IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 109 of 2025

BETWEEN : **WESTCOAST PACIFIC PTE LIMITED** a limited liability company incorporated under the Laws of.

FIRST PLAINTIFF

AND : **SHASI SHALENDRA KUMAR** and **SUNITA DEVI** both of Lot 7 Deo Street, Namaka, Nadi, Fiji Company Directors.

SECOND PLAINTIFF

AND : **HOME FINANCE COMPANY PTE LIMITED** a limited liability company incorporated under the laws of Fiji and trading as **HFC BANK**

DEFENDANT

Before	:	U.L. Mohamed Azhar, Acting Judge.
Counsels	:	Ms. T. Draunidalo for the plaintiffs Mr. N. Prasad for the defendant.
Date of Hearing	:	09.06.2025
Defendant's submission filed on	:	09.06.2025
Plaintiff's submission filed on	:	19.06.2025
Date of Ruling	:	03.07.2025

RULING

01. The plaintiffs filed an Inter-Parte Summons and moved the court for following injunctive reliefs against the defendant – the bank:

(a) The Defendant is restrained from proceeding with its mortgagee's sale of Certificate of Title number 12964, Lot 7 on DP 3246;

(b) The Defendant is restrained from dealing in any manner whatsoever with Certificate of Title number 12964, Lot 7 on DP 3246;

(c) An Order for Costs on a Solicitor/Client indemnity basis;

(d) That time be abridged for service of this Summons, to be served within 2 days;

(e) Any other Order deemed just and expedient by this Honourable Court.

02. The facts of this matter, albeit brief, are that, the first plaintiff obtained loan facilities from the defendant on a loan agreement dated 18.07.2018. The loan facilities were secured by mortgage of Certificate of Title number 12964, Lot 7 on DP 3246 belonged to the first named second plaintiff. Admittedly, the first plaintiff defaulted in paying loan as agreed with the defendant. The defendant sent the demand notice. The plaintiffs failed to comply the requirements of the demand notice and eventually, the defendant proceeded to mortgagee's sale of the security which is Certificate of Title number 12964, Lot 7 on DP 3246. The plaintiffs seek to restrain the defendant from mortgagee's sale.

03. The argument of the counsel for the defendant at hearing of the summons, was twofold. Firstly, the counsel submitted that, it is the general rule that the mortgagor should bring the total amount to the court in order to restrain the mortgagee from exercising the right of sale. He relied on the decision of **Inglis v Commonwealth Trading Bank of Australia** [1972] HCA 74; (1972) 126 CLR 161 and the decision of this court in **Tremma Holdings Ltd v Bred Bank (Fiji) Ltd** [2024] FJHC 539; HBC94.2024 (9 September 2024). Secondly, the counsel submitted that, the plaintiffs also failed to satisfy the requirements of granting interlocutory injunctions expounded in the often-cited case of **American Cyanamid Co. *v.* Ethicon Ltd** [1975] AC 396.

04. Conversely, the counsel for the plaintiff agreed to the general rule emphasized in **Inglis** and followed by this court in **Tremma Holdings Ltd**. However, she argued that, this case falls under the exceptions to that general rule. The counsel submitted that, there are exceptions recognized by the courts to the above rule and they are; (a) where the amount claimed by the mortgagee is plainly wrong, (b) where there is a doubt as to the existence of power of sale or doubt as to whether it has become exercisable at all, (c) where the validity of the mortgage is being challenged, and (d) where the action is pursuant to the Trade Practice Act 17974 which is peculiar to the Australian jurisdiction. The counsel further submitted that, this case falls under exception (b) that, there is doubt as to existence of power of sale or doubt as to whether it has become exercisable at all.

05. It has now become necessary to discuss the general rule, the exceptions, if any, recognized by the court and the issues raised by the counsel for the plaintiffs to bring this case within the said exception.

06. This court in **Tremma Holdings Ltd** discussed in detail the general rule and its applicability in Fiji. The general rule is that a sale by a mortgagee will be restrained only on payment into court by the mortgagor of the amount which the mortgagee swears to be due to him. This is a long-established rule decided by the English Court of Appeal in **Hill v. Kirkwood** (1880) 28 W.R. 358. Jessel, M.R. referred that case in **Hickson v Darlow** (1883) 23 Ch. D 690 and held at page 694 that:-

> All the court there decided was that the ordinary practice in cases between mortgagor and mortgagee was to be followed, namely, that on an application by a mortgagor to stay a sale, if the mortgagee swears that an amount which, consistently with the terms of mortgage, may be due to him, is due, that is the amount which the mortgagor must bring into court.

