

IN THE HIGH COURT OF FIJI

AT LABASA

ORIGINAL JURISDICTION

CASE NUMBER: HBC 40 of 2018

BETWEEN: MOHAMMED SHAMSOOD aka MOHAMMED SAMSOD SAKUR TRADING AS SAM CIVIL SERVICES
PLAINTIFF

AND: CREDIT CORPORATION (FIJI) LIMITED
1st DEFENDANT

AND: REGISTRAR OF TITLES
2nd DEFENDANT

AND: ATTORNEY GENERAL OF FIJI
3rd DEFENDANT

Appearances: Mr. A. Sen for the Plaintiff.
Mr. V. Filipe for the 1st Defendant.
Mr. Pickering for the 2nd and 3rd Defendants.

Date/Place of Judgment: Wednesday 20 July 2022 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Consequences of non- registration of Bills of Sale under s. 7 of the Bills of Sale Act raised by mortgagor – Is it proper to determine the question of the validity of the Bills of Sales and the rights arising thereunder independently in a subsequent action when the claim by the

mortgagee for recovery of monies is pending and when the issue of the validity is connected to other issues where oral evidence is necessary.

B. Cases:

1. *In Re: Standard Manufacturing Company [1891] 1 Ch. 627*

C. Legislation:

1. *Bills of Sale Act Cap. 225: ss. 7; 14 and 15.*
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Cause

1. The plaintiff has filed an originating summons seeking 2 declaratory orders as follows:
 - i. *A declaration that the Bills of Sale Numbers 0664 to 0668 of 2012 and the Third Party Bills of Sale Numbers 0669 to 0671 of 2012 given by the plaintiff to the 1st defendant are void and fraudulent; and*
 - ii. *A declaration that the 1st defendant does not have any rights under the said Bills of Sale.*
2. The basis on which the Bills of Sale are sought to be declared void and fraudulent is failure to register the Bills of Sale within 21 days from the date of execution as stipulated under s. 7 of the Bills of Sale Act.
3. S. 7 reads:

“Every bill of sale to which this Act applies shall be duly attested, and shall be registered, within seven days after the making or giving thereof if it is made or given in Suva, or within twenty-one days if made or given elsewhere than the

city of Suva, and shall set forth the consideration for which such bill of sale was given; otherwise such bill of sale shall be deemed fraudulent and void:..."

4. The claim specifies the various motor vehicles covered under the said Bills of Sale. I do not think that it is necessary to identify the particular vehicles covered under each Bill of Sale. However it is essential for the purposes of this proceeding to indicate that the Bills of Sale encumbers about 15 motor vehicles/chattels.

Plaintiff's Position

5. The plaintiff's position is that the 1st defendant had provided to him certain credit facilities and had obtained by way of security Bills of Sale over the vehicles and chattels. The Bills of Sale were executed on 30 December 2011 and stamped on 20 March 2012.
6. The 1st defendant was required to register the said Bills of Sale with the Registrar of Titles within 21 days of the execution of the same but the said Bills of sale were not registered within time as required by s. 7 of the Bill of Sales Act rendering the same void and fraudulent.
7. The 2nd defendant has improperly allowed the registration of the Bills of Sale outside the 21 days' time limit provided by the Act.

1st Defendant's Position

8. The 1st defendant states that the plaintiff was its customer. In December 2011, the plaintiff had a loan account with it. The account number was 172007.

9. By an offer letter dated 21 December 2011, the 1st defendant agreed to lend to the plaintiff and the plaintiff agreed to borrow from it a sum of \$595,633.92. This amount represents the principal sum of monies.
10. On 21 December 2011, the loan account of the plaintiff was re-written to loan account number 312487. This was done at the request of the plaintiff as he had requested for a refinance. The account was re-written to assist the plaintiff with his arrears for account number 172007.
11. The loan granted to the plaintiff was secured by the Bills of Sale and the Third Party Bills of Sale. The Bills of Sale were prepared and forwarded to the plaintiff for execution in Labasa. The plaintiff executed the Bills of Sale on 30 December 2011 and only forwarded it to the 1st defendant's office on or around 30 January 2012.
12. Since the plaintiff had delayed in sending the documents for registration, a fresh set of Bills of Sale were sent to the plaintiff to sign however he failed and/or refused to execute them. This left the 1st defendant with no choice but to register the Bills of Sale that were already executed by the plaintiff and the third party. The 1st defendant had to do this to protect its interests.
13. The 1st defendant wrote to the Registrar of Titles and Deeds on 19 March 2012 to accept the said Bills of Sales. The 1st defendant had to pay to the office of the Stamp Duties prescribed fees and penalties in the sum of \$1,518.12 on 20 March 2012. This was paid due to the plaintiff's delay, negligence, procrastination and failure in honoring his part of the deal. The Bills of Sale were registered with the Registrar of Titles and Deeds Registry on 22 March 2012.
14. The Bills of Sale and the Third Party Bills of Sale contains certain terms and conditions including a condition for repayment of the monthly instalments by

the plaintiff and if he defaults by the third party. There were 59 monthly instalments with a monthly instalment of \$15,387.21. The plaintiff and the third party were in breach of the terms of repayment.

