

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 155 of 2010

BETWEEN : SHIU RAM of Mulomulo, Nadi, Businessman
PLAINTIFF

A N D : DATA BUREAU LIMITED a limited liability company
having its registered office at Suva, Fiji.
DEFENDANT

A N D : CARPENTERS FIJI LIMITED trading as CARPENTERS
FINANCE a limited liability company having its registered
office at Suva, Fiji
THIRD PARTY

Counsel : (Ms) Arthi Bandhanna Swamy for the Plaintiff
(Ms) Pulekeria Maibatiki Low for the Defendant

Date of Hearing : Friday, 08th June 2018
Date of Ruling : Friday, 27th July 2018

RULING

(A) INTRODUCTION

- (1) The matter before me stems from the Plaintiff's 'Notice of Motion', dated 14th September 2016, seeking the grant of the following Orders;
1. *AN Order that Section 19 of the Fair Reporting of Credit Act 2016 does not restrain the within matter from being heard and decided on the issues as pleaded in the Amended Statement of Claim before this Honourable Court.*

2. ANY further or other Orders of this Honourable Court;
3. COSTS of this Application to be assessed in the favour of the Plaintiff.

- (2) The 'Notice of motion' is supported by an affidavit sworn by the Plaintiff on 14th September 2016.

The application is made pursuant to Order 33, r.4(2) of the High Court Rules, 1988 and to the inherent jurisdiction of the Court.

- (3) The application is vigorously resisted by the Defendant. An '**Affidavit in Reply**' sworn on 23rd February 2017, by 'Pramesh Sharma,' the Director of 'Data Bureau Limited', the Defendant Company was filed.
- (4) The Plaintiff filed an '**Affidavit in Answer**' sworn on 21st March 2017, in response to the 'Affidavit in Reply' of Pramesh Sharma.

(B) THE FACTUAL BACKGROUND

- (1) What are the circumstances that give rise to the present application?

To give the whole picture of the action, I can do no better than set out hereunder the averments/assertions of the pleadings/affidavits.

- (2) The Statement of Claim which is as follows sets out sufficiently the facts surrounding this case from the Plaintiffs point of view as well as the prayers sought by the Plaintiff.

The Plaintiff says as follows:-

1. *He is a businessman residing in Nadi, Fiji.*
2. *He has a number of personal assets and is a Director of certain companies. He is also the Managing Director of a group of companies.*
3. *The Plaintiff both personally and through companies of which he is a director and/or shareholder of has a number of projects which he is a central part of.*

4. *Over the last few years (restricted to three years from the date of this Writ of Summons) the Plaintiff has applied to Banks and financial institutions for loans. Examples are applications to the Bank of Baroda, Westpac Banking Corporation and to the Australia New Zealand Banking Group Limited.*
5. *The Defendant has recorded the Plaintiff a defaulter and as having defaulted on payment in the sum of \$965.94 to Carpenters Finance or Carpenters Finance Limited.*
6. *In one instance the Plaintiff has asked for a commercial loan of over two million and a copy of the Defendant's credit report to the Plaintiff's Bankers Plaintiff showing the Plaintiff as having defaulted on payment in the sum of \$965.94 to Carpenters Finance was a major impediment to the loan being granted.*
7. *The Plaintiff's projects have as a result of the said Credit Report of the Defendant have suffered delay and difficulties and have suffered a great deal of loss and damages and loss of income.*
8. *The Plaintiff through his Solicitors wrote and asked for the basis on which Defendant had recorded and on what basis it had supplied the subject information about the Plaintiff his Bankers as this has had serious consequences to the Plaintiff.*
9.
 - (a) *It was pointed out to the Defendant that they stated in their information that while it stated that it did not accept liability for incorrect information, the information given by it and its conduct did cause damage to persons such as the Plaintiff as it held itself out as a company established by 'leading financial institutions' and that it supplied its members with information which allows them to make "informed credit and business decisions".*
 - (b) *The Defendant also stated about itself and holds itself out to the public that its principal business was the operation of Credit Bureau database where members could access the credit history and identify details of their customers.*
 - (c) *The Defendant charges fees for its services. It uses information provided to it by others and advertises its services and invites customers and makes money from persons wanting information about members of the public.*
 - (d) *It owes a duty to those about whom it collects information about and provides reports on. It is money making commercial business.*
10. *The Defendant stated by letter dated 10th June, 2010 that it obtains*

information about others from its members and stated that if the Plaintiff believed that the "debt was inappropriate" the Plaintiff contact Carpenters Finance so the matter could be resolved.

