

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 314 of 2025**

In the matter of an application pursuant to Section 59 (b) of the Indemnity, Guarantee and Bailment Act 1881

Between: **PETER SAVONA** of Lot 2 Raghunath Singh Drive, Lami.

Plaintiff

And: **MOHAMMED JAAVED KHAN** of Lot 1 Namuka-i-Lau Settlement, Lami, Mechanic.

Defendant

Representation:

Plaintiff: In Person

Defendant: Mr. I. Romanu (MIQ Lawyers)

Date of Hearing: 22nd January 2026

Ruling

A. Introduction

[1] This application is brought by Originating Summons pursuant to Order 14 and section 59 (b) of the Indemnity, Guarantee and Bailment Act 1881. The Plaintiff seeks summary judgment for a liquidated sum of \$600,000.00 arising from a written Acknowledgement of Debt dated 5th December 2024.

[2] The Defendant does not deny signing the Acknowledgement but alleges that it was procured by trickery, without independent legal advice, and in circumstances said to be unconscionable. The Defendant contends that these matters raise triable issues requiring a full trial.

[3] I have considered all Affidavits and Submissions filed by the parties.

B. Background

[4] The Plaintiff's claim arises from a written Acknowledgement of Debt dated 5th December 2024, in which the Defendant acknowledged owing the Plaintiff \$600,000.00 and agreed to repay it with interest. The Plaintiff contends that the Defendant has failed to

make the payment in accordance with the terms of that acknowledgment despite the issuance of a formal Notice of Demand.

- [5] The Defendant opposes the application and denies liability. He does not dispute signing the Acknowledgement of Debt but alleges that it was obtained by trickery, without independent legal advice, and in circumstances he says were unconscionable. He further asserts that no proper financial breakdown was provided and that the transaction forms part of a deceptive scheme.
- [6] The Plaintiff rejects these allegations and maintains that the Acknowledgement of Debt was lawfully and voluntarily executed and that the Defendant's default entitles him to judgment on a liquidated demand.
- [7] The Court is therefore required to determine whether the Plaintiff is entitled to summary judgment on the acknowledged debt or whether the Defendant has raised a bona fide triable issue requiring the matter to proceed to a full trial.

C. Issues

[8] The issues for determination are:

- (a) *Whether the Plaintiff has established a prima facie entitlement to judgment on a liquidated demand?*
- (b) *Whether the Defendant has raised a bona fide triable defence of unconscionability, fraud, or procedural unfairness?*
- (c) *Whether any procedural or collateral matters prevent entry of judgment?*

D. Determination

- [9] Section 59 of the Indemnity, Guarantee and Bailment Act deals with promises or agreements by parol and is placed in the context of guarantee/indemnity law. The Act is part of the statutory scheme for such obligations in Fiji. A written Acknowledgement of Debt signed by a defendant admitting a specified sum due is treated as strong evidence of a liquidated demand and entitles a creditor to pursue summary relief unless the defendant can point to a real, substantive defence.
- [10] Order 14 rule 1 of the High Court Rules 1988 permits summary procedure where the claim is for a debt or liquidated demand. Order 14 rule 4 requires the Court to grant leave to defend where the defendant satisfies the Court that there is a triable issue or that there ought for some other reason to be a trial.

- [11] The governing principle is that a defendant must show a bona fide defence. Mere denials or speculative allegations are insufficient. This approach has been consistently applied in Fiji, including in **Sisters Aircool Electrical Services Ltd v Westpac Banking Corporation Ltd [2018] FJHC 1069; Civil Action 217 of 2013 (26 October 2018)**, where the Court held at paragraphs [42] – [45] that unsupported assertions do not amount to a triable issue.
- [12] Allegations of unconscionability are governed by established equitable principles. In **Commercial Bank of Australia Ltd v Amadio [1983] HCA 14; (1983) 151 CLR 447 (12 May 1983)**, which is adopted as persuasive authority in Fiji, the Court held at paragraphs [18] – [21] that relief is available only where a party suffers from a special disability and the other party knowingly takes unconscientious advantage of that disability.
- [13] **Section 12 (3)** of the Limitation Act expressly provides that where a debt is acknowledged in writing and signed by the person liable, the cause of action is treated as accruing on the date of acknowledgment. A valid written acknowledgment therefore carries statutory significance and reinforces the enforceability of a contemporaneous written admission of indebtedness.

