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IN THE SUPREME COURT OF FIJI  
Civil Jurisdiction  
Action No. 783 of 1984

Between:

BP (SOUTH-WEST) PACIFIC LTD.                      PLAINTIFF

- AND -

MOHAMMED ALI s/o Rajai                              DEFENDANT

Mr. D. Whippy for the Plaintiff  
Mr. Sohan Singh for the Defendant

D E C I S I O N

The plaintiff entered up judgment against the defendant on the 12th day of September, 1984, for the sum of \$26,212.72 and \$25.00 costs for default of the defendant filing a defence.

On the 27th November, 1984, the defendant applied for an order setting aside the judgment and filed an affidavit in support of his application.

In his affidavit he denies being indebted to plaintiff in the sum of \$26,237.72 but there is no denial that he is not indebted at all.

The defendant quite falsely stated in his affidavit that the plaintiff's solicitors had refused to furnish better and further particulars. He annexes to his affidavit a copy of a letter in which Mr. Whippy responds to the request and supplies 29 pages of further and better particulars. He then alleges that his former solicitors overlooked filing a defence.

He further alleges that the plaintiff had claimed from him the sum of \$20,732.75 which was the amount of the account owing by Royal Transport Company of which firm the defendant claimed to be a "director".

The defendant had by letter dated the 1st August 1983 requested the plaintiff to transfer "the balance as at 31st (sic) September 1983" of the account of Royal Transport Company to his personal account.

He makes no specific mention of this letter in his affidavit but he does claim that there is no consideration for the defendant's claim.

It is not known if the defendant is a partner in Royal Transport Company or the sole proprietor of the firm or whether he has taken over the assets of the firm and agreed to meet the firm's liability for petroleum products supplied by the plaintiff.

If there has been a novation of the debt of \$20,732.72, then there is clear evidence of consideration. The plaintiff at the defendant's request has transferred the firm's debt and it must be assumed that the defendant by his request undertook to pay the debt if the plaintiff did so. The plaintiff by its actions released Royal Transport Company from payment and looked to the defendant for payment.

There is no denial by the defendant that the firm owed \$20,732.75 as at the end of September, 1975, nor that the balance of the claim is for petroleum products supplied to him by the plaintiff. If he was a partner or sole proprietor of the firm he would in any event still be personally liable.

Under Order 19, Rule 2(1) the plaintiff was entitled on the pleadings to enter up judgment.

The defendant's solicitors were expressly warned

by letter dated 23rd August, 1984, that judgment would be entered up if he failed to enter an Appearance and deliver up a defence. A bankruptcy notice was issued against the defendant on the 27th September, 1984. He moved to set aside the notice on 4th October, 1984, but his application was dismissed by Rooney J. on 3rd November, 1984. He then applied by motion dated the 14th November, 1984, to set aside the judgment.

While the defendant's application appears to have little merit, there could be a possible defence to the claim of \$20,732.75 part of the debt.

I am prepared to vary the judgment but only on terms that the defendant pay into Court the sum of \$20,732.75 or give adequate security for such sum within one month from the date hereof.

If he fails to pay in the said sum or give security for the said sum within one month, his application shall be deemed on such failure to have been dismissed with costs.

If he complies, the judgment shall be deemed to be varied to the extent that there should be interim judgment for the plaintiff for the sum of \$5,479.97 (i.e. \$26,212.72 - \$20,732.75) being the amount in respect of which the defendant has raised no defence.

I would add that now the parties have filed affidavits, if there was in fact a novation of the agreement more particulars should have been stated in the very brief Statement of Claim.

*R. G. Kermod*  
(R. G. KERMODE)

J U D G E