

**SIDDIQ FAIZAL KOYA v DATA BUREAU LTD, DOMINION FINANCE LTD (HBC0008 of 2011L)**

HIGH COURT — CIVIL JURISDICTION

5 NÂWÂNA J

30 November 2011, 7 February 2012

10 **Practice and procedure — injunctions — publication of notice of bankruptcy proceedings — subscription database — status of liability of plaintiff — whether injunctive relief justified.**

The plaintiff sought orders restraining the defendants from publishing any notice of bankruptcy proceedings against the plaintiff.

15 **Held –**

There is no illegality in reporting the status of liability of the plaintiff on the basis of an arrangement between the defendants to educate on the plaintiff's creditworthiness for the benefit of subscribers to the database. The Court is not satisfied that overall consideration of the matters in issue justify such injunctive relief in favour of the plaintiff.

20 Notice of Motion is refused.

*T Draunidalo* for the Plaintiff.

*Anu Patel* for the First Defendant.

25 *Faisz Khan* for the Second Defendant.

[1] **Nâwâna J.** The plaintiff, by an *inter-parte* 'Notice of Motion' dated 30 September 2011, principally sought orders *inter alia* that:

30 (a) The defendants, their employees and/or agents be directed to remove the notice of 'Bankruptcy Proceedings' against the plaintiff from their electronic and/or written data bases; and,

(b) The defendants, their employees and/or agents be restrained from publishing, in any manner whatsoever, any notice of bankruptcy proceedings against the plaintiff.

35 [2] The plaintiff relied on an affidavit dated 19 September 2011 to support the basis upon which above orders were sought. The plaintiff pleaded that:

(i) He and his wife, Ms Mubarak Koya, borrowed monies from the 2nd defendant for a business venture, which was transferred to another in 2009;

40 (ii) The new owners of the business had defaulted repayment of the loan; and, recovery proceedings were instituted where summary judgement was obtained against the plaintiff and his wife in Action No HBC 193/2009 in High Court, Lautoka;

(iii) The second defendant, upon institution of recovery proceedings, advised the first defendant that the plaintiff had been summoned by a court of law under bankruptcy proceedings and such information was contained in a 'Consumer Search Document' [SFK-1] and made available to any party for a fee; and,

45 (iv) There was no truth whatsoever in the information and that the information had damaged him financially at the expense of a great stress and caused loss of investment opportunities.

50 [3] The first defendant, in response to the 'Notice of Motion', filed an affidavit dated 08 November 2011 and stated that it [the first defendant] had engaged in the business as a credit reporting agent for credit providers who subscribed to its database. Credit providers electronically entered data on creditworthiness

relating to individuals only for the benefit of the subscribers to the database; and, it was not made available to the general public. It was further stated on behalf of the first defendant that the database was updated on 02 March 2011 and removed the status of 'Bankruptcy Proceedings' against the plaintiff from the database.

5 [4] Mr Karl Rebman Smith, General Manager of the second defendant, filing an affidavit dated 11 November 2011, opposed the 'Notice of Motion' of the plaintiff. He stated that the second defendant had an arrangement with the first defendant to upload the names of the defaulting debtors onto the first defendant's database. He stated further that:

- 10 (i) The plaintiff and his wife, through their company Europarts (Fiji) Limited, borrowed funds from the second defendant and guaranteed the repayment on the basis of a Deed of Guarantee dated 11 March 2008;
- (ii) It did not consent to the debt being transferred to a third party; and, in any event, there was no material before court to substantiate such a transfer and the plaintiff and his wife continued to hold the liability of the debt;
- 15 (iii) The learned Master of the High Court, Lautoka, ruled in favour of the second defendant by giving a summary judgement in Action No HBC 193/2009, which is now in appeal at the instance of both parties;
- (iv) The status of the plaintiff on the database was changed to that of 'legal action' as borne-out by document 'KRS-1'; and, that nowhere it appeared that the plaintiff had been summoned by a court of law;
- 20 (v) (v) The plaintiff and his wife by letter dated 07 December 2009 marked as 'KSR-2' submitted a repayment proposal and thereby accepted the liability of the debt; and,
- (vi) (vi) The plaintiff, in any event, faced 'Bankruptcy Proceedings' as borne out by document 'KSR-4'.
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[5] It was admitted that the status of the plaintiff having 'Bankruptcy Proceedings' is no longer on the database of the first defendant. Learned counsel for the plaintiff, accordingly, did not pursue the relief sought in paragraph (a) of the *inter parte* Notice of Motion dated 30 September 2011.

30 [6] The relief claimed in paragraph (b) of the Motion is injunctive in nature.

[7] I see no illegality in reporting the status of liability of the plaintiff (and his wife) on the basis of an arrangement between the defendants to educate on their (the plaintiff's and his wife's) creditworthiness for the benefit of the subscribers to the database. The plaintiff by the pleadings or by means of submissions at the hearing have not satisfied court that overall consideration of the matters in issue justify such injunctive relief in favour of the plaintiff under the applicable laws for the grant of an injunction.

[8] I, accordingly, refuse the Motion for such relief.

40 [9] Having considered all the circumstances, especially the fact that the status of the plaintiff on the data base was changed after the institution of this action, I make no order as to costs.

*Motion refused.*

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