

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 140 of 2016

BETWEEN : FIJI DEVELOPMENT BANK
PLAINTIFF

AND : ZOMBEE LIMITED
1ST DEFENDANT

AND : JAE WOOK LEE
2ND DEFENDANT

AND : SEBASTIAN JOHN RAHIMAN
3RD DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr Lajendra [Lajendra Lawyers]

DEFENDANT : Mr Lanyon [Law Solutions]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 18 October 2018

INTERLOCUTORY RULING

[Preliminary Objections - No Locus to bring application without prior leave of the Court or sanction of the Official Receiver]

-
1. The Third Defendant had filed his summons to set aside and stay a default judgment entered against him.
 2. The Plaintiff's Counsel has raised a preliminary issue that the Third Defendant does not have the legal standing to bring this action.

According to the Plaintiff in his affidavit paragraphs 5-7:

5. *The Summons to set aside and stay of Judgment by Default was filed in the High Court by the 3rd Defendant on 2 October 2017. The Affidavit in Support of the Summons to set aside was deposed by the 3rd Defendant in person and was also filed on 2 October 2017.*
6. *The 3rd Defendant was adjudged Bankrupt and a Receiving Order was made against him on 27 September 2017. Annexed hereto and marked "A" is a copy of the said Order which was lodged at the Magistrates*

Court Registry on 4 October 2017 and it was issued out of the Magistrates Court Registry on 11 October 2017.

7. *From the Order the Court will note that the 3rd Defendant was represented by counsel, namely, Mr Sione Fa of Law Solutions at the time when the Receiving Order was made on 27 September 2017.*

Hence it is asking for the application by the Third Defendant to be dismissed.

3. The 1st Defendant in his Affidavit states as follows:

The receiving order was made against him on 27 September 2017.

Notice of Intention to Appeal was filed on 4 October 2017 and served on Plaintiff's Counsel on 4 October 2017 and the Official Receiver on 16 April 2017.

On 17 October 2017, the Official Receiver informed his counsel that they did not receive any receiving order.

The Official Receiver later on 27 October 2017 confirmed receiving the order.

The Application to set aside default judgment was filed on 2 October 2017 and served on the Plaintiff's solicitor on 5 October 2017.

On 7 November 2017, his solicitors wrote to the Official Receiver to get consent.

On 14 November 2017, the Official Receiver granted him consent to continue with the legal proceedings.

4. Pursuant to Section 9 of the Bankruptcy Act:

"upon making of a receiving order, the official receiver shall be constituted receiver of the property of the debtor."

No creditor shall have remedy against the property or debtor or shall commence any action or other legal proceedings except with the leave of the court.

5. Upon presentation of a Bankruptcy Petition the Court may stay any action, execution or other legal proceedings are pending, on proof that a bankruptcy petition has been presented, either stay the proceedings or allow them to continue on such terms as it may think just.
6. The receiving order was made against the Third Defendant on 27 September 2017.

Said application was filed on 2 October 2017.

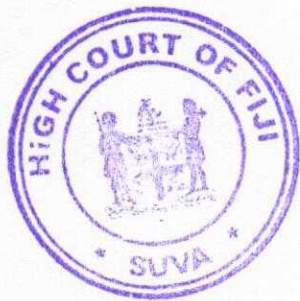
There is no order made for stay of the Receiving Order.

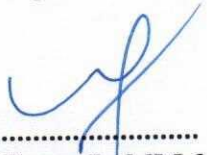
7. Hence as at 02 October 2017, the Third Defendant had no power to make the said application except without leave of the court.

Had the application made prior to 27 September 2017, the court could exercise its power to stay until such time the Third Defendant got leave from the Official Receiver to proceed.

8. Accordingly I will uphold the preliminary objection raised by the Plaintiff's Counsel and dismiss the application on the grounds that the 3rd Defendant did not obtain any prior leave of the Court before making the said application to set aside the default judgment nor did it as at 02 October 2018 have the sanction of the Official Receiver the commence to commence the application.

9. There shall be costs awarded in sum of \$850 against the Third Defendant.




.....
Vandhana Lal [Ms]
Acting Master
At Suva.