

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No.: HBC 212 of 2009**

**BETWEEN** : **DOMINION FINANCE LIMITED** a limited liability company having its registered office at Suva in Fiji.

**PLAINTIFF**

**AND** : **PROLINE BOATING COMPANY LIMITED** a limited liability company having its registered office at Suva in Fiji.

**1<sup>ST</sup> DEFENDANT**

**AND** : **PROLINE MARKETING (In Receivership)** a limited liability company having its registered office at Suva in Fiji.

**2<sup>ND</sup> DEFENDANT**

**AND** : **APISALOME BAI BARO** of 65 Duncan Road, Suva, Company, Director.

**3<sup>RD</sup> DEFENDANT**

**AND** : **ESITIA LOLOHEA BARO** of 65 Duncan Road, Suva, Company Director.

**4<sup>TH</sup> DEFENDANT**

**Counsel** : **Ms. N. Choo for the Plaintiff**  
**Mr. Matebalavu for the 1<sup>st</sup> Defendant**

**Date of Hearing** : **6<sup>th</sup> April, 2018**

**Date of Ruling** : **3<sup>rd</sup> May, 2018**

**RULING**

**INTRODUCTION**

1. The summons filed by the 1<sup>st</sup> Defendant on 15.2.2018, seeks to restore a summons dated 2<sup>nd</sup> April, 2012 where some orders were made by consent. The 1<sup>st</sup> Defendant was represented by its counsel at that time and now the 1<sup>st</sup> Defendant seeks to discharge consent order made by Justice Balapatabendi on 28<sup>th</sup> February, 2013 and make fresh orders on that

summons. The contention between the parties relate to 3 Crown leases registered in the name of the 1<sup>st</sup> Defendant which were cancelled illegally, which were declared null and void in a Judicial Review action in 2015 .

## ANALYSIS

2. The summons filed on 2<sup>nd</sup> April, 2012 which the 1<sup>st</sup> Defendant now seeks to restore sought following orders

*The Plaintiff be restrained by itself /or through its servants and /or agents and/or howsoever from calling tenders or proceeding further with the sale and or dealing in any manner whatsoever with the properties comprised in Crown Lease Nos. 18013, 18014, and 18015 until the hearing and determination of the action or until further order'*

3. The consent order was made on 28<sup>th</sup> February, 2013 and 1<sup>st</sup> Defendant was represented by its counsel who represented them at that time.

4. The consent orders made on 28<sup>th</sup> February, 2013, are as follows

- '1. That the sale proceeds for the disposal of the remaining lot be held in the Trust Account of R. Patel Lawyers until negotiation for a settlement is concluded.
2. That the application of Mr. Nagin is allowed for a period of six weeks to explore a settlement.
3. That the matter be adjourned to 29<sup>th</sup> April, 2013 at 9.15 a.m for mention.'

5. Now the 1<sup>st</sup> Defendant is seeking an order for payment to court 'all the sale proceeds for the remaining lot and all rent paid to the purchaser for the reaming lot'.

6. In the affidavit in opposition to the summons filed on 15.2.2018 by the Plaintiff at paragraph 5 states that the 1<sup>st</sup> Defendant was aware of the sale of the two lots were already sold by the receiver for 2<sup>nd</sup> Defendant and the third lot was in the process of being sold at the time consent orders were made, but was never sold.


7. I have perused the file and on 11<sup>th</sup> February 2013 an affidavit was filed by a director of 1<sup>st</sup> Defendant. There is an annexed marked 'C' which was the transfer of Crown Lease no 18013 indicating that it was registered on 22.11.2012.
8. The above sale of Crown Lease 18013 was admitted by the Plaintiff in paragraph 10(ii) of their affidavit filed on 18.2.2013.
9. The record of this case indicate that the 1<sup>st</sup> Defendant's counsel did not desire to proceed with the hearing of the summons filed on 2<sup>nd</sup> April, 2012 even as late as 30.9.2013 when the previous judge had left Fiji and the matter was allocated to me and listed before me for the first time.
10. Twice on the application of 1<sup>st</sup> Defendant's counsel who represented at that time, hearing of the injunction was not listed for hearing, and on 27.01.2014 the counsel for the Plaintiff had informed that 'lands are sold and money is in the trust account of the lawyer'.
11. In the affidavit in response to the present summons at paragraph 13(d) states that '1<sup>st</sup> Defendant had not at any time whatsoever consented to the sale of any of the subject Crown Lease Nos. 18013, 18014, and 18015. Nor had the 1<sup>st</sup> Defendant instructed or authorized its solicitors at all to consent to the sale of any of such lots including by the alleged receiver.'
12. This fact of consent order of Justice Balapatabendi, was known to the 1<sup>st</sup> Defendant, as there were number of applications in this court as well as in the Court of Appeal.
13. I do not see any need to 'discharge' consent orders granted on 28.2.2012. The said orders were made till the negotiations of the parties are concluded. The summons for injunction was not dealt and adjourned till two of the lots were sold and the remaining lot could not be sold due to the orders of this court in Judicial Review application. So there was no need for the said injunctive application. This decision is now in appeal.

14. It seems that the consent orders made on 28.2.2012, made till the negotiations are completed. The time given for negotiation was 6 weeks but it remained operative for over 6 years! Any negotiation needs to be completed within a reasonable time. All the parties admit that there are no negotiations at this moment. There is no justification to keep the money in trust account when the negotiations failed. So it is prudent to remit the money to the High Court considering the circumstances of the case and the conduct of the parties.
15. There is no reason given in the affidavit in opposition why money in trust account of a law firm relating to a litigation cannot be transferred to Chief Registrar's account.

#### **FINAL ORDERS**

- a. Money left in the trust account of the R. Patel Lawyers from the sale proceeds of Crown Leases relating to this action to be remitted to the High Court, and remain in an interest bearing account with the Chief Registrar, until further order of this court.
- b. The Chief Registrar is directed to deposit the said money in an interest bearing account in favour of this action.
- c. Parties are not at liberty to make an application regarding the said money held in High Court.
- d. Cost of this application is summarily assessed at \$1,000 to be paid within 21 days to the 1<sup>st</sup> Defendant.

**Dated at Suva this 3<sup>rd</sup> day of May, 2018**

  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**