

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

HBM 188 of 2019

IN THE MATTER OF THE EVIDENCE BY  
COMMISSION ACT 1859 (U.K)

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IN THE MATTER OF AN ONTARIO  
SUPERIOR COURT OF JUSTICE MATTER  
(Court File No. CV-19-619740-00CL)  
BETWEEN:

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BETWEEN : MAGNA EXTERIORS INC. carrying on business as  
PLASCOAT

PLAINTIFF

AND : ASHWEEN KUMAR, ASHWEEN KUMAR carrying on  
business as MTS INDUSTRIES, AIM SUPPLIES INC.,  
JOVANE SHANE MARAGH, JOVANE SHANE MARAGH  
carrying on business as GTA PRODUCTS & SERVICES,  
FIDIA SUPPLIER LTD., PALLAV MAGGU, SUMEET  
ARORA, SUMAN ROY, LASHAUNA HYPOLITE,  
BRIANNA RUSSEL-HYPOLITE, EFFYGENE GRAY and  
AARON GRAY

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Ms. S. Lodhia for the Plaintiff  
Defendant in person

Date of Hearing : 19 October 2022

Date of Decision : 18 October 2023

# DECISION

*CONTEMPT Examination by commission – Debtor examination – Defendant’s failure to answer questions and produce documents – Scope of examination – Orders 39 & 52 of the High Court Rules 1988*

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1. The plaintiff filed an application on 29 November 2019, which was amended on 4 December 2019, seeking the assistance of the judicial authorities of this country to compel a defendant, Mr. Ashween Kumar, to attend an examination under oath and produce documents to be used as evidence in an action pending before the Superior Court of Justice in Ontario. The application was supported by a letter of request from the authorities in Ontario.
2. Subsequently, the court was informed that judgment was entered in the plaintiff’s favour in the Ontario court. Nevertheless, the application was maintained for the purpose of a debtor examination to enforce the judgment.
3. After hearing the plaintiff, the court appointed an examiner in terms of Order 70 rule 1 of the High Court Rules 1988. Mr. Ashwin Kumar was allowed to be examined in accordance with Order 39 rules 5 to 10 and 11 (1) to (3). The examination was to comply with the rules of civil procedure and evidence obtaining in Fiji.
4. The plaintiff was asked to produce an amended letter of request from the Ontario authorities to the judicial authorities of Fiji limiting the scope of the examination and specifying the documents to be produced for the purpose of enforcing the judgment.
5. Thereafter, the plaintiff’s solicitors wrote to the defendant advising him to attend the debtor examination. The plaintiff says that as the defendant did not answer several of the questions posed to him and provide documentation, the plaintiff provided him a chart containing unanswered questions and outstanding documents.

6. On 2 June 2022, the plaintiff filed an *ex parte* notice of motion supported by an affidavit for an order of committal under Order 52 rule 2 of the High Court Rules 1988.
7. The application for committal is on the ground that Mr. Ashween Kumar is refusing to answer questions of the examiner and failing to produce documents and information which he undertook to produce. The plaintiff seeks the defendant's imprisonment for being in contempt by refusing to answer questions and produce documents.
8. The applicant appeared in court and sought to file an affidavit in opposition. He denied having refused to comply with the court's orders, and said that he attended the debtor examination as requested. He filed an affidavit in opposition on 29 September 2022 by which he said he has provided answers to the questions asked during the debtor examination. In his affidavit, he repeated the very brief answers he has given in reply during the examination.
9. An affidavit in reply was filed by Ira Nishisato, a partner of the law firm engaged by the plaintiff, on 14 October 2022. The affidavit, which listed the questions put to the defendant to which he did not respond helpfully, says that although he claims not to have access to various records due to flooding, there is no indication that attempts were made to obtain information from other sources.
10. The affidavit says the defendant did not provide contact information for his family members and details of his travel and that he did not ask service providers such as Facebook, Google or Instagram to restore access to his accounts. There was also no explanation that he did not have his passport, which would have revealed the requested travel details, and the sketch to his mother's house had not been given.
11. The plaintiff tendered five volumes of transcripts numbering 2074 pages containing a large number of questions. Some of these questions and answers have been incorporated in the plaintiff's affidavit to demonstrate the defendant's unwillingness to answer.

12. On 8 September 2022, the plaintiff handed over to court a letter of the same date addressed to the defendant. The letter asked him to provide a list containing 20 documents.
13. The defendant's answers are lacking in detail and information required by the plaintiff, who has a serious damages claim against him in the Superior Court of Justice in Ontario. However, the defendant has not refused to attend the debtor examination. He has allowed himself to be examined as a judgment debtor. Taken overall, the responses are not such as to constitute acts of contempt.
14. In regard to the debtor examination, paragraph 20 of the decision dated 23 September 2020 stated:

“It is averred in the plaintiff’s supplementary affidavit that for the purpose of executing a judgment, a debtor may be examined under the Ontario rules of procedure. In terms of those rules, the plaintiff states, a judgment creditor may examine the debtor in relation to the reason for non-payment or non-performance of the order; the debtor’s income and property; the debts owed to and by the debtor; the disposal the debtor has made of any property either before or after the making of the order; the debtor’s present, past and future means to satisfy the order; whether the debtor intends to obey the order or has any reason for not doing so; and any other matter pertinent to the enforcement of the order”<sup>1</sup>.
15. The court noted that the examination of the judgment debtor must be specific to the enforcement of the judgment. Observing that the letter of request from the authorities in Ontario was excessively broad, the court directed that an amended letter of request be submitted for the purpose of the debtor examination to enforce the judgment of the Ontario Superior Court of Justice.
16. The questions suggest that the examination has gone beyond what is necessary for the purpose of judgment enforcement. The decision of 23 September 2020 specified the limits within which the examination is to be carried out. The defendant’s lack of co-operation at times must be seen in that context.

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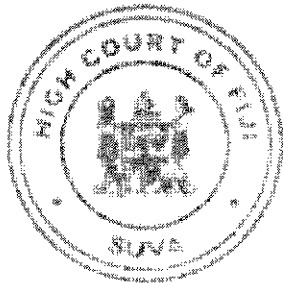
<sup>1</sup> Magna Exteriors Inc. v Kumar [2020] FJHC 783; HMB 188.2019 (23 September 2020)

17. In these circumstances, the court declines to grant the application for committal against the defendant.
18. If necessary, the plaintiff may give notice of debtor examination of the defendant for the purpose only of enforcing the judgment, and avoid subjecting him to an examination on matters that are not necessary to enforce the judgment.

**ORDER**

- A. The application for committal is dismissed
- B. The plaintiff is to pay the defendant costs summarily assessed in a sum of \$1,000.00 within 21 days of this decision.

Delivered at Suva on this 18<sup>th</sup> day of October, 2023.



M. Javed Mansoor  
Judge