

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2017-004-002856
[2021] NZDC 16418**

BETWEEN

ORANGE CAPITAL LIMITED (IN
LIQUIDATION)
Plaintiff

AND

GAUTAM JINDAL
Defendant

Hearing: 10 August 2021

Appearances: A Ho for the Plaintiff
Defendant appears in Person

Judgment: 10 August 2021

ORAL JUDGMENT OF JUDGE M-E SHARP

Introduction

[1] The appellant defendant, who appears in person, seeks a stay of enforcement pending the determination of his appeal to the High Court against a summary judgment which was entered against him by this Court on 31 May this year. He appeals the summary judgment of Judge Lawry Hinton on several bases but most of all that, first, the judgment was wrong in several respects and, secondly, he wishes to adduce further evidence on appeal. That matter has a separate application.

[2] I note these things:- the first is that this Court is unable to give an opposed hearing date for this matter before 15 September when the appeal itself is to be heard on September 8 2021. On the basis of that and that Mr Jindal submits that the appeal could be rendered nugatory in the meantime, I have heard submissions from the parties today even though the respondent is represented by an agent without full instructions.

[3] I have carefully read Judge Hinton's judgment and indeed the documentation which was filed both in support and in opposition to the summary judgment application against Mr Jindal. I do not wish to pre-empt the High Court, and I may be wrong, but I cannot see that there will be any successful ground of appeal open to Mr Jindal notwithstanding his protestations.

[4] The matter is essentially a simple matter and Judge Hinton was quite generous to Mr Jindal in allowing him a credit for various things like vehicle payments, et cetera when he permitted a lesser sum to be entered by way of summary judgment against him. Any additional evidence that Mr Jindal is allowed to file by the High Court I cannot see is going to much change the outcome.

[5] In addition, he has failed to pay the award of costs which was made against him after the summary judgment was given in the sum of \$5,850 albeit he appears to have paid security for costs on his appeal to the High Court I am told.

[6] Despite being self-represented until this point Mr Jindal appears to have done a pretty good job of defending himself and this proceeding has now been dragging on since 2017.

[7] No steps have been taken to enforce the judgment. The respondent plaintiff submits that this application is premature given that fact. He says he understands that Mr Jindal has no assets of any sort and that the only relevant and appropriate means of enforcement would be by way of a bankruptcy petition to the High Court. He makes the cogent point that in the event that such petition was made to the High Court, it is unlikely that the High Court would not stay that proceeding until the outcome of Mr Jindal's appeal was known.

[8] I agree with Mr Ho who appears for the respondent plaintiff that this application for a stay of enforcement is premature. I do not know whether the respondent plaintiff given the short length of between now and the hearing of the appeal on September 8 will consider it necessary or even practical to take any enforcement action against Mr Jindal but, in the event that the liquidator does, I consider that the appellant defendant will be in a position to lodge an application for

stay of enforcement in the forum and jurisdiction that has been chosen for enforcement action. It would, as I say, seem to me to be somewhat impractical for any enforcement provisions to be undertaken before September 8 but I leave it at that.

[9] I do not consider at this point that a stay of enforcement is in the interests of justice, let alone necessary, and I, therefore, decline the application.

[10] There is already an award of costs outstanding which the appellant defendant maintains that he cannot meet. He is now legally aided although he has not had counsel appear on his behalf today. It would seem nugatory to make an award of costs against him knowing that it is unlikely to be paid but I invite submissions from you, Mr Ho, about that matter.

[11] The normal rule is that costs follow the event. The plaintiff respondent has been successful today in opposing the application by Mr Jindal for a stay of enforcement of its summary judgment against him.

[12] Whilst the appellant defendant Mr Jindal maintains that he is effectively penniless and has legal aid in respect of the appeal to the High Court, nevertheless he seeks to protect his position from being bankrupted should enforcement action of that type be taken. That is as may be (and I have already given a judgment indicating that I do not consider it in the interests of justice now to stay any potential enforcement because I consider this application to be premature under the circumstances and I do not consider the merits of his appeal are likely to result in a good outcome for him) but I cannot see, although it may not be practical, any reason in law why the successful plaintiff should be disentitled to a costs award on successfully opposing the application for stay of enforcement today. I, therefore, grant 2B costs to the plaintiff. These are to be approved by the registrar.

M-E Sharp
District Court Judge

