

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

CIVIL ACTION NO.: HBC 193 of 2017

**BETWEEN : MACQUARIE TRAVEL WORLD SERVICES
LIMITED**

PLAINTIFF

AND : SHERYLE CHAND

DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms K Singh [Patel Sharma Lawyers]

DEFENDANT : Mr A Liverpool [Reddy & Nandan Lawyers]

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 25 February 2022

INTERLOCUTORY RULING

Application

1. This is the Defendant's application to set aside the default judgment entered against her on 14th December 2017.

File History

2. A brief background of proceeding can be summarized as follows;
 - *A writ of summon was filed on 29th June 2017;*
 - *As per the affidavit of service filed on 27th November 2017, the writ was served on 08th September 2017;*
 - *The Defendant's solicitors on 22nd September 2017 filed an acknowledgement of service and intention to defend;*

- *On 23rd November 2017 a praecipe and search for defence was filed;*
- *Judgment by default was sealed on 14th December 2017.*

Defendants Contention

3. According to the Defendant, during March 2017 and March 2018 she was visiting the CID Headquarters for interview purposes, she did not have access or mobile or other means of communication between early morning till late evenings or nights.

As a result, she was unable to provide adequate instruction to her solicitors. She claims she has a valid defence and as annexed to her affidavit a proposed statement of defence.

In her defence, the Defendant denies she was responsible for banking preparation. According to her, initially her responsibility was to issue tickets and invoices with receipts done by another employee.

According to the Defendant, she was later given access to receipts.

When the Defendant was absent the raising of invoices and banking receipts was done by other staffs.

Charlotte Kumar only did the reconciliation and actual banking.

According to the Defendant, the account department monitored all the receipts.

The Defendant claims she was suspended on 04th January, 2016 and not 05th January, 2017 as claimed by the Plaintiff and it yet to be charged.

Reason for delay

4. The writ was served on the Defendant on 08th September 2017 and the default judgment entered on 14th December 2017 some 03 months later.

5. According to the Defendant, during March 2017 till March 2018 she was visiting CID Headquarters for interview purpose.
6. It's uncertain when she was served with the default judgment; however according to the Plaintiff on 26th April 2018, the Plaintiff proceeded with bankruptcy action and documents were served on the Defendant on 27th August 2018.
7. This application for setting aside was made on 07th June 2019.
8. There is no sufficient explanation or reasons provided for the delay after March 2018 until June 2019.
9. With an acknowledgment of service being filed the Defendant and/or her solicitors ought to be aware they were to file a defence and should have taken necessary steps earlier to be in compliance with the rules.

Meritorious Defence

10. The judgment so entered is regular hence the Defendant is required to show to this Court she has defence on merits.
11. I have earlier outlined what the Defendant has stated in her defence.

Her only defence is that other staffs would raise invoices and banking receipts in her absence and initially she would only issue tickets and invoices with receipts due by other employees.

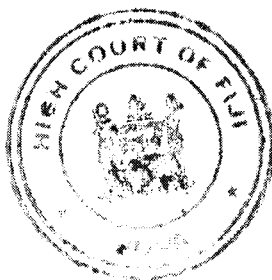
Further in her defence, she has made bear denial or that the contents are not within her knowledge for the particular invoices raised and receipted but not banked; or for cash collected; for tickets issued and paid for but not invoiced or receipted and for the voided tickets.


She has also denied having knowledge that certain void tickets, for which the customers had paid, were paid off by her sister and friend being an amount of \$13, 824.55

12. I do not find the Defendant has raised arguable defence to the claim.

Prejudice to Parties

13. The Defendant has not outlined how she is been prejudiced if the judgment is not set aside.
14. The Plaintiff on other hand have proceeded with execution of the order by filing bankruptcy proceedings.
15. With no reason given for the delay in making the application for setting aside and no defence on merit shown, I refuse to grant orders on the Defendant's application filed on 07th June 2019.
16. The same is dismissed with cost in favor of the Plaintiff summarily assessed in sum of \$800 to be paid within 14 days of delivering of this ruling.




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Vandhana Lal [Ms]
Acting Master
At Suva.

TO:

1. Suva High Civil Action No. HBC 193 of 2017;
2. Patel Sharma Lawyers, Solicitors for the Plaintiff;
3. Reddy and Nandan Lawyers, Solicitors for the Defendant.