

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. 375 of 2005

Home Finance Company Limited

Plaintiff

AND : Chandra Wati Ram, Alvin V Ram, and Vedna Rajeshni Devi Nand

Defendants

Appearances: Mr Devanesh Sharma for the plaintiff

Ms S. Devan for the defendants

Date of hearing: 9<sup>th</sup> August, 2012

## **JUDGMENT**

### ***1. The claim***

- 1.1 The plaintiff was in the business of lending monies to customers. The statement of claim states that the defendants made an application to the plaintiff to borrow monies, in order to purchase a property described as Housing Authority sub-lease No. 168235 being Lot 31 on deposited plan no. 3894 situated at Caukuro Road, Kinoya.
- 1.2 The plaintiff lent and advanced sums of money totalling \$72,984 to the defendants. To secure the loan, a mortgage was effected over the property. The defendants accepted the terms and conditions of the loan offer. It is stated that the interest payable on the loan was 9 % per annum; a default in payment triggered a higher interest rate of 15 % on all overdue instalments.
- 1.3 The statement of claim proceeds to state that the defendants agreed to make monthly repayments of \$1,023.00 for a period of 15 years. The defendants defaulted in payment of instalments, after 26<sup>th</sup> April, 2002.
- 1.4 A demand was made by the plaintiff. This not having been paid, the plaintiff exercised its power of sale under the security. The property was advertised for sale. The plaintiff accepted the highest tender of \$86,000.00. The sale proceeds were credited to the loan account of the defendants, leaving a debt balance of \$26,212.11, as at 1<sup>st</sup> March, 2005.
- 1.5 In these proceedings, the plaintiff claims the sum of \$26,212.11 together with interest, at the rate of 15 % per annum from 2<sup>nd</sup> March, 2005, until full repayment.

**2. The statement of defence and counter claim**

- 2.1 The defendants, in their statement of defence and counter claim, state that they first fell into arrears of their loan in late 1998.
- 2.2 The plaintiff requested them to make alternative arrangements to clear the arrears.
- 2.3 The defendants proposed that the first defendant's husband, Jai Ram be included as a fourth party to the mortgage. The plaintiff consented to this arrangement by its letter of 21 April, 1999. The defendants had to jettison this arrangement, since while they were in the process of registering Jai Ram as a co-mortgagor, the plaintiff sent a demand notice to the defendants demanding payment of \$77,230.56 .
- 2.4 There followed an increase in the interest rate for the loan from 9% to 10.25% and correspondingly, the monthly instalment, both without the "*knowledge or consent*" of the defendants.
- 2.5 The defendants then proposed that the one-third mortgage share of the first defendant be transferred to the second and third defendants, in order that the term of the mortgage could be extended to the maximum period of 25 years and the payments reduced. The plaintiff and the Housing Authority gave their consent to the proposed transfer. The plaintiff unreasonably declined the request made by Messrs Munro Leys and Company, solicitors for the defendants, for the title to lease no.168235, to enable registration of the transfer .
- 2.6 At a meeting held between the plaintiff and Jai Ram on 19<sup>th</sup> July, 1999, it was agreed that the defendants would pay a sum of \$600.00 per month, to settle the account. This was to be reviewed at the end of November, 1999. Jai Ram was to be included, as a co-owner of the property.
- 2.7 The defendants paid \$ 600.00 per month from 2<sup>nd</sup> August, 1999, until 31<sup>st</sup> January, 2000.
- 2.8 On 13<sup>th</sup> September, 1999, the plaintiff sent a letter alleging that the arrangement made at the meeting held on 19<sup>th</sup> July, 1999, had not been complied with, albeit the defendants had been paying \$600.00 per month, as agreed.
- 2.9 The plaintiff then without "*any proper notice*" to the defendants, unlawfully and negligently proceeded to advertise the property under mortgagee sale on 20<sup>th</sup> and 24<sup>th</sup> November, 1999.
- 2.10 It is further stated that consequent to a request made by Messrs Khan & Co, the defendants' solicitors, the plaintiff, on 17<sup>th</sup> December, 1999, provided them with the outstanding balance and gave the defendants 30 days time, to settle the debt.
- 2.11 On 7<sup>th</sup> February, 2000, the plaintiff wrote to the defendants advising that it was proceeding with the mortgagee sale and requested them to vacate the premises.