07. **Halsbury's Laws of England**, Fourth Edition, Vol. 32 Para 658 states this rule in following terms:

> The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or because the mortgagor has begun a redemption claim, or because the mortgagor objects to the manner in which the sale is being arranged. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is, normally, the amount which the mortgagee claims to be due to him....

08. Walsh J in **Inglis** referred to the Halsbury's Law of England and re-emphasized this general rule. Barwick C.J. (with whom Menzies J and Gibbs J agreed) dismissed the appeal against the decision of Walsh J and endorsed the general rule as follows:

> I have not heard anything, nor been referred to any authority, which causes me in the least to doubt the correctness of the refusal of Walsh J. to grant the interlocutory injunction sought by the appellant or the reasons which he gave for that refusal. I find no need to discuss the arguments offered, and the authorities referred to, by the appellant. Such of them as were relevant are sufficiently answered in his Honour's reasons.
>
> The case falls fairly, in my opinion, within the general rule applicable when it is sought to restrain the exercise by a mortgagee of his rights under the mortgage instrument. Failing payment into court of the amount sworn by the mortgagee as due and owing under the mortgage, no restraint should be placed by order upon the exercise of the respondent mortgagee's right under the mortgage.

09. The Fiji Court of Appeal in **Westpac Banking Corporation Ltd v Prasad** [1999] FJLawRp 17; [1999] 45 FLR 1 (8 January 1999) held that:

> It is clear on the authorities that if the present case be regarded as one in which the mortgagor's real claim against the mortgagee is for damages only, interlocutory relief should be granted only upon terms that the amount of the mortgage debt is paid into court. The general rule referred to in *Inglis'* case would apply in such a case.

10. Calanchini J (as he then was) held in **Housing Authority v Delana** [2010] FJHC 277; HBC283.2006 (30 April 2010) that:

> This Court has long held the view that failing payment into Court of the amount sworn by the Mortgagee as due and owing under the Mortgage, no restraint should be placed on the exercise of the Mortgagee's powers of sale under the mortgage (see ***Westpac Banking Corporation Ltd –v- Adi Mahesh Prasad (1999) 45 FLR 1***; ***NBF Asset Management Bank –v- Kolinio Bulivakanua and Selina Mau Bulibakarua*** Civil Action No. 97 of 1999 unreported decision of Byrne J (as he then was) delivered on 30 November 1999; ***NBF Asset Management Bank –v- Donald Thomas Pickering and Eileen Pickering*** Civil Action No. 170 of 1999 unreported decision of Byrne J (as he then was) delivered on 19 May 2000 and ***NBF Asset Management Bank –v- Naipote Vere and Another*** Civil Action No. 323 of 2001 delivered 10 November 2003 unreported per Scott J). (Emphasis is original).

11. The next question is whether the above general rule could be applied inflexibly in each and every case or it could be relaxed in certain circumstances. This is because the distinction has been made by the courts between the ordinary cases and the cases where existence of the power of sale or the question whether it is exercisable at all is in question.

12. In **Harvey v McWatters** (1948) 49 SR (NSW) 173, Sugerman J mentioned about the distinction at page 178 as follows:

> There is a distinction between what I have called the ordinary case and the case in which the existence of the power of sale or the question whether it is exercisable at all is in question. The present case is of the second class. What is called the ordinary rule applies to cases of the first class, and to those cases only. This flows from the principles and reasoning on which that rule depends. Cases of the second class are, as regards interlocutory applications, governed by a rule of similar type. But it is a rule resting on different principles and reasoning. These permit of a

greater flexibility. They do not require that in every case the whole amount claimed or sworn to by the mortgagee or seen from the terms of instrument to be the greatest amount that could be due should be paid in. The terms may be moulded so as to require payment in of so much only as suffices to give adequate protection to the mortgagee.