11. *The Plaintiff in fact had already written a letter through his Solicitors to Carpenters Finance dated 12th of May, 2010 as his business interests were being affected and asked that it take steps to remove the information from the Defendant's records.*
12. *Carpenters Finance wrote a letter dated 14th May, 2010 stating that the Plaintiff owed a personal debt under a hire purchase agreement for a lounge suite.*
13. *The Plaintiff through his Solicitors wrote back on the 4th day of June, 2010 stating that he did not accept that he owed the money and asked for a copy of the agreement and asked if there was any judgment against the Plaintiff or a bounced cheque by him. No reply was received.*
14. *A notice was sent to the Defendant requesting the Defendant to remove the entry and for confirmation of the same. There has been no reply by the Defendant and the entry still has not been removed and any other person searching or using the Defendant's data base will come to the conclusion that the Plaintiff is a defaulter and legitimately owes a debt to Carpenters Finance and is not a reliable person to do business with.*
15. *The Defendant's negligent and/or careless and/or reckless conduct has led to the Plaintiff suffering damage, economic loss and loss of income. Particulars of negligence are as follows:-*
 - a. *Putting details about the Plaintiff that the Plaintiff defaulted on a debt of \$965.94 for a fee on its database where it can be accessed members of the public whether in Fiji or abroad who pay a fee to it without properly ascertaining if the Plaintiff was liable to pay that amount or if there was a judgment against the Plaintiff for that amount.*
 - b. *Holding itself out as a credit bureau data base where members can access credit and details of their customers and as a body assisting its members in debt collection when defaulting debtors are listed in its credit bureau and publishing and/or supplying information about the Plaintiff as a defaulter in payment.*
 - c. *Making money from providing information about the Plaintiff as a defaulter without having made proper enquiries regarding the same.*
 - d. *Refusing to remove the entry from its database when requested.*

- e. *Publishing and giving information about the Plaintiff as a defaulter to any person searching or using the Defendant's data base and causing harm to the Plaintiff and his interests without just cause.*
16. *The Defendant has engaged in unconscionable and unfair Trade Practices in breach of the provisions of the Fair Trading Decree.*
17. *The actions of the Defendant has defamed the Plaintiff as a number of persons acquainted with and/or doing business with or providing credit to the Plaintiff are aware of the report of the Defendant about the Plaintiff.*
18. *As a result of the report or publication by the Defendant as a defaulter in payment the Plaintiff has been greatly harmed and seriously injured in his normal character, credit and reputation.*
19. *At the time of the publication of the report of the Defendant about the Plaintiff, the Plaintiff was in the process of negotiating several different business deals.*
20. *As a result of the publication persons or Credit providers became reluctant to deal with the Plaintiff and he has business opportunities worth millions of dollars. There has also been delay caused as well.*
21. *As a result of the publication tradespeople and financial institutions became reluctant to accept the Plaintiff's cheques or extend him credit causing him difficulties in the conduct of his business interests.*
22. *As a result of the said publication the Plaintiff has suffered public embarrassment and great emotional distress.*
23. *As a result of the intentional and/or negligent actions (particulars of which are given hereinabove) of the Defendant, the Plaintiff's reputation and credit as a businessman has been seriously injured and the Plaintiff has suffered extreme embarrassment and great emotional distress.*
24. *The Plaintiff also claims interest under the Law Reform (Miscellaneous Provisions) (Death & Interest) Act Cap 27 Laws of Fiji at the rate of 10 per centum per annum on the sums awarded to the Plaintiff.*

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:-

- (a) *General Damages*
- (b) *Damages for defamation and/or libel and/or slander;*

- (c) *An injunction restraining the Defendant from publishing information about the Plaintiff as having defaulted in payment to Carpenters Finance Limited or Carpenters Finance.*
- (d) *The Defendant do publish a signed apology to the Plaintiff and have the same promptly published prominently in the Fiji Times, the Fiji Sun and the Daily Post at its own cost on two occasions and on its website for a period of two months.*
- (e) *Damages for breach of the Fair Trading decree.*
- (f) *Damages for lost business opportunities and damage to the Plaintiff's business;*
- (g) *Interest under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27 of the Laws of Fiji on the sums awarded to the Plaintiff.*
- (h) *Costs of this action.*
- (i) *Any other relief which the Honourable Court deems just and equitable.*

