

IN THE HIGH COURT OF THE REPUBLIC OF FIJI

WESTERN DIVISION

AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 47 OF 2013

BETWEEN : **DAUDS TRANSPORT LIMITED** a limited liability company having its registered office at Dauds Service Station, Princess Road, Lautoka, Saweni

Plaintiff

AND : **ANISH KUMAR** of Lautoka, Director of Chandar Sen Brothers Transport Limited.

1st Defendant

AND : **CHANDAR SEN BROTHERS TRANSPORT LIMITED** having its registered office at Field 40, Lot 1, Navutu, Lautoka

2nd Defendant

Counsel:

Mr A Sudhakar for the Plaintiff

Mr V Sharma for the 1st defendant

No Appearance for the 2nd defendant

Date of Hearing : 05/06/14

Date of Judgment : 27/06/14

J U D G M E N T

Introduction

1. This is an application for Summary Judgment filed 21 January 2014 by the Plaintiff accompanied by a supporting affidavit of Farook Khan. The application seeks the following orders:-

1. **THAT** Judgment be entered summarily against the 1st and 2nd defendants jointly and severally in the sum of \$83,983.45 or in the alternative summary judgment against the 1st defendant and/or 2nd defendants.
 2. **THAT** the defendants be liable for interest on the judgment sum.
 3. **THAT** the defendants be liable for costs.
 4. **SUCH** other relief and Orders as this Honourable Court deems just and fair.
2. The application is made pursuant of Order 14 Rule 1 of The High Court Rules, 1988 (“the HCR”) and inherent jurisdiction of the court. Ord. 14, r. 1 of the HCR provides:

1.-(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ other than-

(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment,

(b) an action which includes a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 86 applies.

3. The first defendant did not file any affidavit in response to the plaintiff’s application for summary judgment, albeit granted opportunity to do so.
4. Both parties made their oral submissions at the hearing. They did not file any written submission.

Discussion & Determination

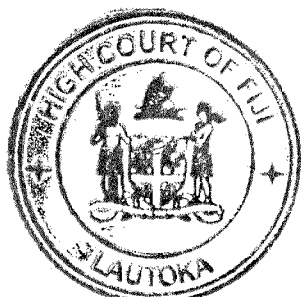
5. The plaintiff brought this action against the defendants to recover the sum of \$88,583.45, being the amount due on account of fuel sold and delivered to the second defendant. The first defendant in May 2011 by way of a guarantee/undertaking in writing agreed to pay to the

plaintiff the aforesaid sum by instalments of \$5,000.00 commencing from June 2011 until the whole sum is fully paid and satisfied. Which the first defendant failed to comply with after payment only \$4,600.00.

6. The second defendant neither filed acknowledgement or service nor statement of defence hence default judgment has been entered against the second defendant. Since a default judgment has been already entered, the plaintiff cannot seek summary judgment against the second defendant. Any application for summary judgment against the second defendant is misconceived and therefore such application must be struck out.
7. The first defendant filed statement of defence and admitted signing the document dated 16 May 2011 (the guarantee) as the Director of the second defendant and stated that he was only acting in his capacity as Director of the second defendant (I was informed during the hearing that the second defendant is now wound up).
8. The plaintiff claim is based on goods sold and delivered. The first defendant has filed acknowledgement of service and statement of defence. Hence the plaintiff can apply for summary judgment under Ord. 14 of the HCR on the ground that the first defendant has no defence to the claim included in the writ.
9. At hearing, Mr Sharma counsel for the first defendant contended that the guarantee given by the 1st Defendant was on behalf of the Company, 2nd Defendant. Therefore he is not personally liable.
10. Conversely, Mr Sudhakar counsel for the plaintiff argued that the undertaking was given by the first Defendant individually on his own capacity and therefore he is liable personally.
11. I have carefully perused the guarantee signed by the first defendant. He has signed it without the company seal and there is nothing in that document to suggest that he is signing for and on behalf of the

company. In the absence of any evidence that he signed the document for and on behalf of the company it must be presumed that he signed it on his own behalf. I would therefore hold that he must take responsibility of that document.

12. The 1st defendant did not file any affidavit against the plaintiff's application for summary judgment.
13. The court may grant judgment against the defendant under Ord. 14, r. 3, if the defendant failed to satisfy the court with respect to the claim that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim.
14. This is an application for Summary Judgment. The 1st Defendant is obliged to show why Summary Judgment should be entered against him. He has not shown a defence on merits to the claim of the plaintiff. It follows he has failed to satisfy the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the plaintiff's claim.
15. I therefore entered Summary Judgment against the 1st Defendant with the cost of \$500.00 which is summarily assessed.
16. Orders accordingly.



At Lautoka

27/06/14

Solicitors:

Messrs Krishna & Co, Barristers & Solicitors for the plaintiff

Messrs Vijay Naidu & Associates, Barristers & Solicitors for the defendant

M H Mohamed Ajmeer

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M H Mohamed Ajmeer

Master of the High Court