13. Barker J, having analyzed some cases in **Linnpark Investments Pty Ltd & Ors v Macquarie Property Development Finance Ltd** [2002] WASC 272 (18 October 2002) held that the general rule is not an inflexible one and the court has, in an appropriate case, discretion to deviate from it by giving adequate protection to the mortgagee. He held in paragraph 22 as follows:

> For my part, I would accept that the general rule describing ***Inglis'*** case is exactly that, a "general" rule. It should ordinarily be applied. However, it has been recognised on a number of occasions, as indicated above, that the rule is not an inflexible one and the Court has a discretion in an appropriate case to depart from the full stringency of the rule and to mould its order so as to require payment into court of only so much as will suffice to give adequate protection to the mortgagee.

14. **Halsbury's Laws of England**, Fourth Edition, Vol. 32 Para 658 identifies certain exceptions in the same paragraph after citing the general rule, and it reads that:

> The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or because the mortgagor has begun a redemption claim, or because the mortgagor objects to the manner in which the sale is being arranged. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is, normally, the amount which the mortgagee claims to be due to him **unless**, on the terms of the mortgage, the claim is excessive; but where he was the mortgagor's solicitor at the time of the mortgage, the court will fix a sum probably sufficient to cover his claim. The mortgagee will also be restrained if, upon a subsequent incumbrancer offering to pay off the first mortgage, the mortgagee denies his title to redeem, and possibly where the validity of the mortgage or the availability of the power of sale is in issue. The extent to which a mortgagee of a ship is bound to charterparty entered into by the mortgagor is considered elsewhere in this work. The sale is improper if at the time of sale the mortgagor tenders the amount due for principal and interest, even though without costs.
>
> Where a mortgage deed conferring an express power of sale contains a covenant that the power is not to be exercised without a specified notice,

> but that the only remedy for breach of the covenant is to be in damages against the mortgagee, it has been held that the court cannot restrain the sale on the ground of want of notice; but it seems that, ordinarily, want of due notice in accordance with the terms of an express power of sale, as it is a ground for setting aside a sale against a purchaser with knowledge, is a ground for restraining a sale. If the mortgagee has, in exercise of his statutory power of sale, entered into a contract for the sale of the property, the court will not, upon tender of the money due under the mortgage, interfere to stop the completion of the sale by conveyance unless the contract was entered into in bad faith. The fact that the contract is at an under-value is not by itself proof of bad faith.

15. In **Gill v Newton** (1866) 14 WR 490, the English Court of Appeal, overturned the decision of lower court which refused to grant an injunction where the mortgagee had been put into possession by a separate deed, which reserved all of the mortgagee's rights and remedies. The deed allowed upon trust the taking of the rents and profits of the property and to pay himself and certain prior encumbrances. Knight Bruce LJ and Turner LJ, had the view that, they would not have interfered with the first instance ruling, were it not for the unusual terms of the deed. The court found that, the existence of subsequent agreement, which created different rights and duties of the parties, is a ground to depart from the general rule.

16. The court departed from general rule in **MacLeod v Jones** (1883) 24 Ch D. 289, where the mortgagee was also the mortgagor's solicitor. The Court of Appeal considered the unique position of the mortgagee as not only mortgagee, but, critically, as the mortgagor's solicitor, who owed independent fiduciary duty to her. The Court granted the injunction without the usual condition of payment into court of the amount due under the mortgages, but on condition the plaintiff pays into court, a sum sufficient to cover the actual amount of money which the defendant had advanced on her behalf. Despite the departure from the ordinary rule, the court protected the mortgagee to the extent of the sums actually expended by him, even if not the full amount due under the mortgages. The court took the view that, in such a case the court will look into all circumstances of the case, and will make such order as will save the mortgagor from oppression without injuring the security of the mortgagee.

17. The examination of various cases mentioned above reveals that, the general rule that an injunction will not be granted against the mortgagee restraining from exercising the power of sale unless the amount of the mortgage debt, if it is not in dispute, is not an inflexible rule applicable to each and every case. The court has discretion to depart from this general rule in exceptional cases where (a) the on the terms of the mortgage, the claim is excessive, and (b) where the validity of the mortgage or the availability of the power of sale is in issue due to subsequent agreement between the parties, or due to bad faith on part of the

mortgagee leading to fraud in dealing with the mortgaged property, or due to the special relationship between the parties, and or special circumstance of a particular case etc. Accordingly, a mortgagor who claims that, a particular case falls under the exceptions, owes duty to satisfy the court that either (a) the power of sale has not accrued to the mortgagee due to genuine dispute over the amount due to the mortgagee; or (b) even it has accrued, there is doubt as whether it is exercisable at all due to fraud, or invalidity of mortgage, or subsequent agreement, or bad faith of the mortgagee, or due to other serious and triable issues.