(3) The Defendant in its 'Amended Statement of Defence' pleaded, *inter alia*, that;

- 1. *The Defendant does not admit the allegations contained in paragraph 1 of the Statement of Claim save that he holds himself out as a businessman.*
- 2. *The Defendant is unaware of the allegations contained in paragraph 2 of the Statement of Claim and does not admit the same.*
- 3. *The Defendant is unaware of the allegations contained in paragraph 3 of the Statement of Claim and does not admit the same.*
- 4. *The Defendant is unaware of the allegations contained in paragraph 4 of the Statement of Claim and does not admit the same.*
- 5. *Save as to admitting Carpenters Fiji Limited trading as Carpenters Finance hereinafter referred to as "the Third Party. The Third Party had electronically entered the Plaintiff had defaulted in payment of the sum of \$1965.94 to the Third Party on to the Defendant's data base the Defendant denies each and every other allegations contained in paragraph 5 of the Statement of Claim.*
- 6. *The Defendant is unaware of the allegations contained in paragraph 6 of the Statement of Claim and does not admit the same.*

7. *The Defendant does not admit the allegations contained in paragraph 7 of the Statement of Claim.*
8. *Save as to admitting the Plaintiff had on the 9th day of June 2010 received an email letter addressed to it by the Plaintiff's solicitors Messrs Mishra Prakash and Associates, the Defendant does not admit each and every other allegations contained in paragraph 8 of the Statement of Claim.*
9. *Save as to admitting the allegations contained in paragraph 9 of the Statement of Claim were contained in the letter referred to in paragraph 8 hereof the Defendant does not admit each and every other allegations contained in paragraph 9 of the Statement of Claim.*
10. *Save as to admitting that it did address an email letter dated the 10th day of June 2010 to the Plaintiff's solicitors the Defendant does not admit each and every other allegations contained in paragraph 10 of the Statement of Claim.*
11. *As to paragraph 11 of the Statement of Claim the Defendant admits that on the 8th day of June 2010 it became aware of the letter therein referred to. Save as expressly admitted herein the Defendant denies each and every allegation contained in paragraph 11 of the Statement of Claim.*
12. *Save that on the 9th day of June 2010 the Plaintiff made the Defendant aware of a letter dated the 10th day of May 2010. Save as herein expressly admitted the Defendant is unaware of each and every other allegation contained in paragraph 12 of the Statement of Claim and does not admit the same.*
13. *Save as to admitting it did receive a copy of the letter dated the 4th day of June 2010 the Defendant is unaware of each and every other allegation contained in paragraph 13 of the Statement of Claim and does not admit the same.*
14. *Save as to admitting it did receive a letter dated the 29th day of July 2012 the Defendant does not admit each and every other allegation contained in paragraph 14 of the Statement of Claim. The Defendant further avers on the 6th day of August 2010 it removed the reference to the Plaintiff which the Third Party had electronically entered on to the Defendant's database. Further the Defendant says such removal of the reference to the Plaintiff was effected prior to the issue of the action herein without any admission of the accuracy or inaccuracy of such reference.*
- 15.1 *As regards to paragraph 15 of the Statement of Claim the Defendant denies it was guilty of negligence as alleged or any negligence whatsoever or the matter complained of were caused as alleged in the Statement of Claim and makes no admission as to the alleged or any loss or damage.*

- 15.2 Further and/or alternatively if the Plaintiff suffered loss or damage (which is not admitted) the Plaintiff failed to mitigate the alleged loss or damage.
16. The Defendant denies each and every allegation contained in paragraph 16 of the Statement of Claim.
17. The Defendant denies each and every allegation contained in paragraph 17 of the Statement of Claim.
18. The Defendant denies each and every allegation contained in paragraph 18 to 23 (inclusive) of the Statement of Claim.
- 18.1 The Defendant avers the information regarding the Plaintiff is accessible only to subscribers to its database and never to members of the general public.
- 18.2 That if the information uploaded on the Defendant's database by the Third Party regarding the Plaintiff was incorrect and/or inaccurate (which is not admitted by the Defendant) any publication thereof to a subscriber to the Defendant's database was on occasion of qualified privilege.

