

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

CV NO.107 of 2009

BETWEEN : POLYNESIAN LIMITED TRADING AS
POLYNESIAN AIRLINES - Plaintiff

AND : SIONE FONUA - First Defendants

AND : TUPOU TANGINOA - Second Defendants

BEFORE THE HON. JUSTICE ANDREW

Counsel : Mr Fakahua for the plaintiff.
Mrs Stephenson for the defendants.

Date of judgment : 24 August 2009.

REASON FOR JUDGMENT

In this matter there are two applications, the first being by the plaintiff seeking summary judgment against both defendants and the second is an application by the defendants seeking that the proceedings be struck out as against the defendants.

I deal first with the application for summary judgment which is made pursuant to ORDER 15 RULE 2.

The background to this matter is as follows:

The first defendant MR SIONE FONUA described himself as the President of the Tonga Volleyball Association and Ms Tupou Tanginoa, the second defendant, was described as the Secretary of the Association. They sought assistance from the plaintiff airline in obtaining tickets to Australia and return for the Tongan Men and Womens Volleyball Team. The tickets were duly issued and the defendants in a letter dated 4 December 2008 stated that:

“Should the Tonga Volleyball Association not be able to repay this debt I MR SIONE FONUA (President) and Ms Tupou Tanginoa (Secretary) will be liable to pay off this debt I MR FONUA is registered as a Sole Trader here in Tonga with my own Graphic Design Company and will grantee (sic) payment of this account”.

That letter is signed only by Mr Fonua but it does refer to both defendants being liable for the debt.

In an earlier ruling I had stated that as the letter was not signed by the second defendant then there might be some doubt as to whether she had given such a guarantee to be liable to re-pay the debt. But in letters dated March 22, 2009 and March 25, 2009 their lawyer acknowledges that both her clients (the defendants) are so liable and indicated that the only dispute was as to the amount of interest owing on the debt.

It is not disputed that the debt owing is \$18,614.56. The plaintiff is claiming that amount together with interest at 16% from the 9th February 2009.

What the defendants are now saying as evidenced by their application to strike out the proceedings is that they don't dispute that the money is owing but that they are not the correct defendants at first instance and that the pleadings do not establish liability against them personally. They say that the plaintiffs should at first instance pursue the Tongan Volleyball Association and the members of the association who received the tickets.

I do not accept this argument. The defendants represented themselves as the President and Secretary respectively of the Association. They both acknowledge the debt and have both guaranteed to be liable for the debt.

They acknowledged their liability both as the Tongan Volleyball Association and personally.

The principle upon which an application to strike out a claim may be entertained by the Court is clear. No party should have his claim denied without a hearing in the ordinary way, except where the claim is so hopeless that it cannot possibly succeed: see *JAGROOP v SOAKAI* and *THE KINGDOM OF TONGA* [2001] TONGA L.R.

In this matter I am satisfied that there is no proper defence to the claim.

The Plaintiff has established the amount owing. That is not disputed and accordingly I grant the application for summary judgment and it follows from everything that has been said that the application to strike out is dismissed. The costs of both applications I awarded to the plaintiffs.

ORDER

1. Application for summary judgment is granted.
2. Judgment in the sum of \$18,614.56 is awarded to the plaintiffs as against the first and second defendants jointly and severally together with interest at the rate of 16% per annum from the 9th February 2009 until payment.
Costs are awarded to the plaintiff as agreed or taxed.
3. The application to strike out the proceedings is dismissed.
Costs are awarded to the plaintiff as agreed or taxed.

DATED: 24 August 2009.



Andrew J

JUDGE