bloomfield and with Mrs. Tupou my previous involvement in Tongan criminal proceedings concerning the murders arising out of the Shoreline. I represented one of the young man charged with murder in the Shoreline fire. I indicated that I had not had any

involvement with authorities and the trial turned principally on identification evidence concerning the alleged involvement of my client. There was nothing that I learned from my involvement in the case that was in any way out of the ordinary and I certainly do not in any way feel that my involvement in those criminal proceedings would mean that I should recuse myself from hearing this case. The trial took place from recollection nearly 4 years ago, and my recall of events is now somewhat hazy, in any event.

I also said that I had been paid by QBE in part for the preparation of my client's defence in the Bridgecorp trial as were other counsel pursuant to policies that were held by directors. I was paid privately for the trial which ended recently. That again was nothing out of the ordinary.

I therefore have indicated to counsel that I do not see any reasons to recuse myself and on their return this afternoon from consulting with New Zealand counsel, neither Mr. Bloomfield nor Mrs. Tupou indicated any objection to my being the Judge in this matter.

Accordingly, unless there is any further meaningful objection I do not intend to recuse myself.

**DATED: 11 May 2012**



**JUDGE**