15. Clause 7 of the Bills of Sale and the Third Party Bills of Sale authorized the 1st defendant to seize the securities once the plaintiff was in default of his monthly instalments. The plaintiff failed and/or refused to pay the arrears and/or the pay-out amount.
16. The 1st defendant then brought a claim to repossess the chattels secured under the said Bills of Sale. Pursuant to an order of the High Court on 31 May 2012 vide the Civil Action Number 13 of 2012, the 1st defendant managed to seize four of the securities from the plaintiff.
17. The 1st defendant says that the Plaintiff failed and/or refused to return the other securities and has wrongfully interfered with the 1st defendants goods by converting them to his own use and/or tampering with them so as to make them unidentifiable. The 1st defendant was therefore not able to identify and/or sell the securities as they had been tampered with.
18. The 1st defendant has suffered substantial losses as a result of the breach. As at 21 March 2012 the amount owing by the plaintiff to the 1st defendant was \$926,350.83.
19. The Fiji Police Force have since seized all the other securities from the plaintiff and has kept it in their custody as exhibits for a criminal action against the plaintiff.

20. Those securities are no longer of any value to the 1st defendant although the 1st defendant had initially spent \$47,841.16 for their initial safekeeping. The plaintiff is also liable for this sum.
21. There is a pending action for recovery of monies against the plaintiff in the High Court Suva being Civil Action Number 28 of 2016 arising out of the same transaction and breach.
22. The 1st defendant contends that the plaintiff should have his case about the validity of the Bills of Sale argued in the Suva Civil Action Number 28 of 2016 without duplicating the claims. By raising the issue of validity of the Bills of Sale when an action for recovery of monies is pending amounts to an abuse of the process of the Court.
23. The 1st defendant further contends that in the repossession action (Labasa HBC 13 of 2012) which was delivered on 31 May 2012, the Court had found that even if the Bills of Sales were not duly registered, it is not fatal to the plaintiff's claim. The 1st defendant therefore has the right to proceed with its action for recovery of monies and any concerns surrounding the validity of the Bills of Sale shall be raised in the pending claim.
24. The 1st defendant also raised that since the plaintiff is operating a company, the chattels are not covered by the Bills of Sales Act and the non-compliance of s. 7 of the Act does not affect its claim.

Law and Analysis

25. The 1st defendant had already initiated an action in Suva High Court being HBC 28 of 2016 where it is claiming monies owed under the Bills of Sales which the plaintiff is seeking in this action to be declared void and fraudulent. In the Suva

High Court claim, the plaintiff has raised a defence that the mortgagees cannot have any rights under the Bills of Sale as it is void.

26. I find that the current action is an abuse of the process of the court. The plaintiff in this case ought to have his claim about the validity of the Bills of Sale tried in HBC 28 of 2016 and not duplicate the same issue in a different and separate claim as he has done in this action.
27. Further, the issue of the validity of the Bills of Sale cannot be dealt with separately as it is connected with other issues for which oral and documentary evidence is necessary. The current affidavits before me is insufficient.
28. Firstly, it is connected to the issue of whether the chattels are registered under the name of the company. For this, the court needs to see the evidence of registration. If the chattels are registered under the company then the issue that needs determination is whether the Bills of Sale Act will apply to the chattels.
29. Most of the chattels secured under the Bills of Sale are heavy goods vehicle which are used for business purpose. It is difficult to accept at this stage that the chattels are not registered in the name of the company.
30. *In Re: Standard Manufacturing Company [1891] 1 Ch. 627* the court held that the debentures were expressly excepted from the operation of the Bills of Sales Act.
31. The second issue that is connected with the issue of the validity of the Bills of Sale is whether the 1st defendant can recover any portion of the monies even if the Bills of Sale are void. There is affidavit evidence from the 1st defendant that the plaintiff had an existing loan account with the 1st defendant. He was

already in arrears and that is why his loan account was re-written. The court needs to hear evidence of what monies were due and owing under the earlier Bills of Sale.

32. I must not overlook the findings of the court in the repossession action that even though the Bills of Sales are not registered, it is not fatal to the plaintiff's claim. There is no appeal arising from that finding. I therefore find it proper that the issue of the validity of the Bills of Sales be determined with the writ action for recovery of monies. A separate determination on the issue of the validity of the Bills of Sale is premature and will deprive the 1st defendant from having its rights vindicated.
33. The third issue that is connected to the question of the validity of the Bills of Sale is whether it was sufficient if the earlier Bills of Sales were renewed under s. 14 of the Bills of Sale Act thus precluding the need for registration under s. 7.
34. S. 15 of the Bills of Sale Act prescribes a different method for renewal of Bills of Sale. If some of the chattels under the current Bills of Sale were already secured under the previous Bills of Sale, the court needs to hear evidence of when did the need for renewal arise and whether there was a proper renewal.
35. I find that the plaintiff's claim in this action is premature to determine at this stage and an abuse of the process of the court. The claim ought to be tried in the pending action for recovery of monies filed by the mortgagee.

Final Orders

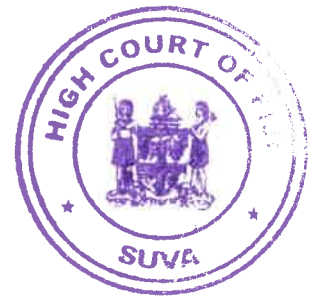
36. In final analysis, I make the following orders:

- (a). *The plaintiff's application for an order that the Bills of Sale are void and fraudulent is struck out.*
- (b). *The plaintiff is ordered to pay to the 1st defendant costs in the sum of \$3500 within 21 days of the date of the judgment.*
- (c). *The plaintiff is further ordered to pay to the 2nd and 3rd defendant's costs in the sum of \$1, 500 within 21 days.*

Anjala Wati

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Hon. Madam Justice Anjala Wati
Judge

20. 07. 2022



To:

- 1. Maqbool & Company for the Plaintiff.**
- 2. Haniff Tuitoga Lawyers for the 1st Defendant.**
- 3. Attorney - General's Chambers for 2nd and 3rd Defendants.**
- 4. File: Labasa HBC 40 of 2018.**