

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 144 of 2012**

**IN THE MATTER of MICHAEL  
FONG aka BENG KAI (aka  
MICHAEL) FONG aka BENG KAI  
FONG**

**AND**

**IN THE MATTER of Section 28(7)  
of the Tax Administration Decree  
2009**

**Appearance:**      **Ms Rayawa T** for the Plaintiff/Applicant  
  
                         **Ms Malimali B** for the Defendant/Respondent

**RULING**

1. This action is filed under Section 28(7) of the Tax Administration Decree 2009.
2. **Background**
  - 2.1 Michael Fong aka Beng Kai (aka Michael Fong aka Beng Kai Fong) defaulted payment of Tax amounting to \$175,342.29.
  - 2.2 The Commissioner of Inland Revenue registered its charges on the property situated at 15 Rakua Street, off Nailuva Road, Suva and the said Michael Fong the lawful owner of the property having Certificate of Title No. CT17489 (*Annexure marked "A"*).

- 2.3 On 5<sup>th</sup> October 2004, the Plaintiff/Applicant posted to the tax payer a Notice of Demand but there was no response (*Annexure marked "B"*).
- 2.4 On 30<sup>th</sup> June 2005, the Plaintiff/Applicant filed and served the tax payer a Writ of Summons but there was no response (*Annexure marked "C"*).
- 2.5 On 29<sup>th</sup> March 2012, Petitioner (Plaintiff/Applicant) served the tax payer a Notice for filing of Petition but there was no response (*Annexure "E" Notice of filing Petition*).

**3.** The Plaintiff/Applicant prayed:

- (a) *Sale of property in any manner to be determined by the Petitioner;*
- (b) *For the appointment of a receiver of the rents profits or income thereof;*
- (c) *For the payment of the amount of the charge and the cost of the Plaintiff/Applicant out of the proceeds of the sale or out of the rents, profits or income;*
- (d) *That the transfer of the title documents be signed by the Deputy Registrar of the High Court of Suva.*

- 4.** The affidavit of Mr Visvanath Das of Debt Management Unit, Taxation Division of the Plaintiff/Applicant was filed on 29<sup>th</sup> May 2012.
- 5.** At the request of the Defendant/Respondent, the Hon. Master granted time until 24<sup>th</sup> August 2012 to finalise the issues with the Plaintiff/Applicant and made directions to refer to a judge to make Orders.
- 6.** The case was mentioned before me on the following dates and time granted to the Defendant/Respondent to finalize the issues with the Applicant with the consent of the Plaintiff/Applicant:

- (a) *On 23<sup>rd</sup> August 2012, time granted until 16<sup>th</sup> October 2012;*
  - (b) *On 16<sup>th</sup> October 2012, time granted until 25<sup>th</sup> October 2012;*
  - (c) *On 25<sup>th</sup> October 2012, time granted until 26<sup>th</sup> November 2012;*
  - (d) *On 26<sup>th</sup> November 2012, time granted until 4<sup>th</sup> February 2013 to review the matter by the Petitioner and on 4<sup>th</sup> February 2013, both counsels on agreement requested further 2 weeks time to finalize the matter and time granted until 11<sup>th</sup> March 2013;*
  - (e) *When the matter was called on 11<sup>th</sup> March 2013, the counsel for the Plaintiff/Applicant stated new Assessment of Tax being given to the Plaintiff which was not settled. The counsel for the Defendant/Respondent stated her client disputes the amount and the court fixed the matter for hearing on 8<sup>th</sup> April 2013.*
- 7.** On 18<sup>th</sup> March 2013, Notice of Change of Solicitors filed by Pacific Chambers Solicitors and Summons for an extension of time to file an answering affidavit and the affidavit in support of summons to extend the time filed on 2<sup>nd</sup> April 2013.
- 8.** The summons for extension of time to file an answering affidavit Defendant/Respondent pleaded:
- (a) *Leave be granted to the Defendant/Respondent, Michael Fong to file an Answering Affidavit Out of Time to defend the proceedings for the sale of the land;*
  - (b) *Costs of the application.*
- 9.** When the matter came up before the court today, 8<sup>th</sup> April 2013 the counsel for the Defendant/Respondent made submissions in support of the summons and stated:

- i) The Defendant Respondent has meritorious Defence;*
- ii) There will be no prejudice caused to the Petitioner if time is extended to file the Answering Affidavit;*
- iii) In the property, tenants are in occupation;*
- iv) The Defendant/Respondent is solvent.*

**10.** The counsel appeared for the Plaintiff/Applicant made no submissions and she had no objection for the Defendant/Respondent's application.

**11.** It is my duty to consider the submissions made by the counsel for the Defendant/Respondent and the affidavit dated 2<sup>nd</sup> April, 2013.

11.1 On various submissions made by the Defendant/Respondent the new tax liability was reduced to \$166,163.79 from \$175,214.79 which is disputed by the Defendant/Respondent.

11.2 It was deposed that the Defendant/Respondent has a meritorious defence and Draft Answering Affidavit was marked MF6 annexed to the affidavit dated 2<sup>nd</sup> April 2013.

11.3 The Defendant/Respondent is solvent.

11.4 No prejudice caused to the Plaintiff/Applicant.

**12.** My conclusions are as follows:

- (a) The Defendant/Respondent failed to establish any meritorious grounds for extension of time;*
- (b) The Defendant/Respondent was granted adequate time by the Plaintiff/Applicant more than 15 years to pay the Tax liability;*
- (c) The Defendant/Respondent had delayed the payment of Taxes and thereby he deprived the collection of the Taxes by the Plaintiff/Applicant;*

- (d) *The Defendant/Respondent had failed to establish he is solvent other than the rental income from the subject property in this case which is under charge;*
- (e) *The Defendant/Respondent had not justified his claim for extension of time to file an Answering Affidavit;*
- (f) *The Defendant/Respondent over a period of time delayed the proceedings on the sale of the property and defaulted the payment;*
- (g) *The tenants occupying the property is not a matter to be considered by this court;*
- (h) *No action taken by the Defendant/Respondent against the default judgment entered on 19<sup>th</sup> of September 2005 which led to this case and the Defendant/Respondent has no right to claim redress.*

In the circumstances, I make the following Orders:

- (a) *The summons for extension of time to file an Answering Affidavit dismissed;*
- (b) *The Plaintiff/Applicant is granted the Orders as prayed for in the Petition filed on 21<sup>st</sup> May 2012 subject to the following:*
  - (i) **The tax payers liability to recover on Sale of the property is restricted to the last assessment of tax liability of \$166,163.79 and if there is any payment made after 21<sup>st</sup> May 2012 by the Defendant/Respondent to be reduced from the said sum of \$166,163.79;**
  - (ii) **The Defendant/Respondent is granted time till 10<sup>th</sup> May 2013 to pay the total liability to the Plaintiff/Applicant;**

**(iii) The Order made under para (a) to be stayed until 10<sup>th</sup> May 2013.**

**Delivered at Suva this 8<sup>th</sup> Day of April 2013**

.....  
**C Kotigalage**  
**JUDGE**