

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 104** of **2013**

BETWEEN : **DOMINION FINANCE LIMITED** a limited liability company having its registered office at 231 Waimani Road, Suva.

PLAINTIFF

AND : **SKYKING INVESTMENTS LIMITED** a limited liability company having its registered office at 7 Waimanu Road, Suva, in Fiji.

1ST DEFENDANT

AND : **HF RESIDUAL OBLIGATIONS LIMITED** a company incorporated under the laws of New Zealand.

2ND DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Sharma D.** for the Plaintiff

Mr. Singh R. with Mr. Nand A. for the 1st Defendant

Mr Barker A. [Kings Counsel] for the 2nd Defendant

DATE OF JUDGMENT: 26th February, 2026

JUDGMENT

[Loan - Mortgage - Equitable Mortgage]

Introduction

- (1) The Plaintiff, Dominion Finance Limited [DFL] filed a Writ together with a Statement of Claim, subsequently amended on 25th June, 2019, and sought for the following relief:
- (a) Judgment against the First Defendant in the sum of \$3,478,061.59.
 - (b) Interest on the judgment sum to accrue at the rate of 10% per annum until the date of payment;
 - (c) Post Judgment interest as determined by the Court;
 - (d) An Order that the Plaintiff's Mortgage be registered against CT 7426 forthwith on the duplicate original lodged with the Titles Registry at Suva;
 - (e) A Declaration that the Plaintiff is entitled to transfer CT 7426 free from all encumbrances and charges including the Mortgage No. 597405 [as varied] against Certificate of Title No. 7426;
 - (f) An Order that the Plaintiff be allowed by way of Court Order to sell the following titles free from all encumbrances registered against the said titles:
 - CT 7427 Lot 1 DP 1633
 - CT 29124 Lot 1 DP 7392
 - CT 29125 Lot 2 DP 7392
 - CT 29127 Lot 4 DP 7392
 - CT 29128 Lot 5 DP 7392
 - CT 29129 Lot 6 DP 7392
 - CT 29130 Lot 7 DP 7392
 - CT 29131 Lot 8 DP 7392
 - CT 29132 Lot 9 DP 7392
 - CT 29133 Lot 10 DP 7392
 - CT 29134 Lot 11 DP 7392
 - CT 29135 Lot 12 DP 7392
 - (g) An Order that the Plaintiff's Managing Director be allowed to execute all Transfer and ancillary sale Documents on behalf of the transferor;
 - (h) An Order that out of the sale proceeds that Plaintiff be allowed to do the following, namely:
 - (a) Deduct all reasonable costs of sale;
 - (b) Deduct legal costs for this action as well as all fees incurred in the sale of the Titles.
 - (c) Balance to be used to pay the Plaintiff's Mortgage Debt;
 - (d) Balance to be paid into Court.
 - (i) An Order that the Defendant show evidence of the total funds disbursed by Hanover and show evidence of the amount of Hanover Funds brought to Fiji and used for construction and development of the property;

- (j) An Order that Defendant be ordered to provide receipts and invoices to verify the exact Hanover funds and amount that was spent on subdivision works carried out on CT 7426;
 - (k) Costs on an indemnity basis;
 - (l) Such further or other relief as the Court may deem just.
- (2) The First Defendant filed its Amended Statement of Defence on 9th July 2010.
 - (3) The Plaintiff then filed its Reply.
 - (4) The Second Defendant filed its Amended Statement of Defence and Counter Claim.
 - (5) In its Counterclaim, HF Residual Obligations Limited (HF) is seeking two (2) declarations:
 - (a) A Declaration that the Second Defendant has registered first priority Mortgage security over the Titles pleaded in relation to a claim of \$NZ 22,292,607.57.
 - (b) a Declaration that the HF mortgage are protected by indefeasibility from all adverse claims which the Plaintiff has made or may make in respect of these mortgages or the titles pleaded in the claim.
 - (6) Thereafter, the Plaintiff filed its Reply to the Amended Statement of Defence and Counterclaim.
 - (7) Amended Pre-Trial Conference minutes was filed by the parties to the proceedings on 28th February 2022.
 - (8) Parties to the proceedings furnished Court with written submissions.