(a) Whether the Plaintiff has established a prima facie entitlement to judgment on a liquidated demand?

- [14] The Plaintiff relies on an Acknowledgement of Debt dated 5th December 2024, signed by the Defendant, acknowledging indebtedness in the sum of \$600,000.00, together with agreed interest and repayment terms.
- [15] The Plaintiff relies on a Notice of Demand dated 9th May 2025 and deposed that the Defendant has failed to make payment in accordance with the agreed terms.
- [16] The Defendant does not dispute that the document bears his signature. The existence of the Acknowledgement and default is therefore established on the affidavit material.
- [17] I am satisfied that the Plaintiff has established a prima facie liquidated claim supported by documentary evidence. Unless displaced by a bona fide defence, judgment may properly be entered.

(b) Whether the Defendant has raised a bona fide triable defence of unconscionability, fraud, or procedural unfairness

- [18] The Defendant's primary substantive argument is that the Acknowledgement was obtained by trickery, without independent legal advice, and is unconscionable. The Defendant relies on equitable principles (Amadio) to say the transaction should be set aside.

[19] The *Amadio* (supra) principles require proof that:

Special disability – the weaker party was affected by a condition or circumstance that impaired their ability to make a fully informed and independent judgment.

Knowledge – the stronger party knew, or ought reasonably to have known, of that disability; and

Unconscientious conduct – the stronger party exploited that disability in a manner that makes it unconscionable to enforce the transaction.

[20] The Defendant alleges that he was “lured” into signing the Acknowledgement of Debt, that he did not receive independent legal advice, and that the transaction was deceptive and unconscionable. These are serious allegations. However, the Defendant’s affidavit provides no contemporaneous documentary evidence supporting deception, contains no affidavit from the independent lawyer who witnessed or prepared the Acknowledgement, provides no medical or other evidence of incapacity, vulnerability, or special disadvantage, and does not identify any specific misrepresentation or concealment of material facts.

[21] The Defendant’s assertions remain generalised denials and conclusions. They are not supported by objective or corroborative material capable of demonstrating a special disability or unconscientious advantage as required by equity.

[22] By contrast, the Plaintiff’s evidence demonstrates a formally executed written acknowledgement, followed by demand and default.

[23] The Court must be careful: where the defendant produces credible evidence of special disadvantage and that the plaintiff knew of it, summary judgment must not be entered. That is not so in the present case. The Defendant’s affidavit lacks the necessary particularity to show a prima facie unconscionable bargain.

[24] I therefore find that the Defendant has failed to raise a bona fide triable issue of unconscionability, fraud, or procedural unfairness. The equitable threshold necessary to displace a written acknowledgment of debt has not been met.

(c) Whether any procedural or collateral matters prevent entry of judgment

[25] Collateral issues, including disputes relating to security, caveats, or third-party property interests, do not ordinarily defeat a claim for judgment on a debt. Such matters are properly addressed at the enforcement stage or in separate proceedings.

[26] The Defendant refers to issues concerning land and caveats, supported by a third-party affidavit. Those matters may affect enforcement against specific property but do not undermine the Plaintiff’s entitlement to judgment on the debt itself.

[27] No limitation defence is made out on the face of the pleadings: the Acknowledgement is dated 5th December 2024, and the Notice of Demand and proceedings were brought in 2025; there is therefore no bar under the Limitation Act on the present material.

E. Conclusion

[28] For the reasons given, I find that:

- a. The Plaintiff has established a prima facie entitlement to judgment on a liquidated demand by virtue of the Acknowledgement of Debt dated 5th December 2024.
- b. The Defendant has not adduced affidavit material of sufficient particularity or corroboration to demonstrate a bona fide triable defence of unconscionability, fraud or duress that would require a full trial. The Defendant's allegations are serious but remain unparticularised and uncorroborated on the material before me.

F. Court Orders

- (a) *Judgment is entered for the Plaintiff in the sum of \$600,000.00.*
- (b) *Interest is awarded at 4% per annum from 5th December 2024 to the date of judgment, and thereafter at the statutory judgment rate until payment.*
- (c) *Parties are to bear their own costs.*



A handwritten signature in blue ink, appearing to read "Chaitanya S. C. A. Lakshman", is written over a horizontal dotted line.

Hon. Justice Chaitanya S. C. A. Lakshman
Puisne Judge

20th February 2026