

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 185 of 2020

Down Under Pte Limited

Plaintiff

v

Mahend Chand Maharaj

Defendant

Bank of South Pacific

Interested party

Counsel: Mr V. Filipe for the plaintiff
Mr G. O' Driscoll for the defendant
Mr W. Tokalau for the Interested party
Date of hearing: 5th February,2021
Date of Ruling: 9th November,2022

Ruling

1. The plaintiff, in its summons seeks to enter judgment against the defendant and Interested Party,(IP) for failing to file statements of defence.
2. The supporting affidavit filed on behalf of the plaintiff states that statements of defence should have been filed 28 days from the service of summons on 8 July,2020.

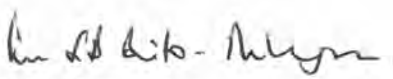
3. The defendant, in his affidavit in opposition states that his solicitor sought consent from the plaintiff on 7th December, 2020, to file statement of defence. His defence was not prepared earlier, as the parties were “*having some exchange*” regarding renewal of tenancy. A draft defence has been attached.
4. The plaintiff filed reply
5. At the hearing, Mr O’ Driscoll, counsel for the defendant submitted that the summons is defective, as it includes the IP which is not a defendant. Judgment cannot be sought against an IP.

The determination

6. The issue before me is whether the plaintiff is to be granted leave to enter default judgment against the defendant and IP for failing to file statements of defence. The application is made under Or19, r7.
7. It is not in dispute that neither party have filed statements of defence nor sought leave for extension of time to file same.
8. The plaintiff makes this application in terms of Or19, r 7. Or19, r 7 contemplates claims which are neither claims for a liquidated demand, detention of goods Nor possession of land.
9. The plaintiff, a tenant of the defendant in its statement of claim states that he substantially renovated the building on the plaintiff’s property and built a new building. The defendant unreasonably and exorbitantly increased the rent. The IP is joined as its rights will be affected if the building and improvements have been improperly or illegally mortgaged. The plaintiff seeks that the mortgage issued by the IP be rescinded or reassessed; declarations with respect to the rent charged by the defendant from the plaintiff, charging of VAT, the loan granted by the IP to the plaintiff, the illegality of the mortgage and threats of eviction; compensation and damages.

- a) The defendant in its draft statement of defence states that the lease expired in 2014 and the plaintiff occupies part of hPayment into the solicitor's Trust Account on behalf of Manuwa Paulo Manaseitava.
 - b) Payment into the solicitor's Trust Account on behalf of Apolo Manaseitava.
 - c) Payment into the solicitor's Trust Account on behalf of Tevita Manaseitava.
 - d) Payment into the solicitor's Trust Account on behalf of Tima Manaseitava as the administratrix of the Estate of Jone Vakatalai Manaseitava.
10. Payment into the solicitor's Trust Account on behalf of the beneficiaries in the Estate of Lui Saladoka Manaseitavais premises on a month to month basis. The plaintiff made the alleged renovations without obtaining consent from the Suva City Council. The assets were not given as security. The plaintiff is not a party to the dealing between the defendant and the IP. There is no fraudulent or dishonest mortgage. There was a revaluation and the rent increased.
11. On a perusal of the draft statement of defence, I find that there are triable issues. Accordingly, in the exercise of my discretion and interests of justice, I decline the plaintiff's summons to enter judgment against the defendant and IP.
12. The defendant is ordered to file and serve its statement of defence.
13. **Orders**
- a. The plaintiff's summons to enter judgment against the defendant and Interested Party is declined.
 - b. The defendant shall file and serve its statement of defence on or before 15th November,2022.
 - c. The plaintiff is at liberty to file its reply on or before 25th November,2022.
 - d. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 1000,00 before filing its statement of defence.
 - e. This matter is to be called before the Master.




A.L.B. Brito-Mutunayagam
JUDGE
9th November,2022