

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 360 of 2019

BETWEEN

CREDIT CORPORATION (FIJI) PTE LIMITED a limited liability company  
having its registered office at Credit House,  
10 Gorrie Street, Suva.

PLAINTIFF

AND

SANGITA DEVI TRADING AS SHIV ENTERPRISES of 22-24 Tofua Street,  
Walu bay, Suva, Businesswoman.

DEFENDANT

Counsel : Mr. Tuitoga T. for the Plaintiff.  
Defendant absent and unrepresented.

Date of Hearing : 27<sup>th</sup> January, 2020

Date of Ruling : 07<sup>th</sup> February, 2020

## RULING

[1] The plaintiff filed the writ of summons seeking the following reliefs:

- (a) Judgment in the sum of \$55,631.06;
- (b) Damages (to be quantified later);
- (c) The plaintiff and /or its servants/agents/employees/ bailiffs take immediate possession of the following vehicle together with all the other parts /tools and/or accessories with the assistance of Police and/or the Land Transport Authority Officers:

One only Second Hand Nissan Sunny Sedan Registration No. FD944  
(Engine No. QG 15223094 & Chassis No. JN1CAAN1620009766)

- (d) An order requiring the defendant whether by herself, her servants and/or agents immediately release the custody and possession of the following vehicle together with all the other parts /tools and/or accessories to the plaintiff and/or its servants/agents/employees/bailiffs:

One only Second Hand Nissan Sunny Sedan Registration No. FD944  
(Engine No. QG 15223094 & Chassis No. JN1CAAN1620009766)

- (e) An injunction restraining the defendant whether by herself, her servants and/or agents be restrained from interfering with the plaintiff's possession and disposal of the following together with all other parts /tools and/or accessories:

One only Second Hand Nissan Sunny Sedan Registration No. FD944  
(Engine No. QG 15223094 & Chassis No. JN1CAAN1620009766)

- (f) That the defendant whether by herself, her servants and/or agents be restrained from interfering with the plaintiff's possession and disposal of the following together with all other parts /tools and/or accessories:

One only Second Hand Nissan Sunny Sedan Registration No. FD944  
(Engine No. QG 15223094 & Chassis No. JN1CAAN1620009766)

(g) That the plaintiff dispose the following together with all other parts /tools and/or accessories in accordance with the Bill of Sale dated 28<sup>th</sup> September 2017 upon repossession:

One only Second Hand Nissan Sunny Sedan Registration No. FD944  
(Engine No. QG 15223094 & Chassis No. JN1CAAN1620009766)

(h) An order that the Police and/or Land transport Authority Officers assist the Plaintiff in enforcing the above orders and/or maintain peace; and

(i) Costs

(j) Such other and further relief as the court may deem just.

[2] The plaintiff on 15<sup>th</sup> October 2019 filed an ex-parte notice of motion pursuant to Order 29 of the High Court Rules 1988, which was subsequently converted into an inter parte notice of motion by the court, seeking the following orders:

1. An injunction be granted requiring the defendant whether by herself, her servants and/or agents immediately release the custody and possession of the following vehicle together with all the other parts/tools and/or accessories to the plaintiff and/or its servants/agents/employees/bailiffs:

One only Second Hand Nissan Sunny Sedan Registration No.  
FD944 (Engine No. QG 15223094 & Chassis No.  
JN1CAAN1620009766)

2. An injunction be granted restraining the defendant whether by herself, her servants and/or agents from interfering with or obstructing or stopping the plaintiff or its servants, agents, officers, and/or bailiff from taking possession and custody of the following together with all other parts /tools and/or accessories:

One only Second Hand Nissan Sunny Sedan Registration No.  
FD944 (Engine No. QG 15223094 & Chassis No.  
JN1CAAN1620009766)

3. An injunction be granted restraining the defendant whether by herself, her servants and/or agents from interfering with the plaintiff or its servants, agents, officers, and/or bailiffs possession and custody of:



One only Second Hand Nissan Sunny Sedan Registration No. FD944 (Engine No. OG 15223094 & Chassis No. JN1CAAN1620009766)

4. That the plaintiff is entitled to dispose of the following together with all other parts /tools and/or accessories by way of public sale:

One only Second Hand Nissan Sunny Sedan Registration No. FD944 (Engine No. OG 15223094 & Chassis No. JN1CAAN1620009766)

5. That the defendant whether by herself, her servants and/or agents be restrained from interfering with the plaintiff's possession and disposal by way of public sale of the following together with all other parts /tools and/or accessories:

One only Second Hand Nissan Sunny Sedan Registration No. FD944 (Engine No. OG 15223094 & Chassis No. JN1CAAN1620009766)

6. An order that the Police assist the plaintiff in enforcing the above order and to maintain peace.
7. Costs of this application.
8. Such other and further relief this Honourable Court deems fit.