18. In this regard, I agree with the submission of the counsel for the plaintiff that, there are exceptional circumstances where the general rule is not strictly applied. However, it should be noted that, the courts did not completely deviate from the requirement of bringing the total sum into the court, but followed a balancing test by saving the mortgagor from oppression without injuring the security of mortgagee.

19. The next question is whether this case falls under any of the exceptions which allow the court to depart from the long-established general rule. The counsel for the plaintiff was very articulate about her submission that, this case falls under the exceptional cases. Her submission was two-fold. Firstly, she submitted that, the Covid 19 pandemic affected the business of the plaintiffs. The Government Fiji, from the beginning of the pandemic, through the Reserve Bank offered pandemic assistance (**Pandemic RBF Assistance**) to all qualifying businesses through their respective commercial banks. The plaintiffs requested the Nadi Branch of the defendant. However, the defendant did not apply to the Reserve Bank. The plaintiffs then moved their application to the Head Office in Suva, which finally approved only in 2022. The counsel argued that, defendant's inaction, negligence and or breach of contract in not facilitating the Pandemic RBF Assistance strongly contributed to the plaintiff's default. Secondly, the counsel argued that, the defendant breached its duty to act in good faith as the mortgagee by failing to obtain a reasonable price to the mortgaged property. The counsel submitted that for these reasons, there is a doubt as to whether the power of sale has become exercisable at all in this case.

20. In response to the first argument of the plaintiffs, the counsel for the defendant on the other hand submitted that, the defendant as the mortgagee was aware of it duties and discharged them considering financial difficulties experienced by the plaintiff during the turbulent time of Covid 19 pandemic. The defendant was promptly working with the plaintiff by providing necessary information to re-structure the loan and offered pandemic related reliefs to the plaintiff. In support of his argument the counsel referred to numerous Exhibits annexed with the affidavit filed on behalf of the defendant.

21. The Exhibits marked as "AH 4" and "AH 5" are the letters dated 22.04.2020 from the defendant to the plaintiffs. By these two letters, the defendant offered variation to the loan facilities to assist the business of the plaintiff during the Covid pandemic period. The heading of the letters is "Variation to Facilities in regard to Covid 19 Hardship Assistance". A repayment moratorium of 2 and 3 months were granted respectively to the relevant loan facilities with the option for review upon expiry of moratorium depending on the economic situation.

22. The second plaintiff thereafter by letter dated 26.06.2020 which is exhibited as "AH 6" requested the defendant to grant loan holiday repayment citing Covid 19 pandemic situation. The defendant positively responded to the request. By two letters dated 20.07.2020 which are marked as "AH 7" and "AH 8" respectively, the defendant provided further short term relief by deleting arrears being loan repayments for the month of June 2020 and repayment holiday for the month of July 2020 to all loan facilities given to the first plaintiff. The Exhibits marked as "AH 9" and "AH 10" annexed with the affidavit of the defendant are evident that the defendant provided further "Covid Hardship Assistance" to the plaintiff. The assistance covered (a) two month repayment holiday for the months of May and June 2021 on all facilities, and (b) extension of loan payment by two months. These two letters clearly state the defendant discussed and understood the hardship caused to the business of the plaintiffs due to Covid 19 pandemic, and provided assistance with the assurance for further assistance.

23. Further, the documentary evidence before the court shows that, the defendant continued to support the plaintiffs to overcome the financial difficulties caused by Covid 19 pandemic. By letter dated 07.02.2022, the defendant offered additional loan facility under the Reserve Bank of Fiji Disaster Rehabilitation and Containment Facility. This facility was thereafter varied by another offer dated 21.11.2022, whereby the first plaintiff was given a working capital requirement of $ 50,000.00. The Exhibits marked as "AH 11" and "AH 12" are evident that this facility was provided to the first plaintiff and it acknowledged the same.

24. The plaintiffs neither disputed the above mentioned documentary evidence adduced by the defendant through its affidavit, nor did they deny the corresponding assertions by the defendant. Accordingly, the first allegation of the plaintiff that, defendant's inaction, negligence and or breach of contract in not facilitating the Pandemic RBF Assistance strongly contributed to the plaintiff's default, is unfounded and baseless. In contrast, the defendant, as the mortgagee, remarkably discharged it duties and supported the defendant in numerous ways to overcome the financial hardship caused by Covid 19 pandemic.

