

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. 323 of 2012

BETWEEN : **CREDIT CORPORATION (FIJI) LIMITED** a limited liability company duly incorporated in Fiji having its registered office at 10 Gorrie Street, Credit House, Suva, Fiji.

PLAINTIFF

AND : **SISTERS AIRCOOL & ELECTRICAL SERVICES LIMITED** a limited liability company duly incorporated in Fiji having its registered office at Lot 5, Bulei Road, Laucala Beach Estate, Nasinu, Fiji.

DEFENDANT

Counsel : **Mr Ritesh Naidu** for the **Plaintiff**
Defendant unrepresented

Date of Judgment: 22nd August, 2013

JUDGMENT

1. The following Order was delivered by this court on 27th February 2013:
 - (i) *An interim injunction is granted restraining the defendant Sisters Aircool & Electrical Services Limited by itself and/or by its servants and/or agents or otherwise howsoever from interfering or hindering in any way with the plaintiff's exercise of its rights to take possession of two motor vehicles registration numbers FH184*

engine number QD32243673 chassis number JNIAJUD22Z0038278 and FH196 engine number QD32242319 chassis number JNICJUD22Z0085485 that are subject to a bill of sale between the plaintiff and the defendant.

- (ii) An order that the defendant Sisters Aircool & Electrical Services Limited by itself and/or by its servants and/or agents or otherwise howsoever do forthwith release to and deliver to the Plaintiff Credit Corporation (Fiji) Limited and/or to the servants or agents of the Plaintiff possession of two motor vehicles registration numbers FH184 engine number QD32243673 chassis number JNIAJUD22Z0038278 and FH196 engine number QD32242319 chassis number JNICJUD22A0085485 that are subject to a bill of sale between the Plaintiff and the Defendant.*
- (iii) That the police do assist the Plaintiff Credit Corporation (Fiji) Limited in the execution of this Order.*

2. The said Order was made on the ex-parte summons filed by the Plaintiff on 5th December 2012 which was subsequently made inter-partes by this court.

2.1 The Affidavit of service was filed by the Plaintiff on 4th February 2013 by Satya Chandra registered Bailiff and sworn that on 25th of January 2013, the Defendant Company was served with true copy of the Writ of Summons, Acknowledgement of Service, Inter-partes Summons for interim injunction and Affidavit in support at registered office at Lot 5, Bulei Road, Laucala Beach Estate, Nasinu. It was also deposed that the copies of the said documents were served at the Defendant Company's current place of business operations situated at 31-31 Brewster Street, Toorak, Suva.

2.2 On the date of hearing i.e. 27th February 2013, the Defendant Company was unrepresented and no appearance was made by a Solicitor on its behalf. Mr Naidu R. made his submissions on behalf of the Plaintiff, having considered the submissions and the Affidavit evidence, court made Order detailed in the preceding paragraph 1 of this Judgment.

2.3 The said Order dated 27th February 2013 sealed on 4th March 2013 was served on the Defendant Company on 6th of March 2013.

2.4 Ex-parte Notice of Motion was filed for Leave to issue an Order for committal in pursuant to Order 52 Rule 2(2) of the High Court Rules 1988 on 18th April 2013

and the matter was taken up before this Court on 20th May 2013 and Mr Naidu R Counsel made submissions on behalf of the Plaintiff and Leave was granted.

- 2.5 Notice of Motion for Committal was filed by the Plaintiff and sought an order that the Defendant, its Directors Robert Wilson Mario, Saututoka Benedict Mario and Nina Maria Iroa be committed to prison for the contempt of this court in failing and/or refusing to comply with the Order made by this court on the 27th day of February 2013. This application was made in pursuant to Order 52 Rule 3(3) of the High Court Rules 1988. The said application was supported by the Affidavit of Neelam Kavita Sharma, General Manager Legal of the Plaintiff Company sworn and filed on 18th April 2013.
 - 2.6 On 30th July 2013, when the matter was taken up for hearing, Mr Tuitonga T. counsel appeared for one of the Directors namely Saututoka Benedict Mario and made submissions and stated Order was not served on his client and it is irregular. Mr Naidu for the Plaintiff accepted the irregularity of serving the order and stated he will not proceed against Saututoka Benedict Mario and other Directors until such time the service of the Order being regularized. Accordingly, Saututoka Benedict Mario was released from committal proceedings and the hearing of the motion for the Order for committal was taken up against the Defendant Company. Mr Tuitonga counsel did not participated at the hearing.
 - 2.7 During the hearing, evidence of the General Manager of the Plaintiff Company, Neelam Kavita Sharma was led in furtherance to her Affidavit filed on 18th April 2013. In addition to the contents of the Affidavit she requested the court to fine the Defendant Company taking into consideration the outstanding due to the company approximately FJ\$156,000.00. In reply to court, she also stated that there are unlimited personal guarantees from the Directors of the company against the monies advanced to the Defendant Company.
 - 2.8 On conclusion of the hearing, counsel for the Plaintiff move to file the written submission on the issue of imposing a fine on the Defendant Company.
3. I agree with the submission made by the counsel, the Defendant Company had willfully disobeyed the order made by this court on 27th February 2013 and has been continuing to disobey the Order of this court and thereby committed and continuing to commit contempt of the court. I find the Defendant's conduct shows it does not have any respect to this court and as detailed in the preceding paragraphs the Defendant was afforded with ample opportunities to participate in the proceedings. The Defendant Company not only failed to observe the terms of order of the Injunction but also failed and neglected to participate in

