

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 272 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

PACIFIC RIM WHOLESALE PTE (FIJI) LTD a limited liability company
having its registered office at 20 Bulu Street, Davuilevu, Nasinu.

FIRST DEFENDANT

AND

MOHAMMED RIZWAN of 20 Bulu Street, Davuilevu, Nasinu,
Company Director.

SECOND DEFENDANT

AND

NORMAN CHAN of 64-68 Rodwell Road, Suva,
Company Director.

THIRD DEFENDANT

Counsel : Mr. Pal A. with Ms. Naidu S. for the Plaintiff
Ms. Nettles V. for the 2nd Defendant

Date of hearing : 20th January 2021

Date of Judgment : 12th February 2021

JUDGMENT

[1] The plaintiff filed this writ of summons and the statement of claim seeking the following reliefs against the defendants:

- a. Judgment in the sum of FJD63,651.12 (sixty-three thousand, six hundred and fifty-one dollars and twelve cents);
- b. Legal costs on a full Solicitor-Client indemnity basis;
- c. Pre-judgment interest at the rate of 10% per annum from 15th September 2016 to the date of the judgment as per the agreement;
- d. Post-judgment interest at the rate of 10% as per the agreement from the date of the judgment to the date of payment; and
- e. Such further or other relief as the court may deem just and reasonable.

[2] The court has already entered default judgment against the 1st and 3rd defendants.

[3] The 2nd defendant in his statement of defence states that the outstanding debt is owed by the 1st defendant and he is not personally liable to settle the loan. He also states that the purported guarantee and indemnity was never executed by him.

[4] The 2nd defendant states that he paid \$12,240.00 which admitted by the plaintiff. The 2nd defendant states further that the plaintiff seized materials worth \$74,000.00 and sold them for \$13,000.00 and the 2nd defendant by way of a counter claim, seeks to recover the balance sum of \$61,000.00.

[5] At the pre-trial conference between the plaintiff and the 2nd defendant the following facts have been admitted:

1. At all material times, Pacific Rim Wholesale Pte (Fiji) Limited, the 1st defendant was a customer of the plaintiff.
2. Mohammed Rizwhan (2nd defendant) and Norman Chan (3rd defendant) are both directors of the 1st defendant company.
3. The 2nd defendant was a director of the 1st defendant at the material times.
4. On 24th May 2016, the 1st defendant entered into a loan agreement (Agreement) with the plaintiff for the provision of FJD 70,000.00 (loan).
5. The 2nd and 3rd defendants approached the plaintiff at Damodar City Centre for the purpose of acquiring a loan.
6. A Mortgage Debenture was taken as security over the finance and was signed by both Directors.
7. The 1st defendant breached its obligation under the agreement and defaulted in its repayments to the plaintiff.
8. As part of remedies available to the plaintiff under the loan agreement and the Mortgage Debenture executed by the company, the plaintiff was entitled to demand payment from the 1st defendant.
9. The plaintiff then issued demands for payment of the loan to the 1st defendant on 0th September 2016, and again on 11th July 2018 to the 1st and 2nd defendants.
10. The plaintiff repossessed materials, in particular bales of clothing that were subject to the loan and sold them to recover their loss.
11. The 2nd defendant made the following payments to the plaintiff:
 - i. 29 July 2016 FJD 6,500.00
 - ii. 15 September 2016 FJD 840.00
 - iii. 14 October 2016 FJD 900.00

iv.	22 November 2016	FJD	1000.00
v.	13 December 2016	FJD	1500.00
vi.	28 December 2016	FJD	1500.00

[6] The plaintiff, 1st witness is Mr. Krishneel Nikshamy Chang, the solicitor who attested the Deed of Guarantee and Indemnity Bond (the Bond) of the 2nd defendant. When the Bond was shown to him Mr Chang identified his signature and the signature of the 2nd defendant and said he explained each and every clause of the Bond to the 2nd defendant before signing it. He also tendered the Guest Signing Book (P2) of the Law Firm which shows that the 2nd defendant had gone to the office of the solicitor. However, this document shows that the 2nd defendant has gone to the solicitor's office on 23rd May 2016 but the Bond has been executed on 24th May 2016.

[7] From the evidence of the plaintiff's own witness a doubt is created in the mind of the court as to whether the Bond was in fact executed at the office of the solicitors or the 2nd defendant's signature was obtained at the plaintiff's office as stated by the 2nd defendant in his evidence.

[8] When the Bond (P1) was shown to the 2nd defendant he first denied having signed it but later he admitted signing it and said when he went to the plaintiff's office some documents were given to him and he signed them but the contents of the documents were not explained to him.

[9] Since the 2nd defendant admits signing of the Bond the only question for determination here is whether the terms and conditions contained in the Bond were read over and explained to the 2nd defendant before signing it. The 2nd defendant does not say that he did not have the opportunity to read the contents of the Bond and on the other hand the last paragraph of the Bond says;

"WE / I HEREBTY ACKNOWLEDGE that we have carefully read and understood the purpose of the within Guarantee and I / we hereby request MFL to make such advances to the within-mentioned Customer ads MFL may from time to time think proper:"

[10] The 2nd defendant does not say that he was prevented from reading the contents of the Bond or he was compelled to sign it without reading its contents. He should have read the Bond and if he could not understand any of the condition he could always have

obtained legal advice. Therefore, even if the contents of the Bond were not explained to him, it could not be a ground for the plaintiff to avoid his liability towards the plaintiff.

[11] Although the defendant claimed \$61,000.00 being balance amount due for the goods seized by the plaintiff and sold for \$13,000.00, he did not adduce any evidence in that regard.

[12] In this matter, as I have mentioned above, default judgment has been entered against the 1st and the 3rd defendants granting the reliefs as prayed for in the statement of claim. The 2nd defendant has not shown any ground for this court to deviate from the reliefs granted in the default judgment.

[13] For the reasons set out above the makes the following orders.

ORDERS

1. The 2nd defendant is ordered to pay FJD63,651.12 (sixty-three thousand, six hundred and fifty-one dollars and twelve cents).
2. Legal costs on a full Solicitor-Client indemnity basis.
3. Pre-judgment interest at the rate of 10% per annum from 15th September 2016 to the date of the judgment as per the agreement.
4. Post-judgment interest at the rate of 10% as per the agreement from the date of the judgment to the date of payment.



12th February 2021


Lyone Seneviratne

JUDGE