

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 13 OF 2021

BETWEEN : **R.C. MANUBHAI AND COMPANY LIMITED** a limited liability Company having its registered office at 6 Ba Market Subdivision, P.O. Box 9, Ba, Fiji.

PLAINTIFF

AND : **PETER JOHN LAWLOR** of Denarau Road, Narewa, Nadi, Fiji.

DEFENDANT

BEFORE : **Master P. Prasad**

Counsels : Mr. D. Patel for Plaintiff
Ms. S. Begum for Defendant

Date of Hearing : 3 December 2024

Date of Ruling : 14 March 2025

RULING

1. The current application before this Court is a Summons filed by the Plaintiff for Summary Judgment pursuant to Order 14 Rule 1 of the High Court Rules 1988 (HCR) supported by the Plaintiff's Affidavit.
2. The Defendant has opposed Summons and has filed an Affidavit in Opposition and the Plaintiff filed an Affidavit in Reply.
3. On the day of hearing, the counsel for the Defendant sought an adjournment on the grounds that: (i) the principle of the firm was conducting a matter before another court; (ii) the counsel appearing had just received the file last week; and (iii) they had been unable to contact their client to consult on the matter. The Plaintiff's counsel strongly opposed the application for adjournment on the

grounds that: (i) he was only informed of the Defendant's application on the morning of the hearing; (ii) there was no need to consult the client as all necessary documents had been filed in the form of affidavits; (iii) this was 2021 matter and previously set for hearing; and (iv) should the Court grant an adjournment then the Plaintiff would seek costs in the sum of \$1,500.00.

4. The application for adjournment was refused on the grounds that: (i) this was a 2021 matter and the Defendant's counsel had filed a Notice of Change of Solicitors on 19 October 2022 which was more than 2 years ago; (ii) this matter had been initially fixed for hearing on 17 October 2024, but the Court had not sat that day, and the hearing was thereafter fixed for 3 December 2024; (iii) the Defendant's counsel had more than enough time to prepare for the hearing and the documents which the Defendant's counsel needed to rely on were already filed and before the Court. The Defendant had not provided good reasons for the adjournment application and hence the application was refused.
5. The Court proceeded with the hearing where both counsel made oral submissions and Plaintiff's counsel also filed written submissions.
6. The Plaintiff's claim against the Defendant arises from guarantee agreements signed by the Defendant, whereby the Defendant has guaranteed to pay for any debts incurred by a company, pursuant to credit sales provided by the Plaintiff.
7. Pursuant to the Plaintiff's Statement of Claim (**SOC**) filed on 20 January 2021, the Plaintiff states as follows:
 - a. On 20 April 2015 the Plaintiff and Sunline Construction Pte Limited (**Debtor**) entered into an agreement under which the Plaintiff agreed to supply goods and services on credit to the Debtor.
 - b. On or about 17 June 2016 and 11 July 2017, the Defendant signed guarantee agreements to the effect that if the Plaintiff supplied the Debtor with the goods and services on credit, the Defendant would be responsible for due payment of the price of such goods together with any additional sums included but not limited to interest and legal costs pursuant to the terms and conditions of the trading account of the Debtor (**RCM Guarantee**).
 - c. By terms of the Guarantee, the Defendant agreed to pay the Plaintiff on demand, any monies due and owing by the Debtor to the Plaintiff as specified under a demand or notice of default issued to the Debtor; and where any debts owned by the Debtor is not recoverable from the Debtor itself for any reason, then the Defendant shall, on demand, pay the Plaintiff such debt together with interest at the rate of 13.5% per annum from the date of demand until payment in full.