the proceedings at any stage of this case. Accordingly, I hold that the Defendant Company's disobedience of the Injunction Order is in contempt and be punished.

3.1 In support of the finding, I cite the following passage from the case of *Hadkinson v. Hadkinson* [1952] 2All ER 567 (at 569):

*"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in **Chuck v. Cremer** (1) (1Coop.temp.cott.342): A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to obey it... it would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed." Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that **anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt.**" (emphasis mine)*

4. Having concluded the Defendant had committed contempt, now I should consider the quantum of fine. However, I am not concurring with the counsel's submission that the outstanding amount due to the Plaintiff should be taken into account on imposing the fine; for the reason that the contempt committed by the Defendant Company is against this court and the amount outstanding to the company is not a matter to be considered by this court at this stage. I conclude the quantum of the fine should be decided considering the conduct of the Defendant Company by disobeying the order, not participating in the proceedings, serious harm caused to the public interest etc. Undoubtedly the court orders must be obeyed and if such orders are deliberately disobeyed such persons or institutions must be prepared to take the consequences of their disobedience, otherwise public interest for the

due administration of justice could be seriously affected. It is the courts duty to make clear to the public that it had taken all steps to safeguard the law and order to ensure the orders of the court are obeyed.

5. The Plaintiff's counsel cited some cases in support of the quantum to be decided. *The State v. Fiji Times Limited and 2 Others Ex-parte The Attorney General of Fiji (unreported)* Civil Action No. HBC 343 of 2011 decided on 20th February 2013. However, the facts of the said case are not similar to this case and the finding was the Respondents Guilty of Contempt of scandalizing the court. As such on deciding the quantum of the fine, principles adopted in the said case cannot be applied in the present case. For the same reasons principles applied in the other case cited by the Plaintiff i.e. *The State v. Tai Nicholas Ex-parte The Attorney General of Fiji* Civil Action No. HBC 364 of 2011 (*unreported*) decided on 8th February 2013 cannot be applied.
6. In the case of *Credit Corporation (Fiji) Limited v. Babu Lal* Civil Action No. HBC 259 of 2001S (*unreported*) decided on 6th April 2002 somewhat relevant to this case. In the said case, the Defendant had willfully disobeyed the order of the court and failed to return to the Plaintiff approximately \$50,000 worth of parts which were removed from the vehicle which was returned as per order of the court. And the court committed the Defendant to prison for 3 months which was suspended until the payment of \$50,000 (*value of the missing parts*) being paid by monthly installment of \$500.00. However, there was a writ filed on 8th June 2001 and order of the court was made on 12th June 2001. In this case the Statement of Claim was filed only on 5th August 2013. As such I hold the Plaintiff had to take further steps in pursuant to High Court Rules of 1988 to obtain a Judgment against the Defendant. In light of the evidence given by the General Manager Legal of the Plaintiff, I also note that there are other securities available for recovery of the outstanding from the Defendant and I hold the Plaintiff cannot use the committal proceedings to obtain a Judgment against the Company to recover their dues, at this stage.
7. Taking all relevant factors into consideration (*specifically matters referred in paragraph 4 of this Judgment particularly willful disobedience of the Defendant Company*) appropriate fine should be imposed on the Defendant Company.
8. 8.1 Having the company committed for contempt of court it is now necessary to analyze the liability of the Directors on the disobedience of the order granted on 27th February 2013. Specifically drawing attention to the fact that to date company had not responded to any of the orders issued by this court, and not attempted to participate in the proceedings, which caused disrespect to this court.

