

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBM 47 of 2022

BETWEEN : **BRED BANK (FIJI) PTE LIMITED** a limited liability company having its registered office at Level 5 Tappoo City Building, Corner of Scott & Usher Street, Suva.

APPLICANT

AND : **MATHEW JAMES MCKINLEY AND MICHELE JANE MCKINLEY** both previously of Denarau, Nadi currently at an unknown address.

RESPONDENTS

Appearances: Mr. A. J. Singh for the Applicant
Date of Hearing: 01 December 2022
Date of Ruling: 20 January 2023

R U L I N G

1. Mathew James Mckinley and Michelle Jane Mckinley are Directors of Evolution (Fiji) Pte Limited (“EPL”).
2. On 25 May 2017, Bred Bank (Fiji) Limited (“Bank”), on the application of EPL, offered EPL a Business Term Loan to the value of \$150,000.
3. EPL accepted the offer on 21 June 2017 and gave the Bank the following as securities:
 - a) Mortgage Debenture.
 - b) Bill of Sale.
 - c) Mortgage over vessel “Mata ni Wai”.
 - d) Deed of Postponement between Mathew Mckinley and Michele Jane Mckinley.
 - e) Unlimited Debt and Interest Guarantee by the Mckinleys.
4. EPL defaulted on servicing the loan and despite reminders by the Bank, EPL failed to clear the arrears.
5. The Bank then took steps to seize EPL’s assets which were charged under the security instruments.
6. On 8 October 2021, the Bank issued a Statutory Demand seeking payment of the sum of \$43,341.99.

7. On the same day, the Bank issued a letter to EPL to request the Company as to the whereabouts of the secured items.
8. On 13 January 2022, EPL was wound up.
9. The Bank then carried out an extensive search of the secured items.
10. However, as it turned out, the McKinleys had fled Fiji and returned to Queensland, Australia – together with all the chattels (a boat and several jet skis) which are charged under the security instruments.
11. The Bank then filed an action in the Nadi Magistrates Court. On 16 May 2022, the Nadi Magistrates Court ruled in favour of the Bank and granted the following:
 - (a) Judgement in the sum of \$43,222.91
 - (b) Interest at the daily rate of \$10.82
 - (c) Interest on Judgement at 13.5% per annum
 - (d) Post Judgement interest at the rate of 4% per annum
 - (e) Costs on a solicitor/client indemnity basis
12. Notably, in the Statement of Claim, the Bank limits its claim to \$50,000 within the jurisdiction of the Magistrates Court.
13. Essentially then, the judgement sum which the Bank is enforcing is \$50,000.
14. Before me now, is the Bank's Ex-Parte Summons dated 28 November 2022 seeking an order that the Nadi Magistrates Court Order dated 16 May 2022 “**be made Orders of the High Court, to allow registration out of the jurisdiction**”.
15. The application is made pursuant to section 100 of the Constitution and pursuant to the inherent jurisdiction of the Court.
16. The reason why the Bank has filed this application is that, when it tried to register the Magistrates Court's judgement in Queensland, the Bank was told that only a judgement of the High Court may be registered in Queensland.
17. Section 100 (6) of the 2013 Constitution provides:
 - (6) The High Court has jurisdiction to supervise any civil or criminal proceedings before a Magistrates Court or other subordinate courts and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the Magistrates Court and other subordinate courts.
18. Section 35 of the Magistrates Court Act deals with this situation. It is a pity that counsel has not done his research thoroughly on this:

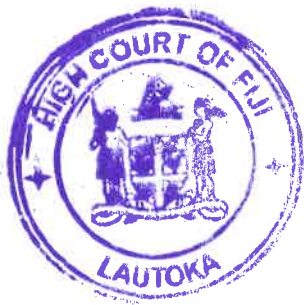
Judgment may be entered in the Supreme Court on a judgment of a magistrates' court

35.-(1) A judge of the Supreme Court, if satisfied that a person whether resident within Fiji or not against whom judgment for an amount exceeding \$40 has been obtained whether by way of a claim or counterclaim or by way of costs or otherwise, in a magistrates' court, has no goods or chattels within Fiji which can be conveniently seized to satisfy the judgment, may if he thinks fit, and upon such terms as to costs as he may direct, by order under his hand and the seal of the Court, remove the judgment into the Supreme Court.

(2) Upon the removal of a judgment into the Supreme Court in pursuance of this section no further proceedings shall be had or taken thereon in the magistrates' court and judgment shall be entered in the Supreme Court for the amount due and payable under the judgment of the magistrates' court together with the costs aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as if it were a judgment originally obtained in the Supreme Court.

(3) This section applies to orders obtained in a magistrates' court as it applies to judgments so obtained.

19. I will not now grant the Orders sought. Instead, I will dismiss the current ex-parte Summons and direct the Bank to file an Originating Summons with supporting affidavit pursuant to section 35 of the Magistrates Court Act.



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Anare Tuilevuka
JUDGE
Lautoka

20 January 2023