

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 78 of 2022

**BETWEEN:**

**BANK OF BARODA** a Bank duly registered under the laws of Fiji and having its head territory office at the Bank of Baroda Building 86-88 Marks Street, Suva.

**PLAINTIFF**

**THE OFFICIAL RECEIVER** as the Provisional Liquidator of **JADURAM INDUSTRIES LIMITED** a limited liability company having its registered office at JNJ Limited Building, Rosawa Street, Nasea, Labasa, Fiji.

**DEFENDANT**

**Appearance:**

**Ms K. Singh: for the Plaintiff (Neel Shivam).**

**Ms. G. Naqiolevu: for the Defendant (Attorney General's Chamber).**

**Date of Hearing: 26<sup>th</sup> February 2024**

**RULING**

- [1] The Plaintiff filed an Originating Summons on 2<sup>nd</sup> March 2022 seeking the following:
- “1. **AN ORDER** for the Defendant by itself and/or its servants or agents to release the sum of \$153,496.30 (One Hundred Fifty-Three Thousand Four Hundred Ninety-Six Dollars and Thirty Cents) held in the Defendant's trust account to the Plaintiff.
  2. **AN ORDER** restraining the Defendant and/or its officers, servants or agents from releasing or transferring the sum of \$153,496.30 (One Hundred Fifty-Three Thousand Four Hundred Ninety-Six Dollars and Thirty Cents) held in the Defendant's trust account for the Plaintiff, to any other creditor of the company, Jaduram Industries Limited.
  3. **THAT** the Defendant pay costs of this application on an indemnity basis.”

The summons was accompanied by an affidavit in support of Vinod Kamal, the Manager Credit Department of the Plaintiff Bank. An Affidavit in Response of Shavleen Prasad, the Official Receiver was filed on 7<sup>th</sup> June 2022. An Affidavit in Reply of Vinod Kamal was filed on 1<sup>st</sup> July 2022.

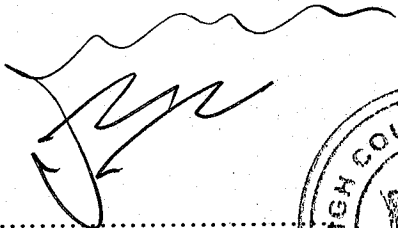
- [2] The submission for the Plaintiff is that Jaduram Industries Limited (“the company”) took a loan facility in the sum of One Million Four Thousand Seven Hundred and Seventy-Six Dollars (\$1,004,776.00) which was subsequently revised on numerous occasions. One of the securities the company provided to the Plaintiff for the loan was a mortgage over Agreement to Lease TLTB 4/9/19913 (“the Lease”), standing in the name of the Company. Later the company used the lease and mortgaged the same with HFC Bank. HFC’s mortgage was endorsed. The Company’s loan account fell into substantial arrears to the Banks. HFC exercised its rights under the mortgage and proceeded to carry out the mortgagee sale. The Company became insolvent and was wound up on 18<sup>th</sup> May 2018. The Lease was sold by HFC to recover the loan. On 2<sup>nd</sup> July 2020 the Plaintiff lodged a proof of debt through their lawyers with the Defendant in the sum of \$153,496.30. The Plaintiffs state that the proof of debt is not disputed and that the Defendant had given assurance that they will hold the amount in trust for the Plaintiff. They were assurances that the amount would not be used to pay another creditor. The Bank claims equitable Mortgage and that the Plaintiffs refusal to release the monies has caused loss and damages.
- [3] The response on behalf of the Defendant is that the proof of debt is disputed by the company. Furthermore, the Defendants argue that the Plaintiff has filed another civil action being in Labasa being HBC 30 of 2019 against the Company’s Directors who are the personal guarantors of the loan. The Defendants submit that paragraphs 18 and 19 of the Affidavit in Support deposes that the Plaintiff realised some of its securities and a sum of \$153,496.30 remains outstanding. While in the Writ action HBC 30 of 2019 the sum claimed is \$134,953.83. According to the Defendants the Plaintiff is seeking payment for the same debt arising from the same loan facility in two separate actions. Whereas they should wait for the determination of the action against the Directors. The Defendants refer to Rule 54 of the Companies (Winding Up Rules) 2015 and state that they are still in the process of verifying the debt filed by the Plaintiff and awaiting the outcome of the action against the Directors. The position of the Defendant is that Official Receiver has neither accepted or rejected the proof of Debt and is still examining the proof of debt and should be given the opportunity to decide that matter.
- [4] Section 543 of the Companies Act 2015 sets out the powers of a Liquidator. Which is the powers of the Defendant, Official Receiver as the liquidator of Jaduram Industries Limited (In Liquidation). The powers of the Liquidator are wide and varied. Section 544 (4) and (5) provides that *“the liquidator must manage the estate and its distribution among the creditors at the liquidator’s discretion”* and *“if any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.”*, respectively. The law need to be read in entirety, however for ease of reference I have underlined the pertinent portions of the law.
- [5] Having noted the submission of the parties I note that the Official Receiver (OR) as the liquidator is being cautious. The caution that is being exercised by the OR is clearly set out in the OR’s affidavit filed on 7th June 2022. The OR’s position is that given the Plaintiffs claim is being disputed and in light of the Labasa Civil Action 30 of 2019 the surplus funds were not paid by the OR to the Bank. The Bank admits the civil action in the Affidavit in Reply of Vinod Kamal. The position of the OR is that the proof of debt is still being examined and a decision has not been made. It is the

OR

duty of the ~~of~~ to examine and verify every proof of debt that is filed. Following that they may admit or reject such proof of debt: **Rule 54 Companies (Winding Up) Rules 2015**. The OR is awaiting the outcome of the Labasa Civil Action 30 of 2019 against the Directors/Guarantors as it relates to the same debt. The position taken by the OR is reasonable. The OR has the power to defer the determination of the proof of debt. What is in issue is the same debt. A court action on the same debt is pending. It is prudent that the matter is decided and then a call be made on the proof of debt. I note that the OR as the liquidator has a discretion. I find that the OR is prudent and honest and impartial in the exercise of the discretion. For these reasons I would dismiss the Originating Summons. The Defendants are entitled to costs which I summarily assess in the sum of \$2000.00 to be paid by the Plaintiff within 14days.

[5] The **Court Orders** as follows:

- (a) The originating summons is dismissed.
- (b) The Plaintiff is to pay the Defendant \$2000.00 as costs, within 14 days. The costs have been summarily assessed.

  
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Chaitanya S.C.A Lakshman  
**Puisne Judge**  
17<sup>th</sup> June 2024

