

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 181 OF 2019

BETWEEN : **ANIL RAJESH MANI GOUNDER** of Nasau, Nadi,
Businessman.

PLAINTIFF

AND : **BANK OF BARODA** a body corporate duly incorporated in
India, having its head office at Mandvi, Baroda, India and duly
registered in Fiji under Part X of the Companies Act (Cap 247)
and having its head office at 86 – 88 Mark Street, Suva, Fiji.

DEFENDANT

Appearances : Mr J. Sharma for the plaintiff
No appearance for the defendant

Date of Hearing : 23 July 2019

Date of Ruling : 23 July 2019

R U L I N G

[on *ex parte* injunction]

[01] This is an *ex parte* application by the plaintiff for an injunction restraining the defendant from proceeding with the mortgagee sale of the plaintiff's property, iTaukei Lease No 17251 over lot 1 in ND 4393 and situated at Vunavou Street, Nadi. The application has been supported by an affidavit sworn by the plaintiff, which annexes some 12 documents.

[02] The application is made under Order 29, Rule 2 of the High Court Rules 1988, as amended ('HCR'), sections 77, 78 and 79 of the Property Law Act ('PLA') and under the inherent jurisdiction of the court.

[03] The injunction is sought on the ground that the defendant has taken step for mortgagee sale without giving 30-day written notice as required by law as well

as the Third Party Mortgage ('TPM-AG3') and that the defendant did not give an opportunity to the plaintiff to make good the alleged default.

- [04] The TPM in Part 7.2 states that the Bank (the defendant) must give a 30-day notice to the mortgagor (the plaintiff) in the case of default under the mortgage to allow to remedy the default before it takes any enforcement proceedings. The plaintiff's affidavit evidence is that that notice was not given to him before proceeding with the mortgagee sale.
- [05] Section 77 of the PLA requires that if the mortgagor defaults in payment of money or any part thereof and such default is continued for one month or such other period of time, the mortgagee may serve a notice in writing to pay the mortgage money. However, section 78 says such notice is not required when money is payable on demand.
- [06] If default, section 79 of the PLA among other things says, in payment of the mortgage money or in the performance or observance of any covenant continues for one month after the service of the notice referred to in section 77, the mortgagee may sell or concur with any other person in selling the mortgage property, or any part thereof.
- [07] It appears that the mortgagee sale has been initiated without giving the required default notice.
- [08] Therefore, I am satisfied that there is urgency in this matter as the defendant has applied for consent of the iTLTB to transfer the property under the mortgagee sale and irreparable mischief would be caused to the plaintiff if this injunction is not granted. I am also satisfied with the undertaking given by the plaintiff as to damages under paragraph 32 of his affidavit.
- [09] Having been satisfied with the application, I would issue an *ex parte* interim injunction as sought to be valid till 12 August. The plaintiff must serve this order together with all documents on the defendant forthwith.

Order

1. *Ex parte* interim injunction granted to be valid till 12 August 2019.
2. The plaintiff shall serve this order on the defendant with all documents forthwith.
3. The matter will be heard *inter partes* at 9.30 am on 12 August 2019.

M.H. Mohamed Ajmeer
23/7/19

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M.H. Mohamed Ajmeer
JUDGE

At Lautoka
23 July 2019

Solicitors:

For the plaintiffs: Janend Sharma Lawyers, Barristers and Solicitors