Background

- (9) Skyking is a Company registered in Fiji and is the registered proprietor of all the land situated at Caudua point, Wainadoi.
- (10) Skyking was incorporated primarily to subdivide, develop and sell for profit all the land (Caudua project). Skyking is substantially owned by **Ocean Pacific Resort Holdings Limited** (Ocean Pacific) a company duly registered in New Zealand.
- (11) **HFROL** was formerly known as **Hanover Finance Limited** and was amalgamated with HF Newco Limited on 30th August 2010 that entity traded as Hanover Finance Limited until it was renamed HFROL on 14th February 2011. HFROL is primarily involved in recovery of assets financed by Hanover Finance Limited before.

Agreed Facts

- (12) Gopal Pillai sold to the First Defendant Skyking Investments Limited land which was duly noted on the titles on 3rd May 2005.
- (13) On 3rd December 2005, the records at the Lands Titles Registry show that the First Defendant granted a mortgage [No. 579405] and registered on 21st December 2005 over the titles in favour of Hanover Finance Limited.
- (14) The borrower specified under Mortgage No. 579405 was Ocean Pacific Resort Holdings Limited and the First Defendant along with Mr Brent Gibson and Derek Storey were specified as Guarantors.
- (15) On 28th November 2007, the First Defendant executed a variation of Mortgage whereby the principal and priority amount secured by Mortgage No. 579405 was increased to \$NZD23,000,000.
- (16) On 30th August 2010, Hanover Finance Limited and HF Newco Limited amalgamated. Upon amalgamation, the merged entity became Hanover Finance Limited. On 14th February 2011, Hanover Finance Limited changed its name to HF Residual Obligations Limited [HFL].

(i) Hanover Loan

- (17) Hanover Finance Limited (now HFROL) between the years 2005 to 2007 lent NZ\$23,000,000 to Ocean Pacific under a Loan Agreement (Hanover Loan).
- (18) Skyking as guarantor secured the Hanover Loan by granting a **First Mortgage** (as well as the first Debenture) to HFROL over the Certificate of Title of land situated at Caudua point. The HFROL Mortgage was registered against all the Certificate of Title as registered mortgage no. 579405 on 21 December 2005.
- (19) Ocean Pacific, defaulted in repayments of the NZ\$23,000,000. HFROL as the **First Registered Mortgagee** over the Certificate of Title wishes to enforce its rights under the HFROL Mortgage.

(ii) Dominion Loan

- (20) The Plaintiff, Dominion Finance Limited alleges that in August 2018, it loaned a sum of F\$1,500,000 to Skyking [First Defendant].

(21) The Plaintiff further alleges that to secure the loan, Skyking offered the Plaintiff equitable Mortgage over Certificate of title No. 7426, however, it was not able to register its mortgage as the original of Certificate of Title No. 7426 was with HFROL.

(22) The Defendants deny the allegations.

Evidence

(23) The Plaintiff called two witnesses:

- [PW1] Nitesh Lal and
- [PW2] Brent Gibson.

(24) The Defendant chose not to call any witnesses rather relied on its written submissions.

(25) [PW1] Nitesh Lal in his evidence stated:

- Familiar with Skyking and Ocean Pacific Resort Holdings Limited.
- In 2008 lent a total of \$1.5 million to these companies to carry out development works at Caudua point outside Wainadoi.
- Loan Agreement [Exhibit P1] signed between Dominion Finance Limited and Skyking with agreed interest of 19% per annum.
- Earlier mortgage with Hanover which Mortgage was registered as the First Mortgage.
- PW1 relied on the Loan Agreement and Equitable Mortgage over CT 7426.
- After \$1.5 million was drawn down and disbursed Skyking made another application for \$9 million loan in order to takeover and refinance the debt of Hanover - Refinance Hanover Loan and carry out subdivision.
- However, second loan fell through.
- PW1 relied on the Loan Agreement and the Equitable Mortgage over CT 7426.
- Skyking defaulted loan repayments.
- Demand served on two Guarantors and Skyking and Ocean Pacific.
- Dominion Finance Limited did not receive any repayments.
- Loan money disbursed in tranches- revolving credit statement of 27th March 2013.
- Debt accrued in current debt now in \$35,427,023.08.
- Sought for Judgment against Skyking.
- No privity of Contract over Hanover.