- 2.12 On 15<sup>th</sup> February, 2000, the defendants filed writ in the High Court at Suva (civil action no 58 of 2000) against the plaintiff for breach of contract and seeking that the plaintiff be restrained from proceeding with the mortgagee sale. On 16<sup>th</sup> May, 2000, Her Ladyship Madame Shameem had made order that the defendants pay the plaintiff a sum of \$750.00, as a minimum monthly instalment and take steps to have Jai Ram registered, as co-owner of the lease. In the event of default, the plaintiff was at liberty to exercise its rights.
- 2.13 The statement of defence and counter claim proceeds to state that on 14<sup>th</sup> August, 2000, the plaintiff once again wrongfully advertised the property for mortgagee sale.
- 2.14 On 30<sup>th</sup> November, 2000, the plaintiff gave its consent for Jai Ram to be included as a co-owner of the subject property. The plaintiff unlawfully and improperly interfered with the registration process to the detriment of the defendants and made it impossible to have Jai Ram registered, as a co-owner of the property.
- 2.15 On 12<sup>th</sup> April, 2001, the plaintiff entered into an agreement with Joseph Williams, for sale of the property.
- 2.16 On 25<sup>th</sup> July, 2001, proceedings were issued against the defendants under Order 88, seeking vacant possession of the property.
- 2.17 The defendants claim that the plaintiff acted in a fraudulent and negligent manner by entering into a sale and purchase agreement for the sale of the property. The defendants reiterates the matters in paragraphs 2.4, 2.5, 2.6, 2.9, 2.10, 2.15 and 2.16 above, as particulars of fraud. The defendants plead that the following acts, namely the advertising of the property without notice to them, failure to give them reasonable opportunity to comply with the demand under the mortgagee sale and obtain the best purchase price, selling at a time when there was instability in the country together with the matters stated in paragraphs 2.4, 2.5 and 2.9 above, constitute negligence on the part of the plaintiffs.
- 2.18 The defendants also claim general damages for fraudulent and negligent conduct and for loss and anxiety suffered due to the conduct of the plaintiff.

### ***3. The plaintiff's reply and defence to counter-claim***

- 3.1 The plaintiff, in its reply and defence to the counter-claim, states the plaintiff made a demand on the defendants for payment of \$77,230.56, since their account continued to be in default. The defendants accepted the condition stipulated in the offer letter, that the interest rate would be increased, in the event of default.
- 3.2 The plaintiff consented to the first defendant transferring her 1/3 share in equal shares to the second and third defendants, subject to certain conditions. The defendants failed to

comply with these conditions. In consequence, the plaintiff declined the request made by Munro Leys, solicitors for the defendants for the title to the property.

- 3.3 The plaintiff admits the meeting with the first defendant's husband, Jai Ram, on 19<sup>th</sup> July, 1999, but states that it did not confirm as acceptable, the proposal of the defendants to make \$600.00 monthly repayments towards the loan. The plaintiff consented to Jai Ram, being joined in the loan, to assist the defendants.
- 3.4 The defendants made repayments on nine occasions commencing on 14<sup>th</sup> August, 1999, and culminating on 28<sup>th</sup> April, 2000. The defendant's account again fell into arrears. There followed continuous default.
- 3.5 The plaintiff states that any other payments would have been made on a "*without prejudice basis*".
- 3.6 The plaintiff admits it provided a settlement figure as requested by the solicitors for the defendants and states that it was grossly misled by the defendants' solicitors that Colonial National Bank had approved the refinancing loan. The plaintiff denies it gave the defendants 30 days time to settle the debt.
- 3.7 The defendants were cognisant and notified that in the event they defaulted, the plaintiff would exercise its powers of mortgagee sale. Tenders were called. The property was sold to the highest bidder.
- 3.8 A consent order was made in civil action no. 58 of 2000 on 16<sup>th</sup> May, 2000. The order gave the plaintiff leave to exercise its powers of mortgagee sale, in the event the defendants fail to comply with that order. The defendants failed to comply.
- 3.9 The plaintiff states it consented to Jai Ram to be included, as a co-owner of the property and clear the arrears, provided that at least 50% of the arrears, namely \$2,195.00 was paid by July 1999, and the defendants pay \$600.00 per month from August, 1999, for 4 months. Jai Ram declined to comply with these terms.
- 3.10 The plaintiff facilitated the defendant to obtain re-finance and gave them adequate time to settle the loan. Finally, the plaintiffs proceeded with the mortgagee sale.

