

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 339 of 2018

Finance Pacific Corporation Ltd
Plaintiff
v
Hotel Equipment Ltd
Defendant

Counsel: Mr A. Chand for the plaintiff
Ms I. Sauduadua for the defendant
Date of hearing: 9th April, 2019
Date of Judgment: 31st July, 2019

Ruling

1. The plaintiff, in its originating summons, seeks to enter its property at 45 MacGregor Road, Suva comprising CT Vol no. 48, Folio no.4782 and sell the distrained inventories of the defendant's items by public auction or its bailiff under the Distress of Rent Act. The defendant is a tenant of the plaintiff.
2. The affidavit in support of the summons states that the plaintiff issued distress of rent, as the defendant defaulted in paying the monthly rent from April, 2018 to- date. The bailiff locked the premises, but could not take an inventory. The defendant agreed to pay the outstanding rent, but only paid rent for the months of June and July, 2018. The plaintiff allowed a 50% discount for month of August, 2018. The defendant owes a sum of \$19,075.00 for August, September, October and November,2018. The premises were locked up and the items seized again. The bailiff could not take an inventory of the items, since the defendant's representatives left the premises.

3. The affidavit in opposition filed on behalf of the defendant seeks that the summons be struck out on the grounds that the distress of rent notice is defective, since the plaintiff claims rent for the period it was not owner of the property. The property was transferred to the plaintiff on 4th June, 2018, but it is claiming rent from April, 2018. The affidavit also states that the defendant has paid rent to the plaintiff's Bank account on 8th August, 2018, and 12th September, 2018. Copies of the bank statement and payment are attached.
4. In my view, the affidavit in opposition and annexures sufficiently reveal that there are issues of fact in dispute which should be determined on oral evidence.
5. I decline the defendants application for striking out the summons and make order that the matter continues as a writ action pursuant to Or 28, r.9. Each party shall bear their own costs.
6. *Orders*
 - (a) The defendant's application for striking out is declined.
 - (b) This matter shall continue as a writ action pursuant to r 28, r.9.
 - (c) Each party shall bear their own costs.



A.L.B. Brito-Mutunayagam

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JUDGE
31st July, 2019