

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

High Court Civil Action No. 213/2012

BETWEEN : **PRIME LAND DEVELOPMENT LIMITED** a limited liability
company having its registered office at Suva.

Plaintiff

AND : **LEE JOO BONG** of 46 Fasa Avenue, Martintar, Nadi, Businessman.

Defendant

Appearances : M/S S.B. Patel & Co. for the Plaintiff
M/S Koyas for the Defendant

R U L I N G

1. The plaintiff (“**Prime Land**”) entered default judgement against the defendant (“**Bong**”) on 21 November 2012 on account of Bong’s failure to file and serve a statement of defence.
2. Before me now is the Bong’s application to set aside the default judgement.
3. The default judgement in this case was entered regularly.
4. The principles of setting aside default judgement are clear.
5. A default judgement entered irregularly must be set aside as of right.
6. However, where the default judgement had been entered regularly, the defendant must show an affidavit of merits in order to succeed in setting aside the default judgement (see **Fiji Sugar Corporation Limited v Ismail** [1988] FJCA 1; [1988] 34 FLR 75 (8 July 1988)).
7. This does not mean that the defendant must establish its defence. He only need to establish a prima facie defence (**Evans v Bartlam**).
8. In the case of **Fiji Sugar Corporation Limited v Ismail**, the Fiji Court Appeal said that:

“.....a draft defence is not necessary, what is required is the affidavit disclosing of prima facie defence.
9. The Court also said that although there is no rule that the defendant must satisfy the court that there is a reasonable explanation why judgment was allowed to go by default it is something which the Court can consider in the exercise of its discretion whether or not to set aside the default judgement.

"The principle obviously is that, unless and until the court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure."

10. Having perused the statement of claim filed by Prime Land on 04 October 2012 and the affidavit of Ms. Laisani Tabuakuro for and on behalf of Bong, and which is filed herein support of the summons to set aside default judgement, I am satisfied that Bong has a meritorious defence.

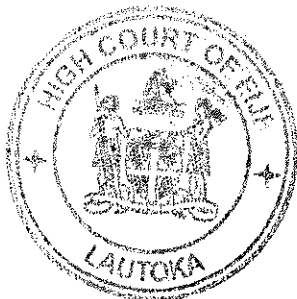
11. My reasons follow:

- (i) Prime Land's cause of action against Bong is based on a lease tenancy agreement that they had entered into on 26 August 2011. By that agreement, Prime Land had leased to Bong for a term of 1 year (from 01 September 2011 to 31 August 2012) some ten accommodation units in a building which the former owns at a monthly rental of \$1,000 per unit.
- (ii) Prime Land alleges that Bong did not keep the premises in good and tenable condition and as a result, caused damages to all the units.
- (iii) Prime Land alleges that at the end of their agreement, the units were in such disrepair that it could not rent out the premises immediately. It had to spend money to repair the units. I gather that there was a two month period when Prime Land had to carry out repairs.
- (iv) Prime Land's claim is for loss of rent from income during the two months when it was repairing the units and also for the cost of repairs.
- (v) Bong's defence as appears from the affidavit filed on his behalf is that the materials in the units which Prime Land alleges were damaged were made from cheap material and the building itself was poorly constructed. It is alleged on his behalf that the damages were due to normal wear and tear of the poorly constructed building and inadequately finished units.

12. I think the line of the proposed defence raises triable issues.

13. Accordingly, I set aside default judgement. Costs to the plaintiff which I summarily assess at \$800 (eight hundred dollars only).

14. Defendant to file and serve statement of defence in 21 days i.e. by 28 July 2016. 14 days thereafter to Plaintiff to file and serve reply i.e. by 11 August 2016.
15. Case adjourned to 22 August 2016 for mention at 10.30 a.m.



Anare Tuilevuka
JUDGE
07 July 2016