#### **4. *The defendants reply to the defence to counter claim***

- 4.1 The defendants, in their reply to their defence and counter claim, state that they did not anticipate that the plaintiff would send a demand notice, contrary to the representations and arrangements made with the plaintiff to settle the arrears. The plaintiff did not assist the defendants to have Jai Ram registered as a co-owner.
- 4.2 The defendants should have been notified of any increase in the interest rate.

- 4.3 The defendants state that they were consistent and regular with their repayments and made payments above the agreed sum of \$600.00. On 30<sup>th</sup> November, 1999, the defendants made a further \$1,000.00 payment. The defendants were never advised that these payments were being received on a “*without prejudice*” basis.
- 4.4 The property was advertised for mortgagee sale in November, 1999, when the arrangement made on 19<sup>th</sup> July, 1999, was still valid .
- 4.5 The defendants further state that they were never served with proper notice that the plaintiff was proceeding with a mortgagee sale.
- 4.6 The plaintiff was in contempt of the court orders made on 16<sup>th</sup> May 2000, by advertising the property for mortgagee sale on 14<sup>th</sup> August, 2000.

## 5. *The hearing*

- 5.1 At the hearing, Ms Devan, counsel for the defendants stated that the defendants consent to judgment being entered against them, in a sum of \$ 16,000. Ms Devan also stated that she is withdrawing paragraphs 11 and V of the counter-claim made under the Fair Trading Decree, now repealed.
- 5.2 The plaintiff did not call any evidence.

### 5.2.1 *The second defendant’s evidence*

The second defendant, Alvin Ram, testified in support of the counter-claim. The property originally belonged to his grand-father. He had sold it to Rajendra Gaundan. The defendants repurchased it from Rajendra Gaundan.

He said that he together with his mother and sister, applied for a loan to the plaintiff, to purchase the property. The property was mortgaged to secure the loan. Subsequently, the defendants fell into arrears.

The witness’s father, Jai Ram, had made representations to the plaintiff, to be included as a co-mortgagor. The plaintiff had advised that the period of re-payment would be reduced, if he was joined as a mortgagor. The plaintiff consented to Jai Ram being joined as a mortgagor, by its letter of 21 April,1999, subject to successful registration of the transfer documents. The plaintiff did not release the title copy of the lease, to effect the transfer.

The defendants then, by letter of 10 June, 1999, made request to the plaintiff that the first defendant’s share be transferred to the second and third defendants The plaintiff had informed the defendants, by letter of 18 June,1999, that they would have to make re-payments, in order that the title be released. The defendants, by letter of 14 July,1999, informed the plaintiff that they had made two payments of \$ 1000 on 15 and 21 June on

account of arrears and would continue with the regular revised payments from 31<sup>st</sup> July. The defendants, by letter of 30 November, 1999, sought a review of the monthly instalment payable. After the first year of loan, the plaintiff informed the defendants that since it was making profits, their repayments would be reduced, as But no reduction was made.

Alvin Ram proceeded to say that while the defendants were making minimum payments, the plaintiff had advertised the property for mortgagee sale. The defendants had to vacate within 7 days. Thereafter, the defendants filed an action against the plaintiff in the High Court. The consent order delivered by the court on 18 May, 2009, provided that the defendants were required to pay \$ 750 monthly and Jai Ram was to be registered as a co-mortgagor. Since the copy of the title was not released by the plaintiff, Jai Ram could not be added. The witness said that the court also ordered that the mortgagee sale be stopped.

The property was re-advertised for sale. The plaintiff was not willing to accommodate the defendants, despite representations made being made by Jai-Ram. The property was valued at \$ 180,000, but was sold to Joseph Williams at \$ 89,000. Mr Sharma, counsel for the plaintiff objected to a valuation report being produced, since its author was not called to testify. Ms Devan admitted that no notice was given in this regard, to Mr Sharma.

5.2.2 In cross-examination, the letter of offer made to the plaintiff, was produced. The letter of offer provides that the interest rate could be revised, after a year. The defendants accepted the conditions in the offer letter. It transpired that the property was sold by the witness' father and uncle to Rajendra Gaundan for \$ 65,000 . Rajendra Gaundan sold the property to the defendants for \$ 77,000. In support, the relevant Transfers of Lease were produced. The property was insured for \$ 107,000. It was suggested to the witness that given the property was purchased for \$ 77,000, the mortgagee sale for \$ 86000 was acceptable.