Upon Cross-Examination [PW1] told Court:

- Credit limit was \$2.15 million but loan given was \$1.5 million to Skyking.
- Advances prior to 14th November 2008 are not for two other facilities.

In Re-Examination:

- The Loan Agreement was given to Hanover and Oceanic
- No advances were made by Dominion Finance Limited to Skyking after the only loan of \$1.5 million.

(26) [PW2] -Mr. Brent Gibson told Court:

- He was the Director and shareholder of Skyking.
- He explained that he and Mr. Storey bought the initial purchase from New Zealand to buy the land from Gopal Pillai.
- Hanover Finance had defaulted in paying three tranches of monies (\$700k each) to pay for Capital Work and Skyking then sought bridging finance from Dominion Finance Limited (plaintiff) from January 2018.
- Initial loan was \$150,000 and further advances were taken at Agreed interest of 19% per annum.
- He agreed that an equitable mortgage was granted to Dominion Finance Limited.
- Hanover and Dominion Finance Limited both lent monies to Ocean Pacific Resort Holdings Limited [OPRHL] and Skyking.
- Skyking wanted Dominion Finance Limited to refinance the Hanover loan but did not happen.
- He said Skyking had never denied its debts to Dominion Finance Limited, nor he had instructed anyone to deny the debt on behalf of Skyking.
- PW2 did not deny the Hanover debt either.

In Cross-Examination:

- It was put to PW2 by Defence that part of the purchase monies was secured by the mortgage which Hanover paid. PW2 could not recall but said that may be true but it was a long time now.
- PW2 admitted adjacent land from Dick Smith was bought for \$100,000 and some of the advances were paid to Fijian Contractors.

In Re-Examination:

- Dominion Finance Limited loan was for two (2) years but unpaid.
- The loan was unsecured, it was a High-Risk Loan, hence, high interest rate.
- He admitted Dominion Finance Limited lent \$1.5 million.
- Could not say what monies were bought by Hanover into Fiji and maintained his position about Hanover's default with Dominion Finance Limited.

Analysis and Determination

(27) The current case before this Court is arising out of a failed property development at Caudua point, Wainadoi. The development was to be called the 'Ocean Pacific Resort'.

- (28) The development was undertaken by Ocean Pacific Resort Holding Limited (OPL) a New Zealand registered company and Skyking Investment Limited (First Defendant), a Fiji registered Company. The land on which development would take place was owned by Skyking. Skyking was substantially owned by [OPL]. The individual behind OPL and Skyking were Brent Gibson and Derek Storey.
- (29) Hanover Finance Limited (Hanover) was the primary lender to the development. Hanover Finance Limited has since amalgamated with HF Residual Obligations Limited (HFROL).
- (30) The Defendant purchased 14 titles from Gopal Pillai on 20th April 2005 for a consideration sum of \$FJD 2,300,000 being Title Nos. CT 7426, CT 7427, CT 29124, CT 29125 to CT 29135.
- (31) On 3rd December 2005, the records at the Land Titles Registry show that the Defendant granted a mortgage [being Mortgage No. 579405 and registered on 21st December 2005] over the title in favor of Hanover Finance Limited.
- (32) The borrower specified under Mortgage No. 579405 was Ocean Pacific Resort Holdings Limited and the Defendant, along the Brent Gibson and Derek Storey specified as Guarantors. The total loan from Hanover to Ocean Pacific was supposed to be \$NZ 21,562,000.
- (33) On 31st December 2006, the Defendant executed a Variation Mortgage No. 579405, the amount increased to \$NZD 10,000,000.
- (34) On 28th November 2007, the Defendant Executed a second variation mortgage whereby the principal and priority amount secured by Mortgage No. 579405 was increased to \$NZ 23,000,000.
- (35) In or around August 2008, the Defendant sought loan from the Plaintiff in the sum of \$FJD 1,500,000.
- (36) The Plaintiff approved the loan of \$1,500,000 to the Defendant.
- (37) Security offered by the Defendant to secure the Plaintiff's advances were-
- Equitable Mortgage over Certificate of Title No. 7425,
 - Unlimited joint and several guarantees given by Kevin Derek Storey, Brent William Gibson and Ocean Pacific Resort Holdings Limited.
 - First option to purchase any of this 16 exclusive waterfront sections described in stage 3 and contained in CT No. 7426.
- (38) The Plaintiff disbursed the \$1,500,000 loan to the Defendant.

