

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 258 of 2018

BETWEEN: THE FIJI NATIONAL PROVIDENT FUND BOARD a body corporate having its registered office at 33 Ellery Street, Suva.

PLAINTIFF

AND: REGISTRAR OF COMPANIES having its registered office at Level 2, Suvavou House, Suva.

DEFENDANT

BEFORE: Justice V D Sharma

COUNSEL: Ms. Saiboba L - for the Plaintiff
Ms. Ali - for the Defendant

Date of Decision: 02nd October, 2018 @ 9.30 am

DECISION

[Originating Summons seeking an order for the Extension of Time for the Defendant to register a charge in favour of the Plaintiff in the Records of Fiji Sugar Corporation Limited pursuant to Order 7 Rule 2 of the High Court Rules, 1988 and section 376 of the Companies Act, 2015].

INTRODUCTION

1. Before this court is the Plaintiff's Originating Summons seeking for the following relief-
 - (a) *An Order to grant an Extension of Time for the Defendant to register a Charge in favour of the Plaintiff in the records of Fiji Sugar Corporation Limited.*
 - (b) *Other Orders which the Court deems fit and proper; and*
 - (c) *Costs.*
2. This application is made pursuant to *Order 7 Rule 2 of the High Court Rules, 1988 and section 376 of the Companies Act, 2015* and on reliance on the Affidavit of Ms. Melaia Bai filed herein.
3. The Originating Summons was initially filed **Ex-Parte** and a returnable date was accordingly assigned for the court's determination.
4. Upon the perusal of the application and the orders sought therein, this court was of the view and hence directed that the Originating Summons should be made Inter-Parte and accordingly served on the Defendant.

THE LAW

5. Section 376 of the Companies Act, 2015 provides for Extension of Time to Register charges-

"The Court, on being satisfied that the omission to register a Charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such Charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of the creditors or Members of the Company, or that, on other grounds, it is just and equitable to grant relief, may, on the application of the Company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration must be extended, or, as the case may be, that the omission or misstatement must be rectified".

DISCUSSION AND DETERMINATION

6. The counsel representing the Defendant appraised court of the following issues and non-compliance by the Plaintiffs:
 - (i) A61 Form containing the statement of particulars of the charge; and
 - (ii) The Mortgage Debenture that FNPF tried to lodge with the Registrar of Companies Office (The Instrument).
7. The counsel further informed court that if the Plaintiff is able to fully comply with all the requirements of the law coupled with furnishing court with the statement of particulars of the Charge and the Mortgage Debenture (Instrument), then the defendant may consent to the orders sought by the Plaintiff in the application filed herein.
8. In reply, the Plaintiff's counsel sought a short adjournment to comply with all the requirements as raised herein above and accordingly will file a supplementary affidavit.

9. The matter was adjourned to 02nd October 2018 and the Defendant's counsel confirmed to court that the Plaintiff has now fully complied and satisfied the requirements of Section 376 of the Companies Act 2015 and will therefore now consent to the orders sought herein by the Plaintiff.
10. At this point in time, the Plaintiff withdrew the order for any cost against the Defendant.
11. Accordingly, the Court being satisfied that the Plaintiff has now fully complied with all the requirements and the law, this Court proceeded to grant the following final orders by consent:

FINAL ORDERS

- (i) By consent, the Plaintiff is hereby granted 7 days extension of time to file and Register the Charge in favour of the Plaintiff in the records of the Fiji Sugar Corporation Limited.
- (ii) There will be no order for cost since the relief sought was withdrawn by the Plaintiff.
- (iii) Orders accordingly.

Dated at Suva this 02nd Day of October, 2018



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Vishwa Datt Sharma
Judge