The property was sold by the witness' father to Rajendra Gaundan to pay his debts to ANZ Bank. It emerged that Jai Ram could not be part of the lending arrangements at the initial stage, since he had a receiving order against him and was declared bankrupt on 28 February, 2003. The receiving order issued by the Magistrates' Court and a bankruptcy search form in confirmation, were produced. Mr Sharma elicited that the witness had no document to establish that FNPF had agreed to advance his funds, to Jai Ram.

The witness was referred to the consent order obtained by the defendants on 18 May, 2009, giving the defendants an opportunity to pay a reduced instalment of \$ 750 a month; the instalment to be reviewed on 31<sup>st</sup> October, 2000, and granting the plaintiff the liberty to exercise its rights as a mortgagee, in the event the defendants default. In this context, Mr Sharma referred to a letter of 7 February, 2000, from the plaintiff to the solicitors for the

defendants and an internal document of the plaintiff dated 14 August, 2000, both suspending the mortgage sale.

Alvin Ram accepted that the plaintiff was very accommodating to the defendants. He also accepted that property was duly advertised, since ten advertisements were published. The advertisements were produced. In response to the witness's assertion that the plaintiff did not give then adequate time to settle the loan, Mr Sharma referred to the correspondence sent by the plaintiff on 3<sup>rd</sup> April, 2001, followed by a notice 21 June, 2001, to vacate the premises. Alvin Ram then accepted that the defendants were given adequate opportunity to redeem the mortgage. It transpired that after the sale proceeds were credited to their account, the defendants were charged interest at the original rate of 9 % on the outstanding amount and a sum of \$17405.56 was written off, as evidenced in the statement of account produced. This was accepted by Alvin Ram.

6. ***The determination***

- 6.1 The defence and counter-claim, grouped together as they are, contain a cascade of statements alleging that the plaintiff, by their fraudulent and negligent conduct, thwarted the alternative arrangements proposed by the defendants to settle their loan and proceeded to exercise their powers of mortgage sale and sell the property at less than its market value.
- 6.2 Under the first particular of fraudulent conduct, it is alleged that the plaintiff declined the request made by the solicitors for the defendants, for the title to the lease, albeit, the plaintiff gave its consent for the first defendants' one-third mortgage share to be transferred to the second and third defendants and representing to the defendants that the term of the mortgage would be extended to a maximum of 25 years..
  - 6.2.1 The plaintiff's argument in riposte was that its consent was conditional. The defendants did not comply. In consequence, the plaintiff declined the request for the title.
  - 6.2.2 The plaintiff's reply of 18 June, 1999, to the letter from the defendants seeking consent for the transfer, is in these terms :

**RE: CONSENT TO TRANSFER**

*We refer to your letter of 10 June 1999 faxed to us this morning.*

*The company has no objection to the proposed transaction. However **the consent is granted subject to the following conditions.***

1. *This consent is not treated in the same way as that granted on 21/4/99 which has delayed the whole matter by a further two months making the arrears position even worse.*
2. *Your arrangement made on 15/06/99 to pay another \$1,000.00 before 18/06/99 is honoured.*
3. *The necessary transfer document is processed without any delay ONLY upon which mortgage repayment adjustments can be entertained.*
4. *Your repayments from now on to the date of conclusion of the proposed transaction, are made promptly pursuant to the initial agreement entered into.*

*In view of the critical status of your account in the first nine months of its tenure, non compliance of any of the provisions stipulated hereinabove, will lead to the appropriate recovery action without any further reminder, notice or advise whatsoever.*(emphasis added)

- 6.2.3 In my judgment, it is manifest that the plaintiff consented to the proposed transfer with the caveat that it retained its right to insist on repayments, in accordance with the initial loan agreement. Alvin Ram, in evidence in chief, said that the plaintiff, by letter of 18 June, 1999, had agreed to the transfer, provided arrears were paid. The statement of account produced depicts that the arrears were not paid.
- 6.3 The second particular of fraudulent conduct asserts that the parties had agreed that the defendants would pay a sum of \$600.00 per month, to settle the account, which term was to be reviewed in November, 1999, but then on 20 July, 1999, demanded that \$ 2195 be paid by the end of July, 1999, and proceeded to advertise the property for mortgage sale.
- 6.3.1 The plaintiff admits the meeting with the first defendant's husband, Jai Ram, on 19<sup>th</sup> July, 1999, but states it did not confirm the proposal to make \$ 600 monthly repayments towards the loan. The plaintiff accepts the defendants made payments of \$ 600 on nine occasions commencing on 14<sup>th</sup> August, 1999, and culminating on 28<sup>th</sup> April, 2000, but states this was followed by continuous default.
- 6.3.2 Jai Ram, in his letter to the plaintiff of 30 November, 1999, states he was expecting a review at the end of 30 November, 1999, but instead the property had been advertised for mortgagee sale.
- 6.3.3 It is evident from its acceptance of nine such instalments without protest, that the plaintiff did agree to the proposal to make \$ 600 monthly repayments towards the loan. But I do not accede to the argument that the act of leniency in accepting a lesser amount than the



agreed monthly instalment, inhibited the plaintiff's entitlement to enforce its rights under the terms and conditions of the letter of offer.