- d. Further the Plaintiff claims that they supplied goods and services to the Debtor between 1 April 2019 to 26 June 2019 and as of 26 June 2020 the Debtor owes the Plaintiff \$107,116.15. A demand notice was served on the Debtor on 8 November 2019 where the Plaintiff required payment of \$115,360.28 (**debt sum**). The Debtor failed to pay the debt sum and the Plaintiff, on 25 February 2020 commenced winding up proceedings against the Debtor. The Debtor was wound up on 11 February 2020 and said order sealed on 11 March 2020.
 - e. The Debtor further owed \$3,922.64 to Ajax Spurway Fasteners Pte Ltd (**Ajax debt**) and \$7,698.30 to Glass & Mirror (Fiji) Pte Ltd (**G&M debt**). Both these debts have been assigned to the Plaintiff.
 - f. The debts owed to Ajax debt and G&M debt have been proven through the acceptance of proofs of debt filed with the Official Receiver's office (**OR**) by the 2 companies respectively. The OR has informed the Plaintiff that it was unable to make any recovery from the Debtor. Both Ajax and G&M have assigned their debts owed to the Plaintiff.
 - g. By Demand Notice of 5 March 2020 served on the Defendant, the Plaintiff required the Defendant to pay the Debt sum on accordance with the terms of the Guarantee. In breach of the Guarantee terms, the Defendant failed to pay the Debt sum.
 - h. The Plaintiff therefore claims \$124,553.93 for the debt owed to the Plaintiff pursuant to the Guarantee. Plaintiff further claims for the Ajax debt and the G&M debt the sum of \$3,922.64 and \$7,698.30. A breakdown of the sum is provided in detail in the SOC.
 - i. The Plaintiff therefore seeks:
 - i. Judgement in the sum of \$136,174.87.
 - ii. Interest on the sum of \$113,544.15 at the rate of 13.5% per annum calculated from 4 March 2020 to date of payment.
 - iii. Interest at the rate of 10% from date of breach of demand notice to the date of judgment under Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 on all sums awarded.
 - iv. Damages.
 - v. Costs.
8. The Defendant filed a Statement of Defence on 18 February 2021 (**SOD**) and stated as follows:

- a. Admits that the Defendant was asked to sign certain documents by the officers of the Plaintiff but he was signing as the officer of the Debtor.
 - b. That the Plaintiff's claim of debt is grossly exaggerated and inflated.
 - c. That there was no consideration moving from the Plaintiff to the Defendant for the guarantee executed by the Defendant in his capacity as officer of the Debtor.
 - d. Admits receiving the Demand Notice but denied being liable to the Plaintiff.
 - e. Denies being party to any agreement between the Plaintiff and the Debtor.
 - f. Denied all other allegations in the SOC and for the Plaintiff's SOC to be struck out.
9. In their Affidavits in Support and Reply, the Plaintiff has annexed copies of: 1 July 2016 and 26 August 2017 contracts between the Plaintiff and the Debtor (**Credit agreements**); 17 June 2016 and 10 July 2017 RCM Guarantee; 8 November 2019 Statutory Demand from the Plaintiff to the Debtor; 11 March 2020 winding up order of the Debtor; Plaintiff's proof of debt; 12 October 2016 contract between Ajax Spurway Fasteners Pte Ltd (**Ajax**) and Debtor and a 30 June 2016 guarantee for Ajax signed by the Defendant (**Ajax Guarantee**); invoices from Plaintiff and Ajax acknowledged by Debtor on delivery; proof of debt of Ajax; deeds of assignment of debts for both Ajax and Glass & Mirror (Fiji) Pte Ltd (**G&M**); G&M proof of debt; Demand Notice of 5 March 2020 to the Defendant; and OR letter of 21 January 2021 that there was no recovery from the Debtor.
10. The Defendant in his Affidavit in Opposition stated that any documents he signed with the Plaintiff was in his capacity as Director of the Debtor and not in his personal capacity and that he never agreed to be personally liable for any debts. The Defendant further averred that he did not recall signing the guarantees and that he was not told the terms on which the Plaintiff will supply goods to the Debtor on credit.
11. Moreover, the Defendant stated that: no debt was owed by the Debtor to the Plaintiff, Ajax or G&M; the Defendant was not served with any court documents in relation to the Debtor; the Plaintiff has not proven its debt; the Defendant did not get a chance to challenge the Debt sum; and the Defendant has merits in his SOD.
12. I will now review the relevant legal provisions and case authorities pertinent to this application. Summary judgment is a swift procedure in civil litigation aimed at resolving cases without a full trial. An applicant is eligible for a summary judgment if there is no defence or dispute regarding the key facts of the case. The goal of summary judgment is to achieve a quick ruling in cases where there is clearly no defence, thus avoiding unnecessary trials and conserving the court's limited resources and reducing costs.

