

IN THE HIGH COURT OF FIJI

WESTERN DIVISION

AT LAUTOKA, FIJI

ACTION NO: HBC 186 OF 2016

BETWEEN : **SILVER BEET INVESTMENTS LTD** a limited liability Company having its Registered Office at 3 Tukani Street, Lautoka, Fiji

PLAINTIFF

AND : **AUTOMART LTD** a limited liability Company having its Registered office at Sautamata Street, Lautoka, Fiji

1ST DEFENDANT

AND : **LAND TRANSPORT AUTHORITY** having its Head Quarters at Valelevu, Nasinu

2ND DEFENDANT

Appearance : Mr N S Khan for Plaintiff
Non-appearance for defendant

Date of Hearing : 1.9.2016 (4pm)

Date of Ruling : 1.9.2016

R U L I N G

1. This is an application filed ex parte seeking release of the 6 trucks the plaintiff had under Bill of Sale. The application is made under Order 29, rule 2 of the High Court Rules 1988, as amended. Rule 2 provides that:

'(2) Where the applicant is the plaintiff and the case is one of urgency and the delay by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by Notice of Motion or Summons.'

2. The application is supported by an affidavit of Riaz Ali sworn on 31 August 2016 and a supplementary affidavit sworn today.
3. The plaintiff on his affidavit evidence states that on 22 June 2015 he purchased the vehicles under various Bills of Sale for \$896,600. The outstanding amount under the bill as at today is about \$486,778.00 and he further states that he had possession of all 6 vehicles and the first defendant without any notice whatsoever seized the vehicles around 2.30pm on 20 July 2016 and removed the same on 1 August 2016 and 5 August 2016.
4. The plaintiff appears to have paid ½ of the Bill of Sale amount as acknowledged by the defendant. The plaintiff gives an undertaking to court that he will pay off the outstanding amount within 30 days from today if the vehicles were released to him.
5. The defendant has advertised for the sale of the vehicles and tenders expire tomorrow (2 September). I am satisfied that there is urgency in the matter and that the delay caused by proceeding in the ordinary way would cause serious mischief to the plaintiff.
6. According to the plaintiff the vehicles have been seized and removed from his possession without notice to him. As such, it seems to me that the vehicles have been seized and removed from the plaintiff's custody without due process. In other words, I might say