

Civil Judgment
file

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

CV 92 of 2011

BETWEEN :

LENNIE NIIT
(t/a T.T Diesel Services)

Plaintiff

AND :

JOSEPH RAMANLAL

Defendant

BEFORE THE LORD CHIEF JUSTICE

Mrs. D. Stephenson for the Plaintiff.

Mr. P. Bloomfield for the Defendant.

DECISION

1. This is an application for summary judgment brought pursuant to RSC O.15. The writ was filed on 16 September 2011 and a statement of defence and counterclaim was filed on 9 October 2011. A statement of defence to the counterclaim was filed on 20 October 2011. The application for summary judgment only applies to the defence, not to the counterclaim.

rec'd 21/12/11
HHC

2. Affidavits were filed as follows:

- (i) Lennie Nitt, in support, 14 November 2011;
- (ii) Peter Augustsson, in support, 14 November 2011;
- (iii) Joseph Ramanlal, in opposition, 25 November 2011;
- (iv) Lolomania Ve'a, in opposition, 25 November 2011;
- (v) Lennie Niit, in support, 28 November 2011.

3. The action concerns a sum of TOP\$7892.87 said to be owed to the Plaintiff by the Defendant by way of payment for repairs and alterations to a yacht "Princess Royal" carried out by the Plaintiff at the request of the Defendant. The Plaintiff's case is that after the work was completed, the Defendant's Manager and agent Lolomania Ve'a confirmed that the work had been satisfactorily completed in accordance with instructions given and that the sum claimed was due and owing.
4. The Defendant's case is that shortly after the Plaintiff ceased work on the yacht it was discovered that much of the work was sub-standard and needed to be remedied. The cost of the remedial work not only off-set the Plaintiff's claim for \$7892.27 but also gave rise to the counterclaim.
5. The Plaintiff's suggestion that the Defendant's own agent accepted that the sum claimed was due is central to the application for summary judgment but Exhibit D to the Plaintiff's first affidavit is a copy of an email from Lolomania Ve'a which states:

"As mentioned to you today during our meeting I am not authorised to make any deals or settlements...My role today was to look at your invoice and report back...with my advice as to the scope of work

performed by TT Diesel and if the billing was correct and true to my knowledge.”

This statement is consistent with the evidence given by Lolomania in his affidavit filed in opposition to the application.

6. The power to give summary judgment under RSC O.15 is intended only to apply to cases where there is no reasonable doubt that a Plaintiff is entitled to judgment (*Jones v Stone* [1894] AC 122). As a general principle, when a Defendant shows that he has a fair case for defence, as even a fair probability that he has a bona fide defence, he ought to have leave to defend (*Saw v Hakim* (1889) 5 TLR 72). Leave to defend must be given unless it is clear that there is no real substantial question to be tried (*Codd v Delap* 92 L.T. 510).
7. There is authority for the proposition that leave to defend should be granted when the questions before the court involve uncertainty as to the amount actually due (*Lynde v Waithman* [1895] 2 QB 180) or the quality of work done (*Runnacles v Mesquita* (1876) 1 QBD 416). Furthermore it is obvious that allegations of apparent or ostensible authority such as to constitute agency must depend on the evaluation of words or conduct.
8. In all the circumstances of this case I am not satisfied that summary judgment should be granted. Under RSC O.15 r (6) the application is dismissed.
9. Before leaving the matter, I wish to address a point already raised with counsel. The value of this claim is under the \$10,000 jurisdictional limit of Magistrates' Courts (Magistrates' Courts Act Section 59 (2) as

amended). While it is undoubtedly correct, as submitted by Mrs. Stephenson, that the Supreme Court has jurisdiction to hear claims within the jurisdiction of the Magistrates' Courts, the question is whether it is good practice for the Supreme Court to do so.

10. The Supreme Court Rules 2007, somewhat surprisingly, do not deal with the court in which proceedings should be commenced or the registry of that court. It may be desirable to make provision for these matters in due course. Meanwhile O.2 rr 3 & 4 of the Supreme Court Rules 2007 refer to the English Supreme Court Practice and to the Civil Procedure Rules 1998 for guidance.
11. Part 30 of the Civil Procedure Rules deals with the transfer of cases from court to court. Paragraph 30.3.1 explains that if proceedings are commenced in the High Court (the equivalent of our Supreme Court) which should have commenced in a county court then the proceedings must be transferred to the county court. There is even authority for the power to strike out proceedings commenced in the wrong court (*Restick v Crickmore* [1994] 1WLR 420).
12. If cases which can conveniently be commenced in the Magistrate's Courts (and see paragraph 30.3 (2) for the applicable criteria) continue to be commenced in the Supreme Court it may be that the Supreme Court will have to consider the question of venue more strictly.

DATED: 13 December 2011.

CHIEF JUSTICE

E. Takataka
13 December 2011

