

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 166 of 2021

BETWEEN

MERCHANT FINANCE PTE LIMITED formerly known as **MERCHANT FINANCE LIMITED**

a limited liability company having its offices at Level 1, Ra Marama House,
91 Gordon Street, Suva, Fiji Islands.

PLAINTIFF

AND

THE OFFICIAL RECEIVER as the Provisional Liquidator of **NOVELLAE LIMITED**

a limited liability company having its office at Delai-Valelevu, Khalsa Road,
Suva, Fiji Islands.

FIRST DEFENDANT

AND

REGISTRAR OF TITLES of Ground Floor, Civic Tower, Victoria Parade, Suva,

Fiji Islands.

SECOND DEFENDANT

AND

FII DEVELOPMENT BANK a body corporate having its head office at
360 Victoria Parade, Suva, Fiji Islands.

THIRD DEFENDANT

Counsel : Mr. Tuitoga T. for the Plaintiff
Mr. Kant S. for the 1st & 2nd Defendants
Mr. Lajendra N. for the 3rd Defendant

Date of Ruling : 19th October 2021

RULING

(On the application for interim injunction)

[1] The plaintiff on 19th August 2021 filed this Originating Summons (Expedite From) seeking the following orders:

- (1) An order (pursuant to section 105(2) of the Land Transfer Act) that judgment No. 894742 or 900382 registered on iTLTB lease No. 33300 being Naisoqele Subdivision Showing Lot 1 on Plan SO 6774 in the Province of Naitasiri shall bind the said lease as a charge to the extent of the monetary sum of the Default Judgment sealed on 18 January 2018 in Suva High Court Civil Action no. 334 of 2018 and shall stand as having effect from 4 February 2020 until further order of this Honourable Court.
- (2) Such further and/or other relief as to this Honourable Court may deem just.

[2] On the same day the plaintiff also filed ex-parte summons which was converted to an inter-parte summons by the court seeking the following orders:

- (1) Leave be granted (retrospectively) to the plaintiff to commence this action against the Official Receiver as the Provisional Liquidator of Novellae Limited pursuant to section 531 of the Companies Act 2015.
 - (2) An interim injunction restraining the Registrar of Titles and/or its officers, employees or agents from registering any dealing on iTLTB Lease 33300 lodged directly or indirectly on the strength of mortgage No. 847602 by Fiji Development Bank and/or any other third party until further order of this court.
 - (3) Costs to be summarily assessed and paid by the 2nd defendant to the plaintiff within a prescribed period.
 - (4) Such further or other relief as the court may deem just.
- [3] The order (1) in the ex-parte summons filed on 19th August 2021 was granted of consent of the parties and they were given time to file affidavits in opposition, affidavit in response and written submissions. The written submissions were to be filed within 14 days from the date of filing of the affidavit in response but the parties did not file written submissions.
- [4] In the case of **American Cyanamid Co v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396 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:
- (i) Whether there is a serious question to be tried at the hearing of the substantive matter;
 - (ii) 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
 - (iii) In whose favour the balance of convenience lie if the injunction is granted or refused.

Lord Diplock in his speech also made the following observations:

I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

- [5] In **Hubbard & Another v Vosper & Another** [1972] 2 Q.B. 84 Lord Denning in that case made the following observations:

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.

- [6] The substantive relief sought by the plaintiff is an order that the default judgment entered by the High court in Civil Action No. 334 of 2018 shall stand as having effect from 4th February 2020 until further orders of this court.
- [7] I will now consider whether the plaintiff has shown sufficient grounds to obtain the above order at the final hearing of the matter.
- [8] The default judgment was entered on 18th January 2018 and it was registered on 04th February 2020, after more than two years.
- [9] The law relating to registration of judgments is found in sections 104 and 105 of the Land Transfer Act 1971.