6.4 Next, it is contended that the plaintiff's interference with "*the registration process .. (made) it impossible for the Defendants to forthwith take steps to have Jai Ram to be registered as a co-owner*" of the lease constitutes fraudulent conduct, on the part of the plaintiff. I believe the reference to "*co-owner*" is a typo and should read as co-mortgagor. The defendants also aver that the plaintiff's conduct was negligent in "*Blatantly disregarding the agreement made between the (parties) regarding the inclusion of Jai Ram as a co-mortgagor*".

6.4.1 The defendants, in their statement of defence and counter claim, state that the plaintiff consented to Jai Ram being included as a co- mortgagor, initially by its letter of 21 April,1999.

6.4.2 That letter, as Alvin Ram quite correctly stated in evidence in chief, was conditional on the successful registration of the required transfer documents. Alvin Ram glossed over the rest of the letter, which more relevantly, goes on to state as follows:

*...you are required to make some periodical payments at least to avoid the arrears escalating further*  
*Should in case no payments come in at all, we may be left with no option but to proceed with the recovery action.*

6.4.3 The defendants, aver that they once again requested the plaintiff's consent for Jai Ram to be included, as a co- mortgagor. The plaintiff, in its reply, states it consented to the proposed action, provided that at least 50% of the arrears, namely \$2,195.00 was paid by July 1999, and the defendants pay \$600.00 per month from August, 1999, for 4 months. Jai Ram declined to comply with these terms.

6.4.4 The defendants accept that the plaintiff made demand of \$ 2,195.00 in July, 1999.

6.4.5 I am satisfied that the plaintiff gave conditional consent for Jai Ram, to be included, as a co- mortgagor. The defendants failed to comply. In my judgment, the plaintiff was entitled to decline to give the lease document to the solicitors for the defendants.

6.5 It is argued that the plaintiff increased the rate of interest and the monthly instalment without any indication to the defendants. I have perused the terms and conditions set out on the letter of offer. It clearly says that the "*Interest rate is to be reviewed after 1 year from the date of first disbursement*". The defendants accepted the terms of the offer, as

evidenced in the acceptance note. This was confirmed by Alvin Ram, in cross-examination. I find no requirement in the letter of offer, that the defendants were required to be informed of an increase in the interest rate.

6.6 The defendants claim that the plaintiff acted in a negligent manner, in advertising the property for sale, without giving them proper notice. It is also contended that the plaintiff failed to give the defendants reasonable opportunity to comply with the demand and take steps to redeem the mortgage

6.6.1 In my view, the plaintiff gave the defendants adequate notice first on 3 April, 2001, and three months later, by letter of 21 June, 2001, to vacate the premises. When these documents were shown to Alvin Ram, he accepted that the defendants were given adequate opportunity to redeem the mortgage.

6.7 Ms Devan, in her closing submissions, has relied on section 72 (1) of the Property Law Act (cap 170). This section provides that a mortgagor “*is entitled to redeem the mortgaged property at any time before the same has been actually paid by the mortgagee under his power of sale, on payment of all moneys due and owing under the mortgage at the time of payment*”.

6.8 In my view, there is no doubt that if a mortgagor tenders all arrears, the mortgagee loses its powers to sell the property. But this was simply not done here.

6.9 Finally, I consider the contention that the property was sold at less than the market value. Alvin Ram asserted the market value was \$ 180,000. No evidence in support, was adduced. It emerged in the cross-examination of Alvin Ram, that the defendants had purchased the property in August, 1998, for \$ 77,000. It is an agreed fact that the property was advertised. The evidence disclosed that the property was advertised in the Fiji Times, on ten occasions. In the absence of any cogent evidence to the contrary, I would accept the contention that the property was sold at less than the market value.