- 8.2 The Defendant Company was incorporated on 23rd of February 2000 (*Certificate marked as SP1 to the Affidavit*) dated 6th December 2012 (*hereinafter referred to as the said Affidavit*).
- 8.3 The subject matter of this case Vehicles Nos. FH184 and FH196 are registered as per vehicle Registration Certificate in the name of the Defendant Company (*Annexures SP2 and SP3 to the said Affidavit*).
- 8.4 Acknowledgement of the Letter of Offer (*with regard to borrowing facilities*) against the vehicles numbers FH184, FH196 and FH327 (*this vehicle was repossessed and sold*) dated 7th December 2010 was signed by the Directors namely Robert Wilson Mario and Saututoka Benedict Mario (*Annexure SP7 to the said Affidavit*) and agreed to the terms and conditions of the Plaintiff.
- 8.5 Bill of Sale dated 30th of December 2010 pertaining to the said two vehicles FH184, FH196 (*FH327 was repossessed and sold*) was signed by the said two Directors namely Robert Wilson Mario and Saututoka Benedict Mario of the Defendant Company and agreed to the terms and conditions of the Plaintiff (*Annexure marked SP8 to the said Affidavit*).
- 8.6 (a) The Plaintiff had annexed company search notes marked NKS1 to the Affidavit dated 29th November 2012 and the Directors particulars are given as:

“Robert Wilson Mario, Director - Unchanged

Saututoka Benedict Mario, Director - Unchanged

Nina Maria Iroa, Director - Appointed on 21st March 2012”

- (b) The Plaintiff’s solicitors by letters dated 6th March 2013 informed the Defendant Company and the Directors of the company to comply with the Orders made by this Court on 27/2/2013, (*Annexure NKS4*).
- (c) The Plaintiff’s solicitors also by letter dated 9th March 2013 informed the Company and Directors to comply with the Order No. 2 of the Order dated 27/2/2013 before 11th March 2013 and if not contempt proceedings will be issued against the Defendant Company and its Directors, (*Annexure marked NKS4 to the Affidavit*).

9. 9.1 Having stated the above, I now wish to deal with the Directors liability towards the contempt committed by the Company.

9.2 Taking into consideration the findings in para 8, the Directors namely Robert Wilson Mario and Saututoka Benedict Mario were well aware of the transactions of the company with the Plaintiff from the inception. However, according to the Affidavit of Service, Inter-parte summons was served along with other documents on 25th January 2013 to Robert Wilson Mario the Director at 31-33 Brewster Street, Toorak, Suva and on his behalf one Zinny had acknowledged the receipt of the documents and it is noted the current place of business of the Defendant Company is also at 31-33 Brewster Street. Accordingly, I conclude Robert Wilson Mario was well aware of the case since 25th January 2013.

In addition the Defendant Company was served with the Order dated 27th February 2013 on the Defendant Company at 31-33 Brewster Street, Toorak, Suva on 6th March 2013 as stated in the Affidavit of Service dated 17th April 2013. In the circumstances, I conclude that the Director Robert Wilson Mario was also aware of the Order made against the Company.

9.3 Being a juristic person the Defendant Company naturally incapable to disobey a Court Order. The order primarily binds the Defendant Company and not the Directors; there was no order against them. However, juristic person function through its Directors. Decisions and the Management of the Company lies in the hands of the Directors. That being the case, the law looks upon those whose duty is to direct the business operations of a company to see to it, that the company complies with Court Orders. In this case, I find the Director Robert Wilson Mario should be responsible for company to comply with the Court Order, and he received adequate notice and had the knowledge of the order.

9.4 I further state the courts are supposed to act as vigilant sentinels of the orders they make. The dictates of any civilized system of civil justice demand that the courts must jealously guard the orders they make in the interest of the public. Respect for Court Orders is the hall mark of any civilized system of civil justice. It is my contention that the administration of justice would be brought into disrepute if directors of companies who deliberately disobey the court orders with impunity were not punished. The said Director of the Defendant Company had no respect for the Order issued by this court and I hold he should be punished along with the Defendant Company for Committal of Contempt.

10. As stated in the preceding paragraphs, I conclude that the Defendant Company and its Director Robert Wilson Mario are liable for Committal of Contempt of this Court by disobeying the Order made on 27th February 2013.

Accordingly, I make the following Orders:

- (a) *Defendant Company and the Director Robert Wilson Mario jointly committed for contempt of this court and fined FJ\$25,000.00 jointly and/or severally, to be paid within 30 days of this Judgment.*
- (b) *If the said fine of FJ\$25,000.00 is defaulted by the Defendant Company and/or the said Director Robert Wilson Mario as ordered in paragraph (a) above the said Robert Wilson Mario is sentenced to 3 months imprisonment.*
- (c) *The Defendant Company is ordered to pay summarily assessed costs of FJ\$5,000.00 to the Plaintiff within 30 days of this Judgment.*

Delivered at Suva this 22nd day of August 2013

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C. Kotigalage
JUDGE