- (39) On 1st April 2009, the Plaintiff at the request of the Defendant offered a further facility of \$9,000,000 available to the Defendant. However, further securities were required as part of the additional loan facility including-
- A First Registered Debenture over all the Skyking Investment Limited's assets and undertaking and
 - As well as registering first mortgage over the Titles with the Exception of Certificate of Title No. 21935.
 - The Defendant failed its undertakings to give the Plaintiff a First Registered Mortgage over the Titles and a First Debenture.
 - The Plaintiff has also been unable to register its earlier mortgage since the duplicate original of CT No. 7426 was with Hanover.
- (40) The High Court has previously determined that HFROL (Hanover) now holds the rights as Mortgagee, following the amalgamation: Reference is made to **Skyking Investments Limited v Dominion Finance Limited** 263/2017, 4 May 2020. This is also acknowledged in Agreed Facts and Defendant's Bundle of Documents.
- (41) Hanover Finance Limited's lending was secured by a First Registered Mortgage over the development properties. At the time the development failed, the priority amount for the mortgage stood at NZ\$23,000,000.
- (42) It is noted that the only asset left from the development are the properties owned by Skyking [First Defendant].
- (43) However, **Dominion Finance Limited's** [Plaintiff] Contention is that it has an **unregistered equitable mortgage** over one of the properties subject to Hanover's security, and it should be allowed to sell all the properties and apply the sale proceeds against its claimed debt.
- (44) Now, taking into consideration the above dispute between Hanover Finance Limited and Dominion Finance Limited [Plaintiff], the primary issue for this Court to determine is **"who has the ranking security to the properties and eventually will be able to sell the properties to discharge their debt?"**
- (45) Obviously, the Competition is between the first ranking registered Mortgage over all the properties [Hanover] and an equitable mortgage over one of the properties to secure an advance made after the advance by Hanover.
- (46) *Hanover's Contention and Submissions* has been that:
- The answer to the existing question of priority is that Hanover's registered Mortgage must prevail, and

- It accordingly seeks a Declaration that it has a registered first Mortgage security over the properties, that has priority over any claim by Dominion Finance Limited [Plaintiff], to the amount of NZ\$23,000,000.
- (47) However, **Dominion Finance Limited** have outright challenged Hanover's priority on this rationale:
- Hanover, as the holder of the first registered Mortgage over the properties, has an indefeasible title in respect of its security interest,
 - The Reserve Bank has not withdrawn any consent to the mortgage,
 - The obligation to comply with any requirements imposed by the Reserve Bank of Fiji was, in any event, an obligation on Ocean Pacific Resort Holding Limited [OPL/Skyking] as borrowers and not Hanover.
- (48) The central issue raised by Dominion Finance Limited (DFL) in its claim is not whether Dominion (Plaintiff) advanced funds to Skyking (First Defendant).
- (49) Hanover believes that there are significant doubts about the quantum of that claim.
- (50) The issue is 'who has the right to sell the properties and to apply the funds from any sale in partial payments of their advance?'
- (51) The Plaintiff, Dominion Finance Limited in August 2018, lent Skyking Investments Limited (Second Defendant) a loan of F\$1,500,000 and executed a Loan Agreement. In order to secure this loan Skyking with Dominion Finance Limited, offered the Plaintiff an equitable mortgage over Certificate of Title No. 7426. The equitable mortgage could not be registered since the original of CT No. 7426 was in possession of HF Residual Obligations Limited (Second Defendant), HFROL.
- (52) It will be noted that the Defendant purchased a total of 14 titles from one Gopal Pillai. The Plaintiff was the holder of an Equitable Mortgage over one of the properties in CT 7426. The other properties were already subject to a **registered First Mortgage**.
- (53) Hanover (HFROL), however, became involved in this proceedings in order to protect its rights as the holder of that security (CT No. 7426) since it had the **First Registered Mortgage** over it.
- (54) In terms of evidence before this Court, there is no dispute that:
- Hanover [HF Residual Obligation Limited] made loan advances to Ocean Pacific Resort Holdings Limited [OPL], Skyking (First Defendant),
 - Loans were secured by Registered First Mortgage over the properties,
 - The loan has not been repaid.

