

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 297 of 2018

BETWEEN

MERCHANT FINANCE LIMITED a duly licensed financial institution
having its registered office at level 1, Ra Marama House,
91 Gordon Street, Suva.

PLAINTIFF

AND

SAAD AMJAD T/AS PARADISE CAR'S a business having its place of business
at Lot 2 Kings Road, Nakasi.

DEFENDANT

Counsel : Ms. Naidu S. with Mr. Pal A. for the Plaintiff
Ms. Kant S. for the Defendant

Date of hearing : 14th October 2020

Date of Judgment : 19th November 2020

JUDGMENT

- [1] The plaintiff instituted these proceedings to recover FJD 158,344.10 with prejudgment interest at the rate of 10% per annum from 09th February 2018 to the date of the judgment and costs on full Solicitor-client indemnity basis.
- [2] The plaintiff's action is based on the loan facility of \$244,516.13 provided to the defendant which was repayable with 10% interest within six months and the monthly installment was \$42,790.32.
- [3] Since the plaintiff has not properly numbered the paragraphs in the statement of claim it is difficult to understand what averments in the statement of claim the defendant has denied.
- [4] The defendant admits that the plaintiff is a financial institution and denies paragraphs 2 and 3 of the statement of claim. There are two paragraphs numbered as 1 and two paragraphs numbered as 2 under different headings.
- [5] The defendant in paragraph 7 of the statement of defence states:
- THAT the defendant claims that he has not read any agreement and neither any agreement was read or explained to him and he is not aware of the terms and condition of the document which he signed.
- [6] Although the defendant has not specifically admitted that he signed the agreement form the above it appears that he has in fact signed the agreement but it had not been explained to him.
- [7] The plaintiff called Ms. Pritee Pranita Prasad Assistant Manager, to testify. Her evidence is that the defendant was their customer and he maintained a good relationship with the

plaintiff. Before the loan which is the subject matter of this action was obtained the defendant had obtained another vehicle loan. She said this is an unsecured loan for a short time payable within six months and the loan amount directly sent to the supplier via telegraphic transfer.

- [8] For the purpose of processing the defendant's request for the loan he has tendered his Personal Statement of Assets and Liabilities (P3), his bank statements (P4, P5, P6 & P7) and his New Tax Payer Registration letter (P8). The defendant has also paid processing charges and stamp duty (P9 & P10). After receiving these documents the plaintiff processed the request of the defendant and sent him the offer letter (P11) which was signed by the defendant acknowledging it. The plaintiff and the defendant then signed two more documents namely, "Loan Agreement Terms & Conditions" and "Trade Finance Terms & Conditions" which were rendered in evidence marked as "P12" and "P13" respectively. It is the evidence of the witness that these two documents were signed by the defendant.
- [9] "P14" is the Disbursement Authority given by the defendant to the plaintiff authorizing the plaintiff to send \$244516.13 to CARPEYDIEM CO. LTD and "P16" is the money transfer application form given by the plaintiff to HFC Bank. "P15" is the cheque for \$244516.13.
- [10] The above evidence clearly establishes that the defendant has obtained the loan of \$244,516.13 and the plaintiff has send this money at the request of the defendant to CARPEYDIEM CO. LTD in Japan from whom the defendant used to purchase vehicles.
- [11] The plaintiff called Mr Kunal Gounder, a Solicitor who identified his signature in "P13". He testified that when this document was executed he explained the defendant his rights.
- [12] The defendant in examination in chief said he did not take this loan and when document "P12", the terms and conditions of the loan agreement was shown he said it was not his signature. Documents "P12" and "P13" have been executed on 05th January 2017. The defendant admitted signing "P13" but said the document was not explained to him and

he went on to say that they asked me to come and sign some documents. When the offer letter (P11) was shown he said it was not his signature. In cross-examination he again said he did not take the loan and when he was shown "P18" Contract Details of the defendant he said someone else has paid the loan.

[13] The defendant testified further that the money did not come to his account but he also said he told the bank that he would pay the money sent to Japan in instalments. He testified further that he has taken many loans from the defendant.

[14] Although the defendant attempts to deny the loan his own evidence shows that he has in fact taken the loan and the plaintiff sent that money to CARPEYDIEM CO. LTD at his request.

[15] The defendant has not taken any action or at least made a complaint to the relevant authorities that his signature has been forged but has continued to pay the loan.

[16] The main allegation of the defendant is that the documents were not explained to him. Clause 4 of the Offer Letter (P11) reads as follows:

Should the borrower not understand any information contained below, it is the Borrower's duty to contact MFL and seek clarification and seek clarification on any information the Borrower does not understand or have a query in relation.

[17] There is no evidence that the plaintiff's signature was obtained to the documents referred to above by force or misrepresentation. The defendant has been a long standing customer of the defendant which fact has been admitted by him and it is also a fact admitted by the defendant that after the money was remitted to CARPEYDIEM CO. LTD he received the consignment of vehicles which he sold.

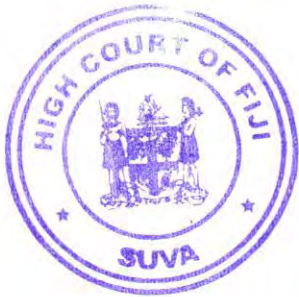
[18] From the evidence it is clear that the defendant's position that he did not sign the loan documents and he did not receive money are not true. The plaintiff has clearly established that the loan was granted to him and on his instructions the money was sent to CARPEYDIEM CO. LTD.

[19] The defendant by way of a counter claim seeks \$16,000.00 from the plaintiff as costs for causing loss and damage to him. There is no evidence whatsoever on this claim for damages adduced by the defendant.


[20] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The defendant is ordered to pay the plaintiff FJD 158,344.10 with interest at the rate of 10% per annum from 9th February 2018 to the date of the judgment.
2. The defendant's counter claim is refused.
3. The defendant is also ordered to pay the plaintiff FJD 5,000.00 as costs (summarily assessed) of this action



19th November 2020


Lyone Seneviratne

JUDGE