6.10 On a review of the totality of the evidence, all that can be discerned is the plaintiff granting the defendants reasonable opportunity to make alternative arrangements and obtain re-financing, clearly not falling within fraudulent or negligent conduct on the part of the plaintiff. In my view, it is not inconsistent for a lender, to allow a borrower to make alternative arrangements, while yet preserving the right to call for repayment and then proceeding to exercise its powers of sale, when there is continuous default. *A fortiori*, the consent order of the High Court gave the plaintiff the liberty to exercise its rights as mortgagee, in the event the defendant defaults for more than fourteen days.

6.10.1 On a consideration of the several correspondence from the plaintiff to Messrs Khan & Co, solicitors for the defendants, it would appear that the plaintiff delayed in exercising its mortgagee rights, on account of the representations made therein .

6.10.2 In this regard, one of the letters in evidence, written on 16 December, 1999, reads as follows:

*Your correspondence of 14<sup>th</sup> inst in respect of the captioned clients, refer.*

*In response thereto, we have prepared the settlement figure as requested therein. Could you please provide an authority from the mortgagors before we release the information to you.*

*Further to the same, be advised that **the aforesaid clients on numerous occasions entered into diversified arrangements of similar nature**, since the loan disbursement was executed on 21 September 1998. These included undertakings by solicitors providing differing proposals. However, **none of them have been honoured and no settlement has eventuated to date.***

*In lieu thereof, the arrears continued to escalate due to non-compliance of repayment provisions of the loan agreement.*

*In view of the above, we request you to provide us with satisfactory and acceptable evidence (of availability of funds to enable them to meet their obligations). The said information is to be supplied at least by 24 December 1999.*

*Will provide us with **no alternative but to proceed to recover our debt under the terms of our mortgage** .(emphasis added)*

6.10.3 There is another letter of 5 January, 2000, of which I read the material part

*As requested, the settlement figure was forwarded to your office on 17<sup>th</sup> ult. However, there has been no response since then.*

*It should also be noted that **we have no evidence with us to accept that the refinancing facilities are in process. Could you therefore oblige us with the same and advise as to when you expect to conclude the transaction.***

*We are sorry to say that, in view of the critical status of the account, we will be left with **no alternative but to proceed with the mortgagee sale, if we do not hear from your good office, forthwith.** (emphasis added)*

6.10.4 Then again on 7<sup>th</sup> February, 2000, the plaintiff wrote:

*We very reluctantly and ONLY upon receipt of firm assurances and undertakings from your good office, suspended the mortgagee sale proceedings in respect of the captioned mortgagors.*

*Reference is also made to your latest letter of 6<sup>th</sup> inst whereby you very clearly stated that a settlement date would be given by 14<sup>th</sup> January. However, from the turns of events, it has become evident that your foresaid clients are accustomed to procrastinating the issue ever since the loan was disbursed in September 1998. Since no settlement is imminent and the poor status of the account continues, we hereby advise that the mortgagee sale process will now proceed without any further delay.*

*Your clients are therefore required to vacate the mortgaged property and deliver vacant possession thereof, forthwith.* (emphasis added)

6.11 I conclude that for the reasons set out in the preceding sub-paragraph, the claim of the defendants for a declaration that the plaintiff has acted in a fraudulent and negligent manner is ill-founded, as is the corresponding claim for general damages and loss and anxiety .

**7. The plaintiff's claim**

The defendants have consented to judgment being entered against the plaintiff, in a sum of \$ 16,000. In my judgment, the evidence establishes the plaintiff's claim for the disputed balance claim. Accordingly, the plaintiff is entitled to judgment against the defendants in a sum of \$26,212.11 together with interest, at the rate of 15 % per annum from 2<sup>nd</sup> March, 2005, until full repayment, as prayed for in the statement of claim.

**8. Costs**

I have found that the allegations of fraudulent and negligence conduct on the part of the plaintiff, as set out in the 49 averments of the statement of defence and counter-claim are ill-founded. It is right that the defendants should pay the plaintiff's costs of having to respond, as it has, in its reply and at the hearing. In my judgment, the plaintiff is entitled to costs summarily assessed in a sum of \$ 5000.

9. **Orders**

- (a) *Judgment is entered against the defendants in a sum of \$26,212.11 together with interest, at the rate of 15 % per annum from 2<sup>nd</sup> March, 2005, until full repayment.*
- (b) *The defendants' counter-claim for a declaration that the plaintiff has acted in a fraudulent and negligent manner is declined.*
- (c) *The defendants' claim for general damages and loss and anxiety is declined.*
- (d) *The defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 5000 .*

8<sup>th</sup> May, 2013

A.L.B.Brito- Mutunayagam

**JUDGE**