

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 246 OF 2020

BETWEEN : **KHERA BROTHERS PTE LIMITED** a limited liability company having its registered office at Main Street, Ba.

PLAINTIFF

AND : **A. JALIL & SONS HOLDING LIMITED** a duly incorporated limited liability company having its registered office at Martintar, Nadi.

1ST DEFENDANT

AND : **BANK OF SOUTH PACIFIC LIMITED** trading as **BANK OF SOUTH PACIFIC** having its registered office at Level 3, BSP Life Centre, Thompson Street, Suva, Fiji and carrying on business elsewhere in Fiji as Bankers.

2ND DEFENDANT

AND : **REGISTRAR OF TITLES**

3RD DEFENDANT

AND : **THE ATTORNEY GENERAL OF FIJI**

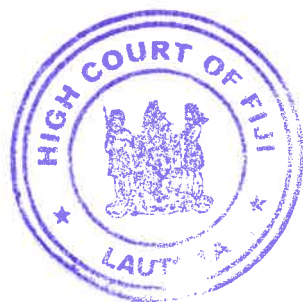
4TH DEFENDANT

Appearances: Ms. Sadrata for the Plaintiff
Ms. Devan S. for the second Defendant
Mr. J. Mainavolau for the third and fourth Defendants
Date of Hearing: 20 February 2023
Date of Ruling: 26 May 2023

RULING

1. The background to the case is set out in my Ruling in **BSP Financial Group Pacific Limited v Khera Brothers Pte** Ltd HBC 143 of 2022 which was delivered on 17 April 2023.
2. Khera Brothers Pte Limited, the Plaintiff, had entered into a sale and purchase agreement with A. Jalil & Sons Holdings Limited over Commercial State Lease No: 19376 legally described as Lot 1 Plan RR686 situated in the Town of Tavua, Province of Ba, a subdivision of Part of Tavua Township Section 1 and comprising 796 square meters.

3. At some point in time, A. Jalil & Sons had given a third party mortgage over the said property in favour of BSP. Whether that mortgage was given prior to the sale and purchase agreement between Khera and Jalil or later is one of the things to be ascertained at trial. The evidence strongly suggests that the said third party mortgage was given well before A. Jalil offered to sell the property to Khera.
4. Furthermore, assuming that the said mortgage was given prior to the sale and purchase agreement, whether the said mortgage was registered on the title before or after the said sale and purchase agreement is an issue of fact between the parties.
5. Khera appears to argue, amongst other things, that before it entered into the sale and purchase agreement with Jalil, it (Khera) conducted a title search and found the title to be free of any encumbrance.
6. Based on that search, Khera then entered into the sale and purchase agreement and also allegedly paid Jalil a substantial deposit.
7. In its current state, the statement of claim alludes to some allegations of impropriety in terms of the late registration of BSP's Mortgage, but makes no direct claim for relief against BSP.
8. I am of the view that the basic factual matrix describes a reasonable cause of action against BSP and would rather err on the side of caution and not strike out the claim against BSP. This perhaps gives Khera an opportunity to seek leave to amend and better its claim against BSP accordingly.
9. Application to strike out is dismissed. Parties to bear own costs.



A handwritten signature in blue ink, appearing to be "Anare Tuilevuka", written over a horizontal dotted line.

Anare Tuilevuka
JUDGE

26 May 2023