25. The second allegation of the plaintiffs is that, the current market for sale of property is bad as the economy is stagnant at the moment. The defendant, acting in bad faith, is selling the

property in current market. This raises serious doubt as to whether the power of sale has become exercisable at all. In order to make a decision on this second allegation, the court should examine following issues. Firstly, when does the power of sale accrue to a mortgagee under the law? and has it accrued to the defendant in this case? Secondly, what is the duty imposed on the mortgagee when it exercises the power of sale? and did the defendant breach it?

26. The answer to the first part of the first issue is available in section 77 and 79 of the Property Law Act (Cap 130). Those two sections are as follows:

> *Mortgagor in default*
>
> **77**. If default is made in payment of the mortgage money or any part thereof, or in the performance or observance of any covenant expressed in any mortgage or in this Act declared to be implied in any mortgage, and such default is continued for one month or for such other period of time as is in such mortgage for that purpose expressly fixed, the mortgagee may serve on the mortgagor notice in writing to pay the mortgage money or to perform and observe the covenants therein expressed or implied, as the case may be.
>
> *Mortgagee may sell*
>
> **79**. -(1) If default in payment of the mortgage money or in the performance or observance of any covenant continues for one month after the service of the notice referred to in section **77**, the mortgagee may sell or concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior leases, mortgages and encumbrances or otherwise, and either together or in lots, **by public auction or by private contract, or partly by the one and partly by the other of those methods of sale**, and subject to such condition as to title or evidence of title, time or method of payment of the purchase money or otherwise as the mortgagee thinks fit, with power to vary any contract for sale and to buy in at any auction or to vary or rescind any contract for sale and to resell without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages and grant such easements of right of way or drainage over the same as the circumstances of the case require and the mortgagee thinks fit, and may make and sign such transfers and do such acts and things as are necessary for effectuating any such sale.(Emphasis is added).

27. Accordingly, if a default continues for a month or for any such period expressly provided in the mortgage, the mortgagee may serve a notice in writing to the mortgagor to pay the

mortgage money. If the default continues for one month after service of such notices, the mortgagee may sell or concur with any other person in selling the mortgaged property or any part thereof by public auction or by private contract, or partly by the one and partly by the other of those methods of sale. It is pertinent to note that, the mortgagee is even allowed to sell the property by private contract. The very reason for this power is that, the mortgagee is not a trustee for sale, but has substantial interest in the property being sold. Therefore, the mortgage is given wide power for the purpose of realizing his security.

28. Consequently, the second issue, as mentioned above arises as to what duty is imposed on the mortgagee in exercising such power of sale? And did the defendant breach it? Lord Justice Salmon having analyzed number of cases in **Cuckmere Brick Company Limited v Mutual Finance Limited** [1971] EWCA Civ 9, held that,

> I accordingly conclude, both on principle and authority, that a mortgagee in exercising his power of sale does owe a duty to take reasonable precaution to obtain the true market value of the mortgaged property at the date on which he decides to sell it. No doubt in deciding whether he has fallen short of that duty, the facts must be looked at broadly and he will not be adjudged to be in default unless he is plainly on the wrong side of the line.

29. It was held in **Warner v Jacop** (1882) 20 Ch. D 220 that, the mortgagee is not a trustee strictly speaking of the power of sale. It is a power given to him for his own benefit, to enable him the better to realize his mortgage debt. If he exercises it bona fide for that purpose without corruption or collusion with the purchaser, the court will not interfere, even though the sale be a very disadvantageous one, unless indeed the price is so low as to be itself evidence of fraud.

30. Accordingly, the mortgagee has substantial interest in the mortgaged property. The power of sale is given to his own benefit to enable him to realize his mortgage debt. The duty of the mortgagee when realizing the mortgaged property by sale is to behave in conducting such realization as a reasonable man would behave in the realization of his own property. He must take reasonable precaution to obtain the true market value of the mortgaged property at the date on which he decides to sell it. A mere fact that, the property is sold at an under-value is not by itself enough to prove bad faith.

