

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 155 of 2016

BETWEEN

BANK OF SOUTH PACIFIC a limited liability company having its principal office at
Level 12, Suva Central building, Corner of Renwick Road and Pratt Street,
Suva in the Republic of Fiji and varying on business of
Banking in Fiji and elsewhere.

PLAINTIFF

AND

MOHAMMED HANIF of 34 Belo Street, Samabula, Suva in the
Republic of Fiji.

FIRST PLAINTIFF

AND

MOHAMED FAIZAL SHAMIM of Navutu Industrial, Lautoka in the
Republic of Fiji

SECOND DEFENDANT

AND

WAZID ALI of 78 Vomo Street, Lautoka.

FIRST THRID PARTY

AND

RAHMAT ALI 78 Vomo Street, Lautoka

SECOND THIRD PARTY

Counsel : Ms. Devan. S for the plaintiff
Defendants absent and unrepresented

Date of hearing : 06th April 2021

Date of Judgment : 28th September 2021

JUDGMENT

- [1] The plaintiff instituted these proceedings to recover \$685,470.04 with interest pursuant to Guarantee Bonds dated 25th April 1995 and 27th February 2004 respectively executed by the defendants securing the repayment of the loan and advances granted to Western Wreckers Limited.

[2] The 2nd defendant did not file his defence and the court entered default judgment against him and the court has ordered:

Judgment is entered against the Second Defendant to jointly and severally pay to the above named plaintiff a sum of \$685,470.04 (Six Hundred Eighty Five Thousand Four Hundred Seventy Dollars and Four Cents) with interest and costs to be assessed.

[3] The 1st defendant while denying that he is indebted to the plaintiff avers in the statement of defence that there were securities and given to the plaintiff by other directors and shareholders and the plaintiff has realized some securities and favoured the other guarantors.

[4] At the pretrial conference the plaintiff and the 1st defendant have admitted the following facts:

- (1) There were other shareholders and directors [Wazid Ali, Rahmat Ali, Mohammed Hanif and Mohammed Faizal] of the Western Wreckers Limited who gave their guarantees for the advancement of loans.
- (2) That various securities were also given by other shareholders and directors of Western Wreckers Limited.

[5] When this matter was taken up for trial on 06th April 2021 the 1st defendant was absent and unrepresented and the court proceeded to hear the matter.

[6] The two defendants, Rahmat Ali and Wazid Ali have subscribed their signatures to the guarantee bond as guarantors (P2).

[7] Clause 11 of the Guarantee bond reads as follows:


I agree that an amount that I am liable to pay under this guarantee becomes payable as soon as the Bank gives me a written demand for payment, and I agree to pay the Bank the amount immediately.

- [8] From the above clause it is clear that each and every guarantor has agreed to settle the amount due to the bank individually. The 1st defendant is therefore, not entitled to say that the bank cannot sue him without suing the other guarantors.
- [9] The witness Sanjlesh Lal tendered in evidence the Transaction History of the Term Loan Account and the Business Banking Cheque Account. This action was instituted on 30th June 2016 and according to the Transaction history the amount due on that date was \$687,634.73. However, the plaintiff's claim is only \$685,470.04.
- [10] Since there was no defence put forward by the defendants, the court has no reason not to rely on the evidence of the plaintiff witness and the documents tendered in evidence.

ORDER

1. The court enters judgment against the 1st defendant as prayed for in the statement of claim.
2. Costs of the action to be assessed.




Lyone Seneviratne

JUDGE

28th September 2021