Particulars

- (i) The Defendant engages in business as a credit reporting agency for credit providers who subscribe to its computerized database system.
- (ii) The Defendant's database records information concerning credit worthiness of individuals;
- (iii) Credit providers who subscribe to the Defendant's database
- Electronically enter creditworthiness data concerning individuals to whom they provided credit, directly into the Defendant's database for the benefit of other subscribers; and
 - Extract electronically directly into the Defendant's database for their own benefit creditworthiness that had been entered into it by other subscribers concerning individuals to whom the latter had provided credit.
- (iv) In the premises if the Defendant published (which is denied) the reference to the creditworthiness of the Plaintiff the Defendant was under a legal and/or moral and/or social duty to the subscribers to its database and its subscribers have a like duty and/or interest to receive them.

- 18.3 Further and/or alternatively if the Defendant published (which is denied) the reference to the creditworthiness of the Plaintiff it did so unintentionally and without notice.
19. If the Plaintiff had suffered loss or damage (which the Defendant does not admit) the Plaintiff has failed to mitigate his loss.
20. Further and/or alternatively if the Plaintiff had suffered loss or damage (which the Defendant does not admit) the matters complained of were caused wholly and in part by the breach of contract and/or negligence of Carpenters Fiji Limited (the Third Party) in the action herein and against whom the Defendant is claiming full indemnity.
21. The Defendant will object that the Statement of Claim in this action discloses no reasonable cause of action against it.

(4) The Plaintiff in his Affidavit in support of the **'Notice of Motion'** deposed as follows;

1. THAT I am the Plaintiff in the action herein.
2. THAT in as far as the contents of this affidavit are within my personal knowledge they are true and as far as they are not within my personal knowledge, they are true to the best of my knowledge and information and belief.
3. THAT on 12th August 2010 the Writ of Summons and Statement of Claim was issued from the court. Thereafter on 8th October 2012 Amended Statement of Defence was filed. Then on 20th November 2012 Reply to Amended Statement of Defence was filed.
4. THAT my claim against the Defendant is for damages suffered to my character by the erroneous noting by the Defendant on the Defendant's database. That the information which was loaded by the third party onto the database kept by the Defendant and accessed given to public, due to which I have suffered loss and damage.
5. THAT on 22 November 2010 Defendant's Statement of Claim against Third Party was filed and thereafter on 18th July 2011 Third Party Statement of Defence and Counter-claim against the Defendant's Statement of Claim was filed. On 23 September 2011 Third Party Reply to Defendant's Reply and Defence to Counter Claim.

6. THAT the matter was set for Trial on 23rd and 24th of May 2016.
7. THAT on 27th April 2016, Fair Reporting of Credit Act 2016 (hereinafter referred as "said Act") came into force.
8. THAT the Defendant now raised as an issue, that present action falls under Section 19 of the said Act therefore the present action should be struck out.
9. THAT I have been advised by my Solicitors and I believe that Section 19 of the said Act does not restrain the present action from being heard before this Honourable Court.
10. THAT I believe the present action filed against the Defendant can still proceed and be heard before the Court under the said Act.
11. THAT I have claimed for compensation for defamation. I have suffered loss and it would be unfair if the said claim is not heard and proceeded before the Court.
12. THAT I therefore pray for the orders sought in the Notice of Motion filed herein.

(5) 'Pramesh Sharma', the Director of the Defendant Company, in his 'Affidavit in Reply' deposed as follows;

1. I am a director of Data Bureau Limited, the Defendant Respondent in this matter and am duly authorized to depose this affidavit on its behalf. I am very familiar with what has transpired and the issues that have given rise to the current proceedings and thus depose this affidavit based on matters within my personal knowledge and documents in my custody and possession. If I depose to matters that are not within my personal knowledge but are my understanding as a result of information or matters that have been relayed to me. I shall state that fact herein.
2. That the Defendant do not wish to comment on the contents of paragraphs 1 to 3 of the Affidavit of Shiu Ram in support of the Notice of Motion sworn on 14 September 2016 and filed on 19 September 2016 ("Affidavit in Support") as it is not required to respond to the same.
3. That the Defendant categorically denies the allegations contained in Paragraph 4 of the Affidavit in support and puts the Plaintiff into strict proof.
4. That the Defendant does not wish to comment on the contents paragraphs 5 to 6 of the Affidavit in support as it is not required to respond to the same.

