

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 231 OF 2010

BETWEEN : **DOMINION FINANCE LIMITED**
Plaintiff

A N D : **TIKIKO TUWAI DRIU**
Defendant

Counsel : **Mr. D. Sharma for the Plaintiff**
No appearance for the Defendant

Date of Hearing : 3rd July, 2014

Date of Judgment : 1st October, 2014

DECISION

[1]. The plaintiff had filed the summons before me seeking among other things for the following orders: -

1. That the defendant's property comprised and described in Certificate of Titles Nos:
 - i. *CT 38459 being Lot 1 on Deposited Plan No. 9769,*
 - ii. *CT 38460 being Lot 2 on Deposited Plan No. 9769,*
 - iii. *CT 38461 being Lot 3 on Deposited Plan No. 9769 and*
 - iv. *CT 38462 being Lot 4 on Deposited Plan No. 9769*

Be transferred to Dominion Finance Limited.

2. **An Order that the Plaintiff by its duly authorized officer Karl Rebman Smith be authorized to execute the Transfer and all other documents necessary to effect the Transfer of the Titles, CT 38459 being Lot 1 Deposited Plan No. 9769, CT 38460 being Lot 2 on Deposited Plan No. 9769, CT 38461 being Lot 3 on Deposited Plan No. 9769 and CT 38462 being Lot 4 on Deposited Plan No. 9769 to Dominion Finance Limited.**
3. **An Order that the Plaintiff by its duly authorized officer Karl Rebman Smith be authorized to make and execute an application for Provisional Titles if the duplicate originals of the four titles cannot be located.**
4. **An Order that the Registrar of Titles pursuant to section 168 of the Land Transfer Act be directed to give effect to the Orders made herein.**

The said summons is supported by an affidavit of one Karl Rebman Smith.

- [2]. Affidavit of Service had been filed by one Ramanjalu Naicker deposing that all documents have been served on the defendant on 6.3.14 and it has been acknowledged by the defendant.
- [3]. Another affidavit of service has been filed by one Lemeki Sevutia deposing that all documents have been served on 17.3.14 on Mr Ronald Paul Chan.
- [4]. The case was mentioned on 11.4.14 but the defendants were not present. As the affidavit of service had been filed the case was fixed for hearing on 3.7.14 and the court reissued NOAH on the defendants.
- [5]. The case is taken for hearing on 3.7.14 but the defendants were not present. The name of the defendant was called but the defendant nor his representative was present. As per the bailiff's report NOAH had been sent and accordingly the court proceeded with the hearing of formal proof.

Background to the Case

- [6]. The plaintiff had lent money to the defendant's company to finance a sub division on Waya Island. The defendant had given a guarantee and as the loan payment was defaulted the plaintiff had filed action to recover the same. A default judgment had been obtained and after the due process the plaintiff has filed this application.

Plaintiff's Case

- [7]. On behalf of the plaintiff one Ms Anjila Kiran gave evidence and stated she was the Complaints Officer and duly empowered to give evidence on behalf of plaintiff.

- [8]. As per the evidence the defendant had defaulted on the repayment of the loan. The plaintiff had filed action and the court had granted a charging order Nisi on the defendant's property comprised and described in Certificate of Title Nos:- .

- i. CT 38459 being Lot 1 on Deposited Plan No. 9769,*
- ii. CT 38460 being Lot 2 on Deposited Plan No. 9769,*
- iii. CT 38461 being Lot 3 on Deposited Plan No. 9769 and*
- iv. CT 38462 being Lot 4 on Deposited Plan No. 9769.*

- [9]. The said order entered on 21.3.12 was marked as P1.

- [10]. The witness in her testimony stated that as per the provisions of Order 50 Rule 6(4) of the High Court rules of 1988 they had waited for 6 months and advertised the property seeking tenders from any interested party. The copies of the advertisement was marked as P2 which demonstrate that it had been advertised on 11.9.12 and 15.9.12, 13.9.12 and 22.9.12 in Fiji Times and Fiji Sun news papers. As there had been no offers the plaintiff has got the property valued and the valuation report by Rolle Associates was marked as P3. The said valuation report dated 26.6.13 gives a value of \$180,000 for the 4 Lots. Order 1 in the summons is sought pertaining to the said Lots.

[11]. The plaintiff had obtained a judgment against the defendant. The defendant attempted to set aside the default judgment but had been unsuccessful and the said ruling was marked P4.

[12]. According to the witness the defendant had made no attempts to settle the loan or to reduce the debt, or to honour the judgment. The current debt owed to the plaintiff is said to be now in excess of \$350, 000.00. The witness sought court orders for the four titles to be fore closed and transferred to Dominion Properties Limited in consideration of the current debt owed by the defendant and also for an order to allow, Karl Rebman Smith to execute all relevant transactional documents on behalf of the transferor in order to allow the four titles to be sold to the plaintiff. It was submitted that in the absence of a mortgage they are seeking a High Court order and has given an undertaking to file in court a memorandum giving the details of the transfer once it is completed.

Determination

[13]. The plaintiff's counsel submitted that they made this application pursuant to order 31 and submitted that under order 31 rule 1 the court is empowered to sanction a sale of any land, also under Order 31 Rule 2 that the court has the power to permit a person to conduct the sales provided the court is satisfied that the best price has been obtained for the land.

[14]. As per the submission the outstanding debts by the defendant amounts to \$350,000. The plaintiff has obtained a valuation for the land from an independent valuer, the said valuation stands at \$180,000 for the 4 lots of land which is lower than the indebted amount. The plaintiff has submitted that due to the location of the land, as it is in a remote island they can't find suitable buyers. As per document marked P2 and the evidence the court is satisfied that the plaintiff had called for tenders to sell the land, but as per the plaintiff's witness's evidence no buyers have been present.

[15]. The amount of debt is higher than the value of the land. The plaintiff also has submitted that with this transfer the defendant's entire debt amounting to \$350,000 would be

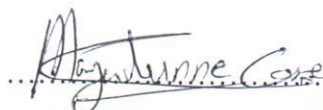
waived off. The plaintiff submitted they have obtained the best value for the land by an independent valuer. In any event the valued price is less than the debt owned.

- [16]. The plaintiff submits that under order 31 rule 2 the court has the power to appoint a person to conduct the sale and therefore seeks an order that Karl Smith be appointed to sign the transfer documents and other ancillary documents, pertaining to the sale.

Conclusion

- [17]. Order 31 contemplates of power to sell the land but the plaintiff submits that as there were no buyers the sale was not successful and wants the court to use this provision to grant the orders sought.

- [18]. The plaintiff has obtained a sale order against the defendant. The defendants attempt to set aside the default judgment has been refused and there are no other documents provided at this stage to show that the defendant had pursued litigation thereafter. This summons has been served on the defendant an affidavit of service had been filed but still the defendant has thought not to oppose or answer this summons; accordingly this application goes unopposed for the above stated reasons and in the absence of any opposition to this summons and as no provision to the contrary has been brought to the notice of court this court grants orders as per the summons dated 8.8.13.



Mayadunne Corea

JUDGE

01.10.2014

