

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2009-404-005659

BETWEEN KING AND QUEEN'S PEACE TRUST
Appellant

AND JUNIOR FEAUSIGA
Respondent

Hearing: 29 September 2009

Appearances: P Johan for Appellant
K M Wakelin for Respondent

Judgment: 29 September 2009 at 4.45 p.m.

JUDGMENT OF VENNING J

This judgment was delivered by me on 29 September 2009 at 4.45 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Solicitors: Meredith Connell, PO Box 2213, Shortland Street, Auckland 1140
Copy to: P Johan, c/- 23 Corban Avenue, PO Box 911442 Victoria Street West, Auckland
1142

[1] The named appellant seeks to appeal a decision of Judge Perkins in the District Court at Waitakere. Judge Perkins granted the respondent's application to strike-out the appellant's claim against the respondent as disclosing no reasonable cause of action and/or being a frivolous and vexatious proceeding

[2] There are a number of difficulties for the appellant with this appeal. The first is the identity of the appellant. As a trust, the entity King and Queen's Peace Trust can only act through trustees. It is neither a statutory nor a corporate trustee. The trustees should be named as the parties to the proceeding. Mr Johan, who appeared on behalf of the trust, has confirmed to the Court that he is a trustee. If that was the only issue relating to the proceedings it could have been addressed by amending the intitlment to record that Mr Johan and whomever else may be a trustee was the appellant, as trustee(s) of the King and Queen's Peace Trust.

[3] There are, however, more fundamental problems with this purported appeal. The first is that it is out of time. The decision of the District Court was delivered on 3 August 2009. The time for appealing as of right expired on 31 August 2009.

[4] The appeal document was lodged with the High Court on 31 August 2009 but the appeal was not served that day. An appeal must be brought within 20 working days after the decision appealed against is given: r 20.4.

[5] Rule 20.6 confirms that an appeal is brought when the appellant does three things:

- a) files a notice of appeal in the Court; and
- b) files a copy of the notice of appeal in the administrative office; and
- c) serves a copy of the notice of appeal on every other party directly affected by the appeal.

[6] Although the notice of appeal was filed with the High Court on 31 August 2009 the appeal was not served on the respondent's address for service that day. When this matter was first before the Court on 15 September I raised that matter with Mr Johan. He said the appeal was served that same day. I adjourned the matter to enable Mr Johan to file an affidavit confirming service of the notice of appeal. Mr Johan has filed a document in which he deposes:

Immediately after filing in the High Court of New Zealand at Auckland Registry, what in hindsight may perhaps have been an incomplete notice of appeal, annexed hereto and marked as "A" ("document"),

- a.* that I within the hour at the Victoria Street West Post Office as service by mail, placed On Her Majesty's Service
- b.* itself considered a sufficient, reliable and acceptable means for service upon a queens representative ; the aforementioned document ;

[7] I take from that Mr Johan and the appellant say the notice of appeal was served by being posted to the respondent's solicitors on 31 August 2009. In response Ms Langham, a legal secretary employed by the solicitors for the respondent, has sworn an affidavit. She confirms that the notice of appeal was received at the respondent's firm on 11 September under cover of a letter dated 7 September 2009. The letter is date stamped as received on 11 September. Mr Johan sought leave to cross-examine Ms Langham. I decline that application. The affidavit speaks for itself. The letter dated 7 September 2009 is authored on behalf of the appellant.

[8] Rule 6.6 applies. If a document is served by being posted to a post office box address it is treated as served on the earlier of the third working day after the day on which it was posted or the day on which it was received.

[9] On the basis of Ms Langham's affidavit the notice of appeal was posted on the date of 7 September and received four working days later on the 11th. It would be deemed to have been received on the 10 September. That is outside the time provided for in r 20.6.

[10] However, putting Ms Langham's evidence to one side, and even accepting Mr Johan's evidence, (which is contrary to the written record of the documents authored on behalf of the appellant), a document posted on 31 August would not have been deemed to have been received until 3 September. The appeal has not been brought within time.

[11] In certain cases the Court may be prepared to dispense with service but this is not a case where the Court would be prepared to do so. The appeal is entirely without merit.

[12] Judge Perkins spent some time analysing the basis of the appellant's proceedings. He has recorded that position as follows:

[10] During his submissions Mr Johan embarked on matters, which seemed to me to be outside the ambit of the application with which I was dealing. However, I was able to pin him down to what the plaintiff is alleging to be the position. It is significant to note that in the proceedings the King and Queen's Peace Trust is described not only as plaintiff but also as judgement (sic) creditor. I used that as a key to endeavour to ascertain from Mr Johan what position the plaintiff is taking. Apparently, according to his submissions, the King and Queen's Peace Trust was the adjudicator in this matter between The Property Trust and the defendant who the plaintiff has named in the proceedings as Junior Faasina. In fact, his correct name is Junior Feausiga. In any event, it appears that the defendant as a bailiff of the Waitakere District Court, seized property, pursuant to either a distress warrant or some other form of warrant, authorised by the Court. The issue of ownership of that property came before His Honour Judge Recordon in the Waitakere District Court in the proceeding *Jade Promotions Limited v Wesley and Astrid Liddle, trading as Nature's Edge* (CIV-2008-020-130). In that proceeding another company, Corinthian Frames Limited, inter-pleaded on the basis that it owned the seized property. Following a hearing, His Honour Judge Recordon ordered that the computers, which had been seized, should be returned to Corinthian Frames Limited, which he decided was the rightful owner of the property. From what I could gather from Mr Johan, The Property Trust (not the plaintiff) has some form of interest in Corinthian. In any event, Mr Johan informed me that the plaintiff, as adjudicator, determined after evidence that the defendant, as principal or agent of his employers, the Ministry of Justice, owed money. The Property Trust apparently was the recipient of the order, which was given by way of a final judgment of the plaintiff on 2 March 2009. Some form of enforcement notice was then issued by The Property Trust against the defendant that he apparently owed money as damages for the wrongful seizure and that as he chose not to respond to that "Certificate of Protest/Default" he was liable for the sum of \$12,000 and that is now the sum claimed in the proceedings and the application for summary judgment. It must be emphasised that the defendant did not take any part in this "adjudication" process.

[13] The summary of the appellant's claim disclose the fundamental problems with the claim. The Judge was undoubtedly right to dismiss the proceeding. The points noted on appeal to this Court do not improve the matter. They are confused and disordered.

[14] In summary, the intitulumt is wrong. The appeal has not been brought within time. The appeal has no apparent merit. There are sound policy reasons for not granting any indulgence to the appellant in this case. The scarce judicial resources of this Court should not be occupied with proceedings like this without any merit.

[15] The purported appeal is dismissed.

Costs

[16] Mr Johan was on notice from the previous minute of this Court that he would be personally responsible for costs if the appeal was dismissed. The respondent is to have costs on a solicitor/client basis against Mr Johan.

Venning J