13. Order 14 of the HCR provides as follows:

Application by plaintiff for summary judgment (O.14, r.1)

1. (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ other than –

(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment.

(b) an action which includes a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 86 applies.

Manner in which Application under Rule 1 Must be made (O.14, r2)

2. (1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the cause may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

Judgment for Plaintiff (O.14, r.3)

3. (1) Unless on the hearing of an application under rule 1, either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The Court may by order, and subject to such conditions if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to Defend (O.14, r.4)

4.-(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2 (2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-

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(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

14. The principles governing the application of summary judgment rules are extensively discussed in numerous cases, both domestic and international. The said principles were clearly and concisely explained by Master Azhar (as His Lordship then was) in his ruling in the case of **Subamma v ARK Co Ltd & Others** [2022] FJHC 315; HBC173.2015 (24 June 2022), which I graciously adopt and reproduce as follows:

*"06. The principles that govern the application of these rules are discussed in many cases both foreign and local, and no reference is needed to all the cases. **The court's duty, when an application for summary judgment is filed, is to ascertain whether there is a triable issue and no arguable defence to the claim.** If there is an arguable issue to be tried and there are matters of facts to be resolved, which can only be resolved in a trial, the court should not allow the application for summary judgment, but should grant leave to defend the matter in a full and proper trial, no matter how strong the plaintiff's case would be. The law and procedure for summary judgment can be summarized as follows, based on the decisions under Order 14:*

a. The plaintiff may, after the notice of intention to defend the action has been filed, apply for summary judgment against the defendant on the ground that the defendant has no defence to the claim or part of the claim included in the Writ except the amount of damages: rule 1 (3). This application must be by way of summons supported by an affidavit with the assertion of facts and the belief of the deponent that

there is no defence to the claim. This summons to be served on the other party to be heard inter parte: rule 2.

b. The procedure under Order 14 rule 1 is applicable to every action begun by a Writ. However, it cannot be invoked for an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment and for an action which includes a claim by the plaintiff based on an allegation of fraud : rule 1 (2). Likewise, this Order is neither applicable to summary judgment in specific performance under Order 86 nor does affect the provisions of Order 77 which applies for the proceedings against the state: rules 1 (3) and 12.

c. The power to grant summary judgment should be exercised with care and should not be exercised unless it is clear there are no real issues to be tried: Fancourt v Mercantile Credits Ltd (1983) HCA 25; (1983) 154 CLR 87 at 99; Theseus Exploration NL V Foyster ([1972] HCA 41; 1972) 126 CLR 507. It would be difficult to obtain summary judgment when there is an array of defences. However an application for summary judgment should not be refused for raising seemingly difficult issues to blot out otherwise simple cases: Hibiscus Shoppingtown Pty Ltd v Woolworths [1993] FLR 106; Territory Loans Management v Turner [1992] NTSC 82; (1992) 110 FLR 341.

d. The legal burden of proof is borne by the plaintiff throughout the application, however, when he has established a prima facie right to an order, a “persuasive” or “evidential” burden shifts to the defendant to satisfy the court that judgment should not be given against him: Australian & New Zealand Banking Group v David (1991)105 FLR 403. Although the onus is upon the plaintiff there is upon the defendant a need to provide some evidential foundation for the defences which are raised. If not, the plaintiff's verification stands unchallenged and ought to be accepted unless it is patently wrong: Australian Guarantee Corporation (NZ) Ltd v McBeth [1992] NZLR 54.