- [3] The plaintiff has provided financial assistance to the defendant to purchase the vehicle No. JB906 and for the purposes of her business. The defendant has loan accounts with the plaintiff being account No. 323098 and 323433. The plaintiff's position is that the defendant has defaulted the payments due on both accounts.
- [4] The defendant has executed two bills of sale in favour of the plaintiff. The plaintiff has already repossessed the vehicle bearing No. JB906.
- [5] The plaintiff complains that the vehicle bearing registration No. FD944 could not be found.
- [6] The defendant does not deny the fact that she obtained financial assistance from the plaintiff. However, her position is that she is not in default and the re-payments are up-to-date. However, she did not tender any documentary proof to show that she has regularly made the payments to the plaintiff.

[7] At the hearing the defendant was absent and unrepresented. However, in granting or refusing an injunction the court must consider the cases of both parties irrespective of the fact that the defendant was absent at the hearing.

[8] In *Hubbard & Another v Vosper & Another* [1972] 2 Q.B. 84 Lord Denning said:

In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. .... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

In *American Cyanamid Co. v Ethicon Ltd* [1975] 2 W.L.R. 316, [1975] A.C. 396

The appellant, American Cyanamid Co., an American company, owned a patent covering certain sterile absorbable surgical sutures. The respondent, Ethicon Limited, also an American Company, manufactured in the United States and were about to launch on the British market a suture which the appellant claimed infringed their patent. The respondent contested its validity on diverse grounds and also contended that it did not cover their product. In an action for an injunction the appellant applied for an interlocutory injunction which was granted by the judge at first instance with the usual undertaking in damages by the appellant. The Court of Appeal reversed his decision on the ground that no prima facie case of infringement had been made out and the appellant appealed.

In this case Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as the leading source of the law on interim injunctions. They are:

1. Whether there is a **serious question to be tried** at the hearing of the substantive matter;
2. Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be **adequately compensated**



by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and

3. In whose favour the **balance of convenience** lie if the injunction is granted or refused.

- [9] Injunction is an equitable remedy granted at the discretion of the court. If any party seeks the court to exercise its discretion in his favour he must establish that the court has sufficient grounds for such an exercise. In this application the defendant did not appear in court nor did she file any objection to the application. However, whether defendant appears in court or not discretionary remedy cannot be granted by default. The party who seeks the remedy must establish that there are sufficient grounds for the court to exercise its discretion and make necessary orders.
- [10] Order 1 sought in the notice of motion is to compel the defendant to release the vehicle to the plaintiff immediately. Under the Bill of Sale the plaintiff is entitled to repossess the vehicle when the defendant is in default of repayment of the loan but in this matter the plaintiff does not know where the vehicle is. The defendant has so far failed to handover the vehicle to the plaintiff. In the circumstances the plaintiff is entitled to an order directing the defendant to hand over the vehicle bearing registration No. FD944 to the plaintiff. However, I must say that this is not an injunctive relief. This is a condition contained in the agreement between the plaintiff and the defendant.
- [11] Order 2 sought in the notice of motion is an injunction restraining the defendant from obstructing the plaintiff from taking possession of the vehicle. Once the court orders the defendant to hand over the vehicle to the plaintiff the question of obstruction does not arise because the defendant must comply the orders of the court unless she wishes to challenge the order in a higher forum. Same principle will apply to Order 3 sought in the notice of motion.
- [12] Order 4 sought in the notice of motion is, the plaintiff is entitled to sell the vehicle. The plaintiff does not need an order of court to sell the vehicle after repossessing it because that right is specifically provided for in the Bill of Sale dated 28<sup>th</sup> September 2017. The defendant has not denied signing the Bill of Sale. In her affidavit in response the defendant has admitted signing the Bill of Sale. However, I will make order that the plaintiff is entitled to sell the vehicle in question by a public sale.

- [13] Order 5 sought in the notice of motion is an order restraining the defendant from interfering with the plaintiff's possession and sale of the vehicle. Injunction is an equitable remedy granted at the discretion of the court. For the court to exercise its discretion in favour of the plaintiff, it must satisfy court that there are grounds for the court to exercise its discretion. There is no evidence whatsoever that the defendant would obstruct the plaintiff in repossessing the vehicle. When the plaintiff repossessed the vehicle bearing registration number JB906 there had been no obstruction from the defendant.
- [14] From the facts it appears that principles of law of injunctions have no application to this matter.
- [15] For the aforesaid reasons the court makes the following orders.

#### ORDERS

1. The defendant is ordered to hand over the vehicle bearing Registration No. FD944 (Engine No. QG 15223094 & Chassis No. JN1CAAN1620009766) together with all the other parts/tools and/or accessories to the plaintiff and/or its servants/agents/employees/bailiffs immediately.
2. The plaintiff is entitled to dispose of the said vehicle by way of public sale.
3. The defendant is also ordered to pay the plaintiff \$3000.00 as costs of this application.
4. Other orders sought in the notice of motion are refused.



  
Lyone Seneviratne

JUDGE

07<sup>th</sup> February 2020