- Priority amount for these Mortgages is NZ\$23,000,000 and
- Value of the loan outstanding is well over NZ\$23,000,000.

(55) Above was accepted by (PW2] Mr Brent Gibson in his evidence and also in Dominion Finance Limited [Plaintiff's] submission.

(56) Further, Skyking (Plaintiff) through the evidence of (PW2) Mr Gibson admitted that Dominion Finance Limited (Plaintiff's) debt. Skyking was not denying the Hanover Finance debt.

(57) Skyking has never sued Hanover so there were was no necessity for Hanover or HF to take over Skyking's defence in the claim. He agreed that the loans were made to assist Skyking and Ocean Pacific Resort Holdings Limited (OPRHL).

(58) It is not in dispute that Dominion Finance Limited (Plaintiff) granted and disbursed the loan amount of \$1,500,000 to Skyking (First Defendant) and Skyking gave the equitable unregistered mortgage over the Certificate of Title No. 7426 to Dominion Finance Limited (Plaintiff).

(59) [PW1] Mr Lal in his evidence confirmed that its mortgage was unregistered because of prior Hanover First Mortgage, the loan that Dominion Finance Limited (Plaintiff) signed with Skyking (First Defendant) acknowledged the Existence of the Hanover Loan Agreement (at clause 3(d). Mr Lal confirmed that the Dominion Finance Limited had a copy of the Hanover loan. The loan agreement itself confirmed that what was granted was 'equitable' mortgage (clause 3i). It was equitable and unregistered because Hanover held The First Registered Mortgage. The representatives from Skyking at clause 8.3.a of its Loan Agreement was that the security of the loan would rank at least on an equal footing with all other unsecured obligations. There was no representation or warranty the Dominion Finance Limited would ever have a secured interest on the properties.

(60) (PW2) Brent Gibson's evidence was that:

- He was the Director and Shareholder of Skyking.
- They borrowed \$1,500,000 from Dominion Finance Limited (Plaintiff).
- They had defaulted and couldn't pay Dominion Finance Limited (Plaintiff) loan back because Hanover Finance had defaulted in financing the completion of the subdivision.
- He confirmed that Dominion Finance Limited (Plaintiff) loan was a bridging loan.
- Due to Hanover's Finance default, the whole project for fail through.
- He confirmed the purchase price of the Skyking properties from Gopal Pillai was financed through monies brought into Fiji by him and Mr Kevin Storey.