5. *That the Defendant disagrees to the contents of paragraph 7 of the Affidavit in Support and avers that the Fair Reporting of Credit Act 2016 ("the Act") came into effect on 27 May 2016 per Legal notice No.37.*
6. *That the Defendant fully admits and supports the contents of paragraph 8 of the Affidavit in support and further avers that our legal advice is that no person may use any information regarding the business of the Defendant because of Section 19 of the Act. All the information pertaining to the Plaintiff and everybody else that was on the Defendant's data base has been transmitted to and confiscated by the Reserve Bank of Fiji.*
7. *That the Defendant denies the contents and allegations of paragraph 9 to paragraph 11 of the Affidavit in Support and puts the Plaintiff into strict proof.*
8. *That for the preceding reasons the Defendant prays for the following Orders:*
 - i) *The Plaintiff's prayers listed in his Notice of Motion filed on 19 September 2016 be dismissed and struck out;*
 - ii) *Costs of an incidental to this action be borne by the Plaintiff;*
 - iii) *Such further and other reliefs as this Honorable Court deems just.*

(6) In response, the Plaintiff in his '**Affidavit in answer**' deposed as follows;

1. THAT *I am the Plaintiff in this action herein.*
2. THAT *in as far as the contents of this affidavit are within my personal knowledge they are true and as far as they are not within my personal knowledge, they are true to the best of my knowledge and information and belief.*
3. THAT *as to paragraph 1 of the said Affidavit I say that there is no authority attached authorizing the deponent of the said affidavit to execute the same.*
4. THAT *I am advised I do not need to respond to paragraph 3 of the said affidavit.*
5. THAT *as to paragraph 6 of the said affidavit I say as follows;*
 - 5.1 *I am advised that Section 19 of Fair Trading Act 2016 relates to the use of information, the information which may have been kept with the Defendant, in or to make a decision on a loan or credit applications.*

5.2 *The Act does not restrict use of the information for the purposes of litigation.*

5.3 *The Act does not indemnify the Defendant from any wrong doing.*

5.4 *My claim is based on the enormous information which the Defendant kept under my name being a defaulter for payment in the sum of \$965.94. This information was entered by the 3rd Party.*

5.5 *My claim is that the Defendant owed a duty of care to ensure that factually correct information is entered.*

5.6 *I am advised that the issue of the Reserve Bank of Fiji raised by the Defendant is irrelevant.*

6. THAT *I do not agree with the contents of paragraph 7 of the said affidavit.*

7. THAT *I believe that my claim should be heard by this Honourable Court.*

(C) DISCUSSION

(1) The debate turns upon the impact of Section 19 of the 'Fair Reporting of Credit Act, 2016' on the substantive proceedings of the matter. Section 19 is mandatory in its terms and the text of Section 19 will eventually have a material bearing on the fate of the matter at hand.

(2) The argument advanced on behalf of the Plaintiff, as I understand it, is this;

- ❖ *The Act or specifically Section 19 of the Act does not restrain the within substantive proceeding from being heard and decided on the issues as pleaded in their Claim before the Court.*
- ❖ *Section 19 of the Act does not apply to matters in litigation including their current substantive claim but it does and only applies to matters where a decision on loan or credit application is concerned. (The Plaintiff relies on the reading of subsection 6 of Section 19 in advancing this argument.)*
- ❖ *The Act is unclear and it is silent on matters in litigation and as such Section 19 does not apply to such category of matters*

- ❖ *There is nothing before the Court to show that the Defendant had been wound up or have sold all its assets but the Defendant can be sued separately or in its own name and may apply for a licence under the Act.*

(3) But it is said on behalf of the Defendant that;

