

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action No: HBC 187 of 2024

BETWEEN: **FARM 2 U FRESH LIMITED** a limited liability company having its registered office at Lot 1 Nokonoko Road, Laucala Beach Estate, Nabua.

PLAINTIFF

AND: **TIVI WEST PTE LIMITED** a limited liability company having its registered office at Factory 8, Kalabu Tax Free zone, Daniva Road, Nasinu.

DEFENDANT

Representation:

Mr. A. Pal (AP Legal) for the Plaintiff.

Mr. A. Vulaono (Siwatibau & Sloan) for the Defendant.

Date of Hearing: 7th November 2024.

Ruling

A. Introduction

[1] The Plaintiff had filed an Ex-parte originating summons seeking the following orders:

"1. The Defendant's property comprised in iTaukei Lease No. 36364 being Lot 1 on SO 9438 containing an area of 113.54 hectares do stand charged with the payment of the judgment sum due from the Defendant to the Plaintiff as adjudged by the High Court in Civil Action No 335 of 2019, in the Judgment dated 28 February 2024 awarding the Plaintiff the following:

- a. The Defendant is ordered to pay the Plaintiff the sum of FJD [\\$]835,250.00 [(Eight Hundred Thirty-Five Thousand Two Hundred Fifty] Dollars).*
- b. Pre and post judgment interest at the rate of 8% per annum.*
- c. Costs to be taxed if not agreed.*

2. The Defendant attend court to show as to why the charge imposed in the proceeding order should not be made absolute.

3. Costs of the application.

4. Any other orders Court deems just and fair”

The summons is accompanied by an affidavit in support of Zaina Dean. The Summons filed pursuant to Order 50 Rule 1 of the High Court Rules 1988.

- [2] On 8th July 2024 I granted interim charging order on the property and sought that the Defendant show cause why the order should not be made absolute. On 12th August 2024 the solicitors for the Defendants were served the orders.
- [3] An affidavit in opposition was filed on 25th September 2024. Plaintiff's filed an affidavit in response on 11th October 2024. The parties were heard. They filed written submissions.

B. Determination

- [4] The application before me is under Order 50 of the High Court Rules 1988. It relates to charging orders. A charging order on a property or asset of the debtor is one of the modes of enforcement of a judgment or order for the payment of money to the creditor. It is, however, not a direct mode of enforcement in the sense that the creditor can immediately proceed to recover the fruits of the judgment. It is rather an indirect mode of enforcement in the sense that it provides the creditor with security, in whole or in part, over the property of the debtor. It makes the creditor a secured creditor, who having obtained the charging order must proceed, as may be necessary according to the nature of the property charged, to enforce his charge in order to obtain the actual proceeds of his charge to satisfy his judgment, in whole or part.
- [5] Order 50 Rule 6 of the High Court Rules 1988 sets out the making and effect of charging order absolute. It is as follows:

“(1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where, on the further consideration of the matter, it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 2 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.”

- [6] The issue to determine is whether the Defendant has shown sufficient cause to the contrary under Order 50 Rule 6 (1). I have already in paragraph [4] set out the effect and the notion of a charging order. Lord Brandon in **Roberts Petroleum Ltd v Bernard Kenny Ltd (in liquidation)**, [1982] 1 All ER 685 set out the principles of a charging order being made absolute. These principles were endorsed by the House of Lords on appeal in **Roberts Petroleum Ltd v Bernard Kenny Ltd (in liquidation)**, [1983] 1 All ER 564.

[7] The principles are as follows:

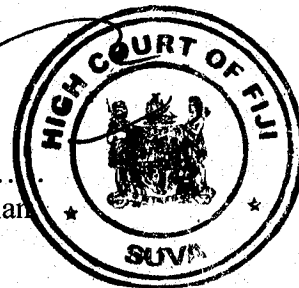
- “(1) The question whether a charging order nisi should be made absolute is one for the discretion of the court.*
- (2) The burden of showing cause why a charging order nisi should not be made absolute is on the judgment debtor.*
- (3) For the purpose of the exercise of the court's discretion there is, in general at any rate, no material difference between the making absolute of a charging order nisi on the one hand and a garnishee order nisi on the other.*
- (4) In exercising its discretion the court has both the right and the duty to take into account all the circumstances of any particular case, whether such circumstances arose before or after the making of the order nisi.*
- (5) The court should so exercise its discretion as to do equity, so far as possible, to all the various parties involved, that is to say the judgment creditor, the judgment debtor, and all other unsecured creditors.*
- (6) The following combination of circumstances, if proved to the satisfaction of the court, will generally justify the court in exercising its discretion by refusing to make the order absolute: (i) the fact that the judgment debtor is insolvent; and (ii) the fact that a scheme of arrangement has been set on foot by the main body of creditors and has a reasonable prospect of succeeding.*
- (7) In the absence of the combination of circumstances referred to in (6) above, the court will generally be justified in exercising its discretion by making the order absolute.”*

[8] I have noted the principles as is stated above. The Defendant in the affidavit in opposition states that an appeal and a stay application is pending. The Plaintiff has an order that the Defendant pay them \$835,250.00. The matter is on appeal and there is no stay. The Plaintiff has a judgment in their favour. They are entitled to enforce the judgment. The Defendant has failed to show cause. The interim orders is made absolute.

C. Court Orders

- (a) Interim charging order imposed on the said property being *iTaukei Lease No. 36364 being Lot 1 on SO 9438 containing an area of 113.54 hectares*, is made absolute.
- (b) The Defendant is pay the Plaintiff \$2000.00 as costs within 21 days. The costs have been summarily assessed.

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Chaitanya S.C.A. Lakshman
Puisne Judge



17th February 2025