- (61) Notably, the difference between First Registered Mortgage and Equitable Mortgage is:
- Registered Mortgage is a **formal legally recorded** agreement where the owners pledges property as security for a loan and
 - Equitable Mortgage is a property security interest based on equity, even if legal mortgage formalities aren't met, collateral for a loan, simpler and less formal than a registered mortgage.
- (62) Therefore, it cannot be disputed that Dominion Finance Limited (Plaintiff) can recover its loan money from Skyking (First Defendant) with interest.
- (63) However, there will be judgment entered against Skyking (First Defendant) on the current outstanding debt of \$35,427,023.08.
- (i) There will be Judgment entered against Skyking (First Defendant) in favor of the Dominion Finance Limited (Plaintiff) on the current debt of \$35,427,023.08.
 - (ii) Interest on the Judgment sum to accrue at the rate of 19% from the date of the Judgment until the date of full payment.
 - (iii) Post Judgment Interest at the rate of 4% per annum on the debt.
 - (iv) There is already a First Registered Mortgage on CT No. 7426 by 'Hanover'. Dominion Finance Limited has an 'equitable mortgage' and order that 'Equitable Mortgage' now to be registered on CT No. 7426 as a second mortgage (owner pledges property as security) accordingly.
 - (v) A Declaration that Mortgage No. 597405 be now be varied to register the Dominion Finance Limited Equitable Mortgage against Skyking on CT No. 7426.
 - (vi) Remaining orders/ relief sought in the prayer at (c), (f), (g), (h), (i), (j) are not acceded to and dismissed accordingly.
- (64) On the other hand, there can be no real dispute that Hanover has a priority and First Registered Ranking Mortgage over the properties at Caudua Point in Wainadoi and is entitled to exercise the Mortgagee powers of sale that it has in an effort to recover part of the **Balance of the loan outstanding**.
- (65) Therefore, I grant a Declaration only that the Amount of the Hanover Debt is at least - NZ\$23,000,000.
- (66) Hanover's Mortgage if not duly stamped may be stamped to cover advances up to \$23 million.
- (67) However, Hanover will still have to satisfy Reserve Bank of Fiji what were the exact funds that came to Skyking's local bank account by way of a loan from Hanover.

- (68) RBF made it clear to Hanover that Skyking would not be liable for any default in repayment of the loan by Hanover. Further, Reserve Bank of Fiji made it a condition that proceeds of sales from land sales from local funding will not be utilized to meet the offshore loan repayments.
- (69) The loan from Dominion Finance Limited was locally used by the Skyking (First Defendant) to develop the land at Caudua point. Therefore, any sale of proceeds from the sale of that land (Caudua point) must be used to first pay Dominion Finance Limited (Plaintiff) who is a local financier by Skyking.
- (70) It has been borne in mind that Reserve Bank of Fiji allowed for mortgage to be registered on the condition that in the event of any mortgagee sale, the only funds that could be paid out to New Zealand would be in respect of funds that were for the account of the Fijian company, Skyking.
- (71) If the securities need to be realized, it will, Reserve Bank of Fiji will want to be satisfied that the repayments to New Zealand relate to funds actually drawn on by Skyking.

Counterclaim

- (72) HF Residual Obligations Limited (Hanover) in its counterclaim is seeking for two (2) Declarations:
- (a) a declaration that Second Defendant has registered first priority mortgage security over the titles pleaded at paragraph 17 of the Second Defendants counterclaim is relation to a claim of NZ\$22,292,607.57.
 - (b) a declaration that the HF mortgage are protected by indefeasibility from all adverse claims which the Plaintiff has made or may make in respect of those mortgages on the titles pleaded at paragraph 17 of Second Defendants counterclaim.
- (73) If Plaintiff does not deny that Hanover registered a mortgage over the titles, pleaded at paragraph 17 of Second Defendants counterclaim.
- (74) However, the issue raised by the Plaintiff is **'whether the mortgage is enforceable for totally different reasons and whether the Second Defendant can take priority over the Plaintiff's claim?'**
- (75) The Plaintiff's Contention is that Hanover mortgage was not duly stamped with the payment of proper stamped duty and it is thus inadmissible and unenforceable.
- (76) Further, the Plaintiff Contends that Hanover mortgage was also not signed by Hanover. A mortgage is a contract and will only become effective when both parties to the contract

execute the contract. Hanover, herein did not execute the mortgage, it remains an Unsigned Mortgage, **how then can an unsigned mortgage be regarded as a contract?**

