

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0080 OF 2008S
(High Court Civil Action No. HBC178 of

2005S

BETWEEN:

B. W. HOLDINGS LIMITED

Appellant

AND:

PROPERTIES PACIFIC FIJI LIMITED

Respondent

Coram:

**Powell, JA
Lloyd JA**

Hearing:

Friday, 27th March 2009, Suva

Counsel:

**R. Naidu for the Appellant
B. Narayan for the Respondent**

Date of Judgment:

Friday , 27th March 2009, Suva

JUDGMENT OF THE COURT

[1] On 25 September 2008 the High Court (Jitoko J) ordered the appellant to pay the plaintiff damages in the sum of \$718,500. The damages were assessed pursuant to a written agreement which provided that the respondent, in the events which

happened, would be entitled to damages for the value of a particular property "*at the market rate as per independent valuation*".

[2] The appellant filed a Notice of Appeal and applied for a stay of the order for damages pending the hearing of the appeal. On 21 January 2009 the stay was heard by a single judge of appeal (Byrne JA) and on 3 February 2009 the stay was refused.

[3] On 5 February 2009 the appellant filed a Notice of Motion for Stay "*before full Court of Appeal*". That Notice of Motion has found its way before the Court today.

[4] Section 20(1) of the Court of Appeal Act (the Act), provides that a single judge of the Court of Appeal "*may exercise the following powers of the Court-*" There are then listed ten items, (a) to (k) including:

(e) *to stay execution or make an interim order to prevent prejudice to the claims of any party pending an appeal;*

[5] Once a single judge of the Court of Appeal has dealt with an application for a stay there is no power for the Court of Appeal to hear an appeal from that decision. The Court of Appeal cannot hear an appeal from itself. The single judge hearing applications pursuant to section 20 of the Act is exercising the powers of the Court of Appeal. The only remedy for a party dissatisfied with the exercise of a section 20 power is to make an application for leave to the Supreme Court.

[6] No other interpretation is available. Moreover it would be bizarre for the legislature to have provided in effect an extra layer of appeal for section 20 matters (High Court, single judge of the Court of Appeal, full bench of the Court of Appeal, Supreme Court), because Section 20 deals in the main with matters which are either discretionary (giving leave to appeal, staying execution of orders) or relatively minor (giving directions as to service, giving judgment by consent).

[7] Accordingly the Notice of Motion filed 5 February 2009 must be dismissed.

[8] Prior to the hearing of the Motion the parties settled the proceedings between themselves in a document dated 18th March, 2009 (terms of settlements).

[9] The orders of the Court are:

1. Notice of Motion filed 5 February 2009 is dismissed.
2. Appeal dismissed .
3. No order as to costs.
4. Orders in accordance with orders 1 to 9 of the terms of settlement.

Powell, JA

Lloyd, JA

Solicitors:

**Sherani and Company, Suva for the Appellant
Lateef and Lateef, Suva for the Respondent**