31. In this case, the loan accounts came into arrears in year 2023, and the first reminder was sent to the plaintiffs on or about 06.01.2023. Thereafter, number of reminder letters were sent to the plaintiffs. The copies of the all the letters are marked as Exhibit "AH 14" and annexed with the affidavit of the defendant. In response, the plaintiffs gave numerous assurance to the defendant to settle the arrears in full, stating that, they were seeking re-

financing from another bank. There was a number of communications between the parties in this regard, and the copies of the e-mail correspondence between them are also exhibited with the affidavit. In or about August 2023, the defendant even permitted the plaintiffs to sell the mortgage property by private sale in order to settle the arrears in full. Subsequently, the notice of demand was sent to the plaintiff with the permission again to sell the property by private sale. However, the plaintiffs were unsuccessful in both selling the property by private sale and in settling the arrears.

32. The defendant then proceeded to sell the property by pubic sale. The defendant had two separate rounds of advertisements for mortgagee's sale. The plaintiff thereafter sought assistance from the Office of Financial Services Ombudsperson in Reserve Bank of Fiji. The Ombudsperson by an e-mail dated 23.10.2024 advised the defendant to proceed with mortgagee's sale, should the plaintiff fail to complete the sale of mortgaged property by 31.01.2025. The plaintiffs, however, failed to comply with the deadline given by the Financial Services Ombudsperson. The defendant then received an offer from a prospective buyer for sum of $ 795,000.00. The plaintiffs now seek to restrain the defendant on the basis that, the amount low. The circumstances of this case as discussed above leave no room for fraud on part of the defendant, or collusion of the defendant with the prospective buyer.

33. Somewhat similar situation arose in **Lord Waring v London and Manchester Assurance Co Ltd** [1934] All ER 642, the mortgagor charged certain property in favour of mortgagee to secure £ 180,000 and interest. The mortgagor defaulted. The mortgagee appointed a receiver of mortgaged property. The mortgagor was informed of this process. At that time, the mortgagor was negotiating with a potential lender for a fresh loan of £ 200,000.00 in order to discharge the total sums due to the mortgagee. The mortgagor from time to time requested the mortgagee to postpone the sale in order to allow the negotiation for the fresh loan, to which the mortgagee agreed. Ultimately, the mortgagor failed. The mortgagee then proceeded to finalize the sale of the property for sum of £ 186,000.00. The mortgagor by a Motion moved the court for an injunction to restrain the mortgagee, on the ground, among others, that the sale was at a gross under value. Crossman J, rejected the argument and held that:

> The law, as stated by KAY J in *Warner v Jacob* (1) (20 Ch D at p 224) is perfectly clear. The learned judge there says:
>
> "A mortgagee is strictly speaking not a trustee of the power of sale. It is a power given to him for his own benefit, to enable him the better to realize his debt. If he exercises it bona fide for that purpose, without corruption or collusion with the purchaser, the court will not interfere even though the sale be very disadvantageous, unless, indeed, the price is so low as in itself to be evidence of fraud."

> In my judgment, it is impossible on the facts of this case to conclude that the price is so low as in itself to be evidence of fraud. It is true that there is some suggestion that the Yorkshire company is willing to advance on mortgage an amount larger than that of the purchase money, which implies, presumably, that the value which the Yorkshire company puts upon the property must also be considerably larger.
>
> I do not consider, however, that that in itself is evidence of fraud. There must be something far beyond the mere fact of undervalue.

34. The plaintiff in this case before me, failed to adduce any evidence to show fraud on part of the defendant or his collusion with the prospective buyer, a part from mere fact of undervalue. A mere fact that, the contract for sale is to be entered at an under-value is not by itself enough to prove bad faith on part of the defendant.

35. It is evident from the above discussion that, the plaintiffs failed to bring show that a serious question to be tried in this case in order bring this case into the exceptions to the general rule that, a sale by a mortgagee will be restrained only on payment into court by the mortgagor of the amount which the mortgagee swears to be due to him. For the above reason I conclude that, (a) the power of sale accrued to the defendant upon the default of the first plaintiff and (b) there is no question at all over the exercisability of such power by the defendant in this case. Thus, I am of the view that, the injunction restraining the defendant from exercising its power of sale should not be granted in this case.

36. In result, I make the following orders:

a. The injunctions sought by the plaintiffs are refused;

b. The Inter-Parte Summons filed by the plaintiffs on 16 May 2025 is dismissed; and

c. The parties to bear the costs.

HIGH COURT OF FIJI · LAUTOKA

U.L.Mohamed Azhar
Acting Judge

At Lautoka
03.07.2025