- (77) Reference is made to the mortgage document no. 579405 at annexure 'A' of within the Plaintiff's Legal Submissions. I find that the mortgage has been registered on 21st December 2005 together with the seal of the Registrar of Titles impressed therein. Therefore, it is *ab-initio* a valid document.
- (78) On 3rd December 2005, the First Defendant (Skyking) granted a mortgage in favour of Hanover Finance Limited (HFL) in order to secure lending from HFL to Ocean Pacific Resort Holdings Limited.
- (79) The mortgage was registered on 14 titles on 21st December 2005 as Mortgage No. 579405. It will be noted that, Dominion Finance Limited (DFL) had an unregistered equitable mortgage of CT No. 7426 for its loan of \$1,500,000 lent to Skyking.
- (80) Mortgage No. 579405 was varied on two occasions. On 31st December 2006, Skyking granted a further mortgage in favour of Hanover Finance Limited (HFL) in order to secure lending from HFL to Ocean Pacific Resort Holdings Limited on CT No. 29126 as Mortgage No. 604981.
- (81) HFL Mortgage Nos. 579405 and 604981 have been registered First Mortgage and undisputedly protected by the indefeasibility protections.
- (82) Skyking granted a mortgage to the Dominion Finance Limited (Plaintiff) on 12th November 2008 on CT No. 7426 which was expressed to secure intended lending by the Dominion Finance Limited (Plaintiff) of Fiji \$1.5 million (Dominion mortgage).
- (83) HF Mortgage was registered on CT No. 7426 on 21st December 2005 and have been a first registered mortgage with priority whilst 'Dominion mortgage' was an unregistered mortgage for all sums owed to Hanover Finance Limited by Ocean Resort Holdings Limited.
- (84) Up to 27th November 2009, the sum of NZ\$22,292,607.57 was owing by Ocean Pacific Resort Holdings Limited to HFL. The sum owed to HFL was secured by the HFL registered First Mortgage.
- (85) HFL [Hanover] is the Second Defendant now after amalgamation with Skyking (First Defendant) and has the first priority mortgage securing over the 14 Certificate of Titles CT Nos. 7426 - CT 7427, CT No. 29124 - CT 291235 inclusive. However, I reiterate that Dominion Finance Limited (Plaintiff) has an Unregistered Equitable Mortgage over CT No. 7426 also.
- (86) However, it is not disputed that Dominion Finance Limited (Plaintiff) granted a loan sum of F\$1,500,000 to Skyking (First Defendant) and Skyking gave Dominion Finance Limited an

unregistered Equitable Mortgage over CT No. 7426 whilst Hanover had a registered mortgage over CT 7426.

- (87) I reiterate that it is noted that RBF made it clear to Hanover that Skyking (First Defendant) would not be liable for any default in repayment of the loan for Hanover. Further, Reserve Bank of Fiji made it a condition that proceeds of sales from the land sales from local funding will not be utilized to meet offshore loan repayment.
- (88) The loan from Dominion Finance Limited (Plaintiff) was locally used to develop the land in Caudua point.
- (89) Bearing in mind the Reserve Bank of Fiji conditions that needs to be adhered to then any sale proceeds from the sale of the land at Caudua point must be used to first pay Dominion Finance Limited (Plaintiff) who is a local financier.
- (90) Therefore, it is clear from the 'Reserve Bank of Fiji conditions' that the Hanover cannot claim priority over that Dominion Finance Limited (Plaintiff) loan of F\$1,500,000 since the Dominion Finance Limited loan was used to fund the developments, of the Caudua land in Fiji and any proceeds of sale of the land in Fiji would first have to be paid to local funder Dominion Finance Limited (Plaintiff) who will get priority from the sale of the Skyking land in Fiji.
- (91) The Reserve Bank of Fiji had also made it clear in its approval letter that Skyking was not liable for any default of the debt.
- (92) Hanover cannot pursue Skyking (First Defendant) for the Ocean Pacific Resort Holdings Limited [OPRHL] debt.
- (93) Hanover was supposed to finance the subdivisions at Caudua point and once the subdivision was completed the OPRHL debt would have been paid from the sale of the lots in that subdivision. However, Hanover defaulted in its lender obligations to bring in money to complete the undergoing subdivision works. Hence, the subdivision failed because Hanover refused to fund and refinance of its loan by Dominion Finance Limited. OPRHL and Skyking lost out on its investment opportunity.
- (94) The question arises,
- **'Why should Hanover or HF be allowed to profit from its default by taking priority under the Mortgage, and**
 - **what about the losses, suffered by OPRHL and Skyking?'**
- (95) Hanover does not seek in its declarations any interest, its claim is limited to the stamped mortgage amount of \$23,000,000. On the other hand, HF is not seeking any Judgment against Skyking, it cannot since they are both Defendants.

