

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI ISLANDS

CIVIL APPEAL NO. ABU0079 OF 1998S
(High Court Civil Action No. 511 of 1997)

BETWEEN:

NATIONAL BANK OF FIJI ASSET
MANAGEMENT BANK

Appellant

AND:

SAILOSI KAILOMA TUIROBE

Respondent

Coram:

The Hon. Mr. Justice Jai Ram Reddy, President
The Rt. Hon. Sir Maurice Casey, Justice of Appeal
The Hon. Mr. Justice Ian Thompson, Justice of Appeal

Hearing:

Wednesday, 10 May 2000, Suva

Counsel:

Mr. H. Nagin and Ms S. Begum for the Appellant
Mr. S.R. Valenitabua for the Respondent

Date of Judgment:

Friday, 12 May 2000

JUDGMENT OF THE COURT

In this appeal by the Bank against Scott J.'s judgment of 12 October 1998 there is a dispute over the Bank's right to retain the certificate of title to the respondent's property deposited with it. The Bank treated it as security for a loan to one Jone Raikabula trading as Bulls Building Contractors, now bankrupt and owing over \$7000, and it refused to release the title until payment of the debt. In proceedings issued by the respondent His Lordship ordered its return, finding that he had not authorised the Bank to use it as security for advances to Raikabula alone, but to a partnership comprising the latter and the respondent's nephew, Etuate Seru, intending to trade as Bulls Building Contractors.

The respondent deposed that he had written to the Bank on 23 January 1992, exhibiting a copy of the letter as follows:-

Block 4,
Flat 1,
Nairai Road
RAIWAI

23rd January, 1992

The Manager
National Bank of Fiji
SUVA

Dear Sir,

RE: LOAN APPLICATION FOR BULLS' BUILDING CONTRACTORS

I, Sailosi Kailoma of the above address, am hereby authorising Bulls' Building Contractors to have my land at Lot 27 D.P. 3660, Aideny Road, Raiwaga, mortgaged by your Bank so as to secure a loan of which they have been requesting with you.

Their current effort to raise some money so as to boost their company has come to my knowledge and I am supporting them and I would like to see them stand on their own two feet and run their Company.

I have known them for the last 15 years and from what I have seen of their work, have promised to support them in whatever way I can.

I do hope your organisation could kindly reconsider their application and help them out to start their own business.

(Sgd) Sailosi Kailoma)

He wanted to help his nephew, who was going into partnership with Raikabula to construct a house for the Housing Authority. Raikabula had an account with the Bank in his own name, trading as Bulls Building Contractors, and it required security for any advance. Seru gave evidence that they spoke to a bank officer (Mataitoga) explaining what they proposed. He delivered his uncle's letter and title, and said they opened an account for Bulls Building Contractors, with both of them signatories. However, he discovered later that the Bank had

made the advances to Raikabula's personal account which he operated without reference to him, and the Bank refused to let him see it or to give him any details. When the respondent heard about this he wrote to the Bank on 23 March 1992 withdrawing his mortgage and support. At that time Raikabula's account was about \$5000 overdrawn.

Evidence was given on behalf of the Bank by a loans officer who had to rely on somewhat incomplete records because the officer who dealt with the matter was no longer available. It is quite clear from his evidence that the only account for Bulls Building Contractors was that conducted by Raikabula personally. Scott J. accepted Seru's evidence of the dealings with the Bank and held that it had acted without authority in treating the title document as security for the advances made to Rakabula.

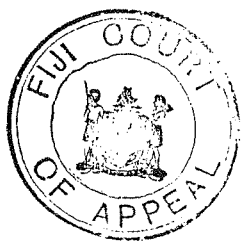
The appeal to this court was advanced on the basis that His Lordship erred in not recognising Raikabula as a partner of Bulls Building Contractors, and thus able to operate the firm's account to which the Bank had properly made advances in accordance with the respondent's letter of authority. However, as we have pointed out, the assumption that Rakabula's account was recognised by the Bank as that of the partnership between him and Seru is simply not correct. Scott J. accepted Seru's evidence to the effect that the Bank knew his uncle was offering the security for an advance to the partnership only, which confirms what the uncle said in his letter of 23 January referring throughout to the proprietors of Bulls Building Contractors in the plural.

We are satisfied His Lordship was correct in his overall assessment of the evidence and agree with his conclusion that the Bank acted without authority in using the title document as security for the overdraft in Raikabula's account, when the loan officer admitted that

the security was required to finance a partnership.

Result:

The appeal is dismissed with \$350 for costs and disbursements to the respondent.



Jai Ram Reddy

.....
 Mr Justice Jai Ram Reddy
 President

Maurice Casey

.....
 Sir Maurice Casey
 Justice of Appeal

Ian Thompson

.....
 Mr Justice Ian Thompson
 Justice of Appeal

Solicitors:

Messrs. Sherani and Company, Suva for the Appellant
Valenitabua S.R. Esquire, Suva for the Respondent