Section 104 -

- (1) No judgment, decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order issued prior to or after the commencement of this Act shall bind, charge or affect any estate or interest in land subject to the provisions of this Act unless and until the Registrar has been served with a copy of such judgment, decree or order certified by the court and accompanied by a statement signed by any party interested or his barrister and solicitor or agent specifying-

- (a) the estate or interest sought to be affected thereby;

- (b) the name, address and description of the person by whom or on whose behalf the same is lodged; and
 - (c) an address or place within Fiji at which notices and proceedings relating thereto may be served.
- (2) The Registrar, on being served with a copy of a judgment, decree or order under the provisions of subsection (1) shall, after marking upon such copy the time of service, enter the same in the register; and with effect from the time of service thereof upon the Registrar such judgment, decree or order shall, subject to the provisions of subsection (2) of section 105, have the effect of, and be deemed to be, a caveat lodged under the provisions of section 106, subject to any prior registered mortgage or charge forbidding the registration of any person as transferee or proprietor of and of any interest affecting, the estate or interest affected by such judgment, decree or order other than in pursuance of such judgment, decree or order.
- (3) Upon the estate or interest in respect of which a judgment, decree or order has been registered under the provisions of subsection (2) having been sold pursuant to such judgment, decree or order, the Registrar shall, on receiving a transfer thereof in the prescribed form (which transfer shall have the same effect as if made by the proprietor) enter a memorial of such transfer in the register; and on such entry being made the purchaser shall become the transferee and be deemed to be the registered proprietor of such estate or interest.
- (4) After the commencement of this Act, no unregistered instrument, document or writing and no equitable mortgage by deposit or otherwise without writing affecting any estate or interest in land shall prevail against a sale under the authority of a judgment, decree or order unless a caveat in respect of such unregistered instrument, document or writing or equitable mortgage shall have been lodged with the Registrar in pursuance of the provisions of section 106 before the service of the copy of the said judgment, decree or order on the Registrar but, in the absence of a caveat, all of the estate and interest of the judgment debtor as well as of any unregistered purchaser.

transferee, mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under the provisions of this section.

- (5) The Registrar may register a transfer under the authority of a judgment, decree or order without requiring the production of the duplicate instrument of title:

Provided that the Registrar shall give such notice of intention to register the transfer, at the cost of the transferee, and cause the same to be published, as in the case of the production of a duplicate certificate being dispensed with under the provisions of section 26.

Section 105 –

- (1) Upon production to the Registrar, by way of application, of sufficient evidence of the satisfaction of any judgment, decree or order registered under the provisions of section 104, he shall direct an entry to be made in the register of a memorial to that effect, and on such entry having been made, such judgment, decree or order shall be deemed to be satisfied.
- (2) Every judgment, decree or order shall cease to bind, charge or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such judgment, decree or order shall be presented to the Registrar for registration within six months, or such extended period as the court by order made on application to it upon summons shall determine, from the day on which the copy of such judgment, order or decree was served.

[10] The law does not provide for re-registering of satisfaction of judgments. Section 105(2) has set down the procedure to be followed. If a judgment creditor realises that the satisfaction of a judgment cannot be registered within the period prescribed, the only alternative available to him is to seek an extension of time from court.

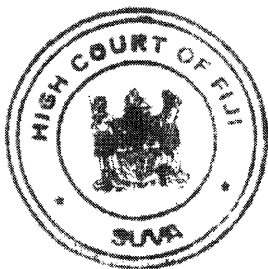
[11] Injunction is an equitable remedy granted at the discretion of the court. In the case of *American Cyanamid Co v Ethicon Ltd* (supra) Lord Diplock set down certain guidelines for

the court to consider in granting or refusing an injunction. As Lord Diplock said in his judgment in addition to these guidelines there may be other factors to be taken into consideration in particular circumstances of individual cases.

- [12] It is settled law that a party who seeks an injunction must have a substantive relief prayed for against the person injunction is sought. In this matter there is no claim against the Registrar of Titles. The relief sought is, as I have stated above, an extension of time to register the satisfaction of the judgment. Whether to grant an extension or not is entire in the hands of the court.
- [13] It is also pertinent to note that this injunction is sought restraining a public officer from performing her duties. The courts must be very cautious in granting such an injunction. Unless the act of the public officer sought to be restrained is tainted with illegality the court should not interfere.
- [14] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The application for interim injunction is refused.
2. There will be no order for costs.



19th October 2021


Lyone Seneviratne

JUDGE