- (96) Therefore, in absence of any Judgment against OPRHL or Skyking, HF has no right to make any claim against DFL (Plaintiff).
- (97) This, Court notes that for one reason or the other, the defence chose not to call Mark Hotchins or the Second Defendant to give evidence all trial in this proceedings.
- (98) Further, Hanover amalgamated with HF Residual Obligation Limited [Second Defendant].
- (99) Then, how did HF Residual Obligation Limited acquire the Hanover loan? HF never lent a single cent to Ocean Pacific Resort Holdings Limited [OPRHL] or Skyking (First Defendant)?
- (100) It was Hanover who lent the funds to Skyking. The Reserve Bank of Fiji letter dated 27th May 2010 [Tab B] makes it clear that it has never consented to Allied Farmers taking over the Fijian Hanover loan to OPRHL or being assigned a mortgage.
- (101) Did HF Residual Obligation Limited (Second Defendant) ever apply to Register a Variation of Hanover mortgage to establish that it now holds the Hanover mortgage? There is no evidence before this Court. Even if it did register any variation of Hanover mortgage, then Reserve Bank of Fiji would have asked '**How did HFROL acquire the mortgage?**'
- (102) Taking all above into consideration and on the Balance of Probabilities this Court cannot accede to the declarations that the Second Defendant has registered first priority mortgage security that is protected as sought for by HF/Hanover's counterclaim.
- (103) The Second Defendant's Counterclaim is hereby dismissed in its entirety.

Costs

- (104) The Substantive Action together with the counterclaim proceeded to a full hearing. Both parties filed/served affidavits and written submissions. The Plaintiff called out at least two witnesses to give *viva voce* evidence whilst the defendant did not call any witnesses. Both parties strongly argued to substantive impending issues before Court.
- (105) It is only just and fair that both First and Second Defendants pay the Plaintiff summarily assessed costs of \$2,000 each within 14 days' time frame.

Final orders

- (i) Following are the final orders of this Court:

Substantive Writ Action

- i Judgment for the Plaintiff Dominion Finance Limited [DFL] in the sum of \$3,478,061.59.
 - ii Interest on the Judgment sum to accrue at the rate of 10% per annum until the date of payment.
 - iii Post Judgment interest of 4% per annum until the sum is paid off.
 - iv The Dominion Finance Limited's Unregistered equitable mortgage be registered against CT No. 7426 accordingly.
- (ii) A declaration is granted that the Plaintiff is entitled to transfer CT No. 7426 free from all encumbrances and charges including the mortgage no. 597405 [as varied] against Certificate of Title No. 7426.
- (iii) The Defendant to show evidence of the total funds disbursed by Hanover and amount of Hanover funds brought to Fiji and used for construction and development of the Cadua property.
- (iv) The Defendant to provide receipts and invoices to verify the exact Hanover funds and amount that was spent on subdivision works carried out on CT No. 7426.
- (v) The First and Second Defendants to pay Dominion Finance Limited a summarily assessed cost of \$2,000 each within 14 days.
- (vi) Dominion Finance Limited relief sought in its Statement of Claim at paragraph (f) (g) (h) and (k) are not granted and dismissed.

Second Defendants Counter Claim

- (vii) A declaration is granted that Hanover debt is NZ \$23,000,000.
- (viii) Hanover mortgage may be stamped if not done to cover advances/loans of up to \$23,000,000.
- (ix) Declaratory orders that the Second Defendant has registered first priority mortgage security over the titles pleaded in paragraph 17 of the Second Defendants counterclaim Certificate of Title No. 7426, 7427, CT No. 29124 to CT No. 29135 in relation to a claim of \$NZ 22,607.57 is declined and dismissed.

- (x) A declaratory order that HFL mortgage are protected by indefeasibility from all adverse claims which the Plaintiff has made or may make in respect of those mortgages or the Certificate of Title Nos. pleaded at paragraph 17 of the Second Defendant's Counter claim is also declined and accordingly dismissed.

Dated at **Suva** this **26th** day of **February** ,**2026**.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: R Patel Lawyers, Suva
Munro Leys Solicitors, Suva