e. The defendant may show cause against a plaintiff's claim on the merits. It is generally incumbent on a defendant resisting summary judgment, to file an affidavit which deals specifically with the plaintiff's claim and states clearly and precisely what the defence is and what facts are relied on to support it: 1991 The Supreme Practice Vol 1 pages 146,147,152 and 322. Mere raising of a defence that is complicated or difficult will not of itself result in a refusal to grant summary judgment: Civil & CIVIC Pty Ltd v Pioneer Concrete (NT) Pty Ltd [1991] NTSC 3; (1991) 103 FLR 196.

f. If a point of law is raised which the Court feels able to consider without reference to contested facts simply on the submissions of the parties, then it will see whether there is any substance in the proposed defence. If it concludes that, although arguable, the point is bad, then it will give judgment for the plaintiffs: Sethia Liners Ltd v State Trading Corporation of India (1986) 1 Lloyds Rep. 31.

g. There has to be a balancing between the right of the defendant to have his day in Court and to have his proper defences explored and examined in details and the appropriate robust and realistic approach called for by the particular facts of the case: Bibly Dimock Corporation Ltd v Patel [1987] NZCA 193; (1987) 1 PR NZ 84; Cegami Investments Ltd v AMP Financial Corporation (NZ) Ltd (1990) 2 NZLR 308; Australian Guarantee Corporation (NZ) Ltd v McBeth [1992] NZLR 54.

15. As stated above, the legal burden of proof is borne by the Plaintiff throughout the application, and only when the Plaintiff has established a *prima facie* right to an order, a “persuasive” or “evidential” burden would shift to the Defendant to satisfy the Court that judgment should not be given against the Defendant.
16. I have considered the Plaintiff’s Affidavits in Support and in Reply and the documents annexed therein. I find that the Plaintiff’s cause of action against the Defendant is not duly supported to the satisfaction of the Court and the Plaintiff has failed to establish a *prima facie* case against the Defendant. My analysis is below.
17. Although the Plaintiff has attached copies of the RCM Guarantee and the Ajax Guarantee to their Affidavits, no evidence has been provided to show that the Defendant signed a guarantee for the G&M debt.
18. Additionally, in their SOC, the Plaintiff seeks judgment for the combined total of all debts, including the RCM debt, Ajax debt, and G&M debt. The Summons for Summary Judgment also seeks a judgment for the full amount of \$136,174.87, which represents the total of the three debts. This judgment sum includes the G&M debt for which, no guarantee documents have been provided in the Plaintiff’s Affidavits. No application has been made to divide the debts into separate judgment orders.
19. The Defendant has also stated in his SOD that he disputes the debt and claims that the debt has been exaggerated.
20. Since no guarantee document has been provided for the G&M debt included in the claimed judgment amount, the Court determines that the Plaintiff’s case against the Defendant lacks sufficient support.
21. In dismissing an application for summary judgment in ***Kidman v Chandra*** [2017] FJHC 712; HBC72.2014 (26 September 2017) Master Azhar (as His Lordship then was) held that “*in deciding whether to grant the application, the court will refuse the application if relevant facts remain in dispute, or if a difficult question of law remains to be decided. In cases where the defendant has a reasonably arguable defence, the court will find that it is appropriate for the matter to proceed to trial: **Hibiscus Shopping Town Pty Ltd –v- Woolworths Ltd** [1993] FLR 106.*”

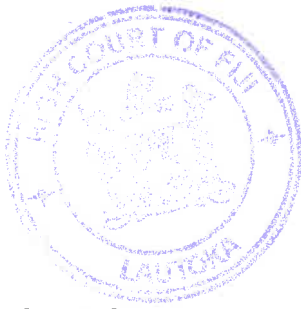
22. Similarly in this matter, there are arguable issues which can only be resolved in a trial.

23. Therefore, the Court in exercising its authority under Order 14 rule 4(3) grants the Defendant leave to defend the matter with respect to the Plaintiff's claim.

24. Accordingly, the final orders are:

(a) The application for Summary Judgment is hereby dismissed, and

(b) Costs of this action summarily assessed at \$2,000.00 to be paid by the Plaintiff within 28 days.



A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal stroke at the bottom.

P. Prasad
Master of the High Court

At Lautoka
14 March 2025