- ❖ *The Plaintiff's interpretation and understanding of Section 19 of the Act is wrong.*
- ❖ *That Section 19 of the Act is a Transitional Clause. As such the clause applies to when the Act came into force and it also applies to information generated by a credit reporting agency such as the Defendant, before the Act came into force. (In submitting this, the Defendant relies on the express provisions of the Act.)*
- ❖ *That Section 19 of the Act is clear, complete and unambiguous and contrary to the Plaintiff's submission. The defendant submits that the Section and the Act as a whole must be read in its entirety and not on particular subsections of Section 19 as argued by the Plaintiff. When read in its entirety or even in subsections Section 19 as a whole stops and does not allow the Defendant nor any person to use the credit information collected before the Act came into force but immediately transmit all information or data collected to the Reserve Bank of Fiji.*

(4) This case turns on Section 19 of the 'Fair Reporting of Credit Act, 2016' which provides;

19. –(1) *Any person who operates a credit reporting agency or an entity that performs the function similar to the business of a credit reporting agency in Fiji on the date of commencement of this Act must discontinue such operations immediately after this Act comes into force.*

(2) *For the purpose of subsection (1), the Minister may in consultation with the Bank, determine whether an entity performs the function of a credit reporting agency in the event of any doubt.*

(3) *The person referred to in subsection (1) must transmit all credit information or data collected by such person, to the Bank immediately after this Act comes into operation.*

(4) *The bank must confiscate the credit information or data transmitted under subsection (3).*

(5) No person shall use the credit information referred to in this section for any purpose other than the purposes specified in subsections (3) and (4) after the commencement of this Act.

(6) On and after the date of commencement of this Act, no person shall use any credit information already provided to such person prior to the commencement of this Act by an unregistered credit reporting agency, to make a decision on loan or credit applications.

(7) The person referred to in subsection (1) may apply for a licence under this Act.

(8) Any person who contravenes subsection (1), (3), (4), (5) or (6), commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both.

- (5) The only rule for the construction of Acts of Parliament is, that they should be construed according to the intention of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress. In other words, the only task of the judiciary in statutory interpretation is to unveil the intention of the legislature. If the target of a legislative provision is clear, the court's duty is to ensure that it is hit rather than to record that it has been missed. Thus, the court will only be called upon to interpret in the event of ambiguity or possible multiple interpretations of language leading to textual uncertainty.

In, Income Tax Commissioners v Pemsel [1891] A.C. 534 at 543 and River Wear Commissioner v Adamson [1877] 2 App. Cas 743, at 778 stated:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the law giver."

Further, Lord Campbell in the case of R v Finchlev Surveyors, Exp Pouncey, (1854) 2 CLR 1583 stated:

“We have no jurisdiction to review Acts of Parliament; we sit here to construe the law not to make it. If the words admit of only one interpretation, we are bound to give that to them.”

(6) With these considerations in mind, let me now turn to the “Fair Reporting of Credit Act, 2016.”

(7) The commencement date of the ‘Fair Reporting of Credit Act 2016’ was 27th May 2016. See; Government of Fiji Gazette Supplement No. 4 dated 26th May 2016.

The object of the Act is *“to make provisions for the regulation, administration and licensing of credit reporting agencies and for related matters”*.

(8) Section 19 of the ‘Fair Reporting of Credit Act, 2016’, provides;

19. –(1) *Any person who operates a credit reporting agency or an entity that performs the function similar to the business of a credit reporting agency in Fiji on the date of commencement of this Act must discontinue such operations immediately after this Act comes into force.*

(2) *For the purpose of subsection (1), the Minister may in consultation with the Bank, determine whether an entity performs the function of a credit reporting agency in the event of any doubt.*

(3) *The person referred to in subsection (1) must transmit all credit information or data collected by such person, to the Bank immediately after this Act comes into operation.*

(4) *The bank must confiscate the credit information or data transmitted under subsection (3).*

(5) *No person shall use the credit information referred to in this section for any purpose other than the purposes specified in subsections (3) and (4) after the commencement of this Act.*

(6) *On and after the date of commencement of this Act, no person shall use any credit information already provided to such person prior to the commencement of this Act*

by an unregistered credit reporting agency, to make a decision on loan or credit applications.

(7) The person referred to its subsection (1) may apply for a licence under this Act.

(8) Any person who contravenes subsection (1), (3), (4), (5) or (6), commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both.

- (9) Section 19 is mandatory in its terms. There is no ambiguity. The obligation is clear.

It is said by the Defendant that all its credit information or data collected for its database was transmitted to the Reserve Bank immediately on 27th May 2016.

