

IN THE HIGH COURT OF FIJI
AT LAUTOKA
WESTERN DIVISION

HBC 137 of 2012.

BETWEEN : **RUSTAM ALI** of Leonidas Street, Lautoka, Businessman.

PLAINTIFF

AND : **CREDIT CORPORATION (FIJI) LIMITED** a limited liability company having its registered office at Suva.

DEFENDANT

R U L I N G

INTRODUCTION

[1]. The defendant seeks an order for security for costs against the plaintiff under Order 23 Rule 1(a) of the High Court Rules 1988. Its application was filed by Janend Sharma Lawyers and is supported by an affidavit of Rupesh Chandra sworn on 09 May 2013. The application is opposed. The plaintiff is a permanent resident of New Zealand. He resists the application by saying simply that **“the defendant can have a stop departure placed against [his] travel until the determination of this action”**. I note that the address he has given which is indorsed on the writ is a Lautoka address. Whether the facts as pleaded do raise a strong prima facie case in favour of the plaintiff is relevant in the balancing exercise. Below I extract in full the plaintiff’s statement of claim:

1. **THAT** the Plaintiff is a Businessman.
2. **THAT** the Defendant Company is a financial institution providing loans to its customers.
3. **THAT** on the 26th day of September, 2011 the Defendant Company approved a loan to **WINDSOR INVESTMENT (FIJI) LIMITED** of Samabula, Suva purported to be a limited liability company whose Directors were the Plaintiff and his mother **SHAMSHAD BEGUM** of Leonidas street, Lautoka.
4. **THAT** the security documentation prepared by the Defendant Company for the said loan was first registered mortgage over Housing Authority Sub-Lease No. 245142 being Lot 7 on DP No. 4253 and a Guarantee from the Plaintiff and his mother **SHAMSHAD BEGUM**.
5. **THAT** the signatures on the Mortgage and the Guarantee are purported to be signed by the Plaintiff and his mother **SHAMSHAD BEGUM**.
6. **THAT** on the 21st day of March, 2012 the Plaintiff wrote a letter to the Defendant Company and advised them that neither him nor his mother are the Directors of the company and the signatures appearing on the Mortgage and Guarantee are not of the Plaintiff and his mother as his mother on the date of the signature was away overseas which can be proved by her passport.
7. **THAT** the Plaintiff believes that the signatures on the security documents were forged by someone to obtain a loan and also the signatures on the formation of a limited company

documents were not his nor his mother's and both of them are unaware of the company named **WINDSOR INVESTMENT (FIJI) LIMITED**.

8. **THAT** the Defendant Company breached the respective legislation of the FTR Act while approving loan to **WINDSOR INVESTMENT (FIJI) LIMITED** as they failed to check the identifications of the signatories on the Mortgage and Guarantee.
9. **THAT** due to the breach by the Defendant Company the Plaintiff and his mother are now suffering and the Plaintiff is unable to return back overseas where he resides.
10. **THAT** due to the breach by the Defendant Company the Plaintiff suffered from shock and depression.

PARTICULARS OF DEPRESSIONS

- (a) Difficulty in sleeping
 - (b) Loss of appetite.
 - (c) Low mood and loss of interest.
11. **THAT** due to the above the Plaintiff had to visit his Doctor for regular check-ups.
 12. **THAT** due to the actions by the Defendant Company in approving loan to **WINDSOR INVESTMENT (FIJI) LIMITED** without checking the evidence of its proprietors the Plaintiff and his mother suffered damages.

PARTICULARS OF DAMAGES

- (a) Losing interest in Business.
- (b) Losing Customers.
- (c) Loss of reputation as a good businessman.
- (d) Loss of Customers due to stress.

AND therefore the Plaintiff claims from the Defendant:-

- (i). The sum of \$5,000,000 (Five Million Dollars) being damages for lost of business and customers.
- (ii). Damages for stress.
- (iii). Any other order or orders this Honourable Court deems just.
- (iv). Costs of this action on Solicitor/Client indemnity basis.

THE LAW

- [2]. The authority of the court to grant **security for costs** is provided for in **Order 23, Rule 1(1)(a)** of the **High Court Rules 1988**:

(1) "Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court

(a) that the plaintiff is ordinarily resident out of the jurisdiction, or

.....

then, if having regard to all the circumstances of the case, the Court thinks it is just to do so, it may order the plaintiff to give such **security for** the defendant's **costs** of the action or proceeding as it thinks just."

- [3]. In **Babu Bhai Patel –v- Manohan Aluminium Glass Fiji Ltd Suva High Court Civil Action No. HBC 0019/19**, Mr. Justice Fatiaki held that once it is established that the appellant was not ordinarily resident in Fiji, the 'onus' shifted to him to satisfy the court that he has property within the jurisdiction which can be made subject to the process of the court. But even if he has no assets in Fiji, he may still avoid having to pay security for costs if he is able to convince the court under Order 23 that, having regard to all the

circumstances of the case, it would not be just to order security for costs or that it would be oppressive to do so. No such evidence or argument has been placed before me by the plaintiff. Nor has the plaintiff argued delay¹.

CONCLUSION

[4]. After considering all, I order that the plaintiff pays security for costs of \$7,500 (seven thousand five hundred dollars only) to Court within 21 days of the date of this ruling. If the plaintiff fails to do so, the claim will be struck out. Case adjourned to **28 October 2013 at 8.30 a.m.** for mention before the Master.

.....
Anare Tuilevuka
JUDGE
27 September 2013.

¹ as per French J in Bryan F Fincott and Associates Pty Ltd v Eretta Pty Ltd and Ors (1987) 16 FCR 497 at 514.

"The further a plaintiff has proceeded in an action and the greater the costs it has been allowed to incur without steps being taken to apply for security for costs , the more difficult it will be to persuade the court that such an order is not, in the circumstances, unfair and oppressive"