

IN THE FIJI COURT OF APPEAL AT SUVA

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0029 OF 1996S
(High Court Civil Appeal No. 275 of 1996)

BETWEEN

ANTECH INTERNATIONAL LIMITED 1ST APPELLANT

HARISH MAHENDRA SINGH 2ND APPELLANT

WESTPAC BANKING CORPORATION RESPONDENT

Mr. Tevita Fa for the Appellant
Mr. M. Daubney and Mr. M. Young for the Respondent

Date and Place of Hearing: 23 August 1996, Suva
Date of Delivery of Judgment: 30 August 1996

DECISION OF THE COURT ON AN APPLICATION
FOR INTERIM INJUNCTIONS

This is an application for interim injunctions, first, to restrain the respondent (the Bank) from realising certain securities held by it under a Mortgage Debenture and a Registered Bill of Sale, and second, from entering, trespassing or interfering with the quiet enjoyment by the second appellant (Singh) of his house at 203 Ragg Avenue, Suva. The background to, and the circumstances in which, the application is made may be briefly stated as follows.

The Bank was about to realise the securities above mentioned that it held and, in result, the first appellant (Antech) and Singh issued a writ of summons on the 13 June 1996 and by its statement of claim alleged that the Bank had been

negligent, so causing Antech and Singh loss, and had also "unlawfully" debited Singh's account with the Bank in the sum of \$32,188.92. They claimed a number of declarations and injunctions. At the same time Singh applied for an interim injunction to restrain the Bank from entering and seizing the property secured by the mortgage, which was his home, and seizing property secured by the registered bill of sale, in particular his daughter's motor car. This interim injunction was sought because two days previously bailiffs had sought, according to Singh, to enter and take possession of the house and to evict him and his family as well as to seize his daughters car. The Bank disputed that the Bailiffs had sought to evict Singh but said the bailiffs had been attempting to seize only Antechs assets and the motor vehicle.

The application for the interim injunction came on for hearing, with commendable promptness, before Scott J. on the 4th July. His judgment was given a week later on the 12 July. He refused to grant an interim injunction. Being dissatisfied with this decision Singh lodged an appeal to this Court against it on the same day and likewise, on the same day, made an application pursuant to s.20 (f) of the Court of Appeal Act and R.26(1) of the Court Appeal Rules for an interim injunction to this Court, which is the matter with which we are now dealing.

This is not an appeal against the judgment of Scott J., as the above summary of events shows, but his judgment contains

the essential facts relating to Singh's claims for declarations and injunctions. It is not necessary for us to repeat them here. The judgment also gives his reasons for declining to grant the interim injunction sought before him, and while we have found them most helpful in considering this application, what we have to bear in mind is that if no interim injunction is granted now the Bank may exercise its powers under the mortgage and registered bill of sale before the appeal is heard. In that event pursuing the appeal would be fruitless; and if Scott J. had been wrong in refusing the injunction it would be too late for Singh whose house could well have been sold, likewise his daughters car.

In these circumstances, we think it best to grant the interim injunctions sought in the application but subject to the condition that he pay to the Bank the total amount outstanding, something in the region of \$100,000.00, or a little more, within ~~one calendar month of the date of the delivery of this judgment.~~

We go on to explain the basis upon which this order is made. It was said to us by Counsel for Singh, in a statement from the bar, that Singh does not have the means to pay the amount allegedly due under the mortgage debenture and the registered bill of sale, and so is in no position to make any payment into Court, not even the amount which indisputably is due

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- something in the region of \$45,000 and some \$13,000 or so due for interest. In passing it should be recorded that he did, however, offer to make a payment into court in three months time of some \$56,000, the amount due on the original overdraft facility, and in the meantime to pay interest at \$35 per day from the 1st January 1996. If the Bank exercised its powers under the mortgage debenture and the registered bill of sale, Singh would have irretrievably lost his house and his daughter's car. If he was ultimately successful in his action against the Bank and he recovered damages it would be too late so far as his house and car were concerned though, as Mr Fa accepted, it was not doubted by Singh that the Bank would be able to satisfy any judgment he obtained. The period of this injunction will give him time to re-arrange his finances and borrow the amount due on the securities now held by the Bank, which would of course release them on payment of the amount due. Singh would then be able to pursue his substantive action against the bank for damages and declarations. His appeal against the judgment of Scott J. would ~~no doubt cease to be worth pursuing but he would be able to carry~~ on with his substantive action for negligence and the alleged "unlawful" debiting of his account by the Bank of the \$32,000 and would retain the legal ownership of his house and his daughter of her car.

Accordingly the Court orders that interim injunctions be issued in terms of the application to this Court dated 13 June 1996 but subject to payment being made to the Bank of the total

amount claimed, being \$100,945.83 as at 12 June, together with interest from that date to the actual day of payment at \$35 per day, within one calendar month from the date of this judgment. Failing due compliance with this condition by Singh and Antech the right to seal the order granting the injunctions shall lapse and the application be deemed to have been dismissed. In making this order we have adopted the form used by the High Court of New Zealand in Parry v. Grace (1981) 2NZLR 273 at 260.

No submissions were made by any party on the question of the costs of this application. We think, however, that Westpac has been substantially successful and, further, that the order made is in the nature of an indulgence to Singh and Antech. They are accordingly ordered to pay Westpac \$250 costs on this application.

Moti Tikaram

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 Sir Moti Tikaram
President

Barry

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 Mr Justice Savage
Judge of Appeal

Dillen

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 Mr Justice Dillen
Judge of Appeal