The Defendant further submits that the 'Reserve Bank of Fiji' has already confiscated its Database after the commencement of the Act. It is said on behalf of the Defendant that the Defendant had sold all its assets and it is in the process of Winding Up the business.

- (10) **The Plaintiff heavily relies on subsection 06 of Section 19 and contends that Section 19 of the Act does not apply to matters in litigation including his current substantive claim but it does and only applies to matters where a decision on loan or credit application is concerned.**
- (11) I cannot think this was the intention of the legislature. I cannot find any trace of such a principle in the statute. **It should be borne in mind that in construing any statute, it is not well to confine your attention to an isolated passage.**
- (12) Section 19 (5) reads' *"No persona shall use the credit information referred to in this Section for any purpose other than the purposes specified in subsections (3) and (4), after the commencement of this Act."*

The purposes specified in subsections (3) and (4) of Section 19 are:

- ❖ **Transmission of all credit information or data to the Reserve Bank.**
- ❖ **Confiscation of the credit information or data transmitted.**

- (13) To my mind, it is obvious that the object of the mission is that no person can use the credit information collected by a credit reporting agency after the Act came into force except for the two exceptions provided in subsection (3) and (4) of Section 19 of the Act.

The construction put by the Plaintiff upon the Act is a very narrow one and it is not consistent with the words of sub Section (5) of Section 19.

The Plaintiff construed subsection (6) of Section 19 of the Act without making reference to subsection (5) of Section 19. At the cost of some repetition, I state that, in construing any statute, it is not well to confine your attention to an isolated passage.

Interpreting subsection (6) of Section 19 in isolation leads to an incongruity in so far as the object of the mission is concerned which it could safely be presumed was not the intention of the legislature. Therefore, subsection (06) of Section 19 should be read in context together with the rest of the subsections of Section 19 for the intention to be manifest. As correctly pointed out by Counsel for the Defendant, subsection (06) of Section 19 is another **extension** of the impact of the Act on matters of loan and credit applications. One word more. The Plaintiff's arguments miss the point. Subsection (6) of Section 19 relates only to an unregistered credit reporting agency. That is not the case here. The wording of subsections (5) and (6) of Section 19 is perfectly clear to me. The language is clear and distinct. **I have come to the clear conclusion that the credit information or data collected by the Defendant before the commencement of the 'Fair Reporting of Credit Act , 2016' cannot be used for any purpose other than the purposes specified in subsections (3) and (4) of Section 19, after the commencement of this Act. If the credit information or data collected by the Defendant before the commencement of the 'Fair Reporting of Credit Act, 2016', is used for litigation or any other purpose other than the two purposes specified in subsections (3) and (4) of Section 19 of the Act (viz, Transmission of all credit information or data to the Reserve Bank of Fiji/ Confiscation of the credit information or data transmitted), the Plaintiff or the Defendant will breach subsection (8) of Section 19 of this Act and will liable for the statutory penalty provided.**

Reiterating the presumption that the legislature does not engage in idle surplusage of words but imbues every part thereof with deliberate meaning to achieve a specific intent, I state with conviction that the Plaintiff's construction tends to make subsection 5 of Section 19 meaningless or ineffective. In constructing a

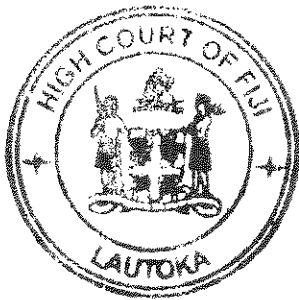
provision of a statute the Court should be slow to adopt construction which tends to make any part of the statute meaningless or ineffective. Every statute has to be construed as a whole and the construction given should be a harmonious one. It is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the statute and to make the whole of it effective and operative. An interpretation which would defeat the purpose of the statutory provision and, in effect obliterate it from the statute book should be eschewed.

One final word. The Plaintiff's construction could defeat the obvious intention of the legislature and produce a wholly unreasonable result.

I must stress here that an intention to produce unreasonable result is not to be imputed to a statute. Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of the legislation established by the Act, which will avoid producing wholly unreasonable result.

(D) Orders

- (1) The Plaintiff's Notice of Motion dated 14th September 2016 is hereby dismissed.
- (2) The costs be costs on cause.



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Jude Nanayakkara
Judge

27/07/2018

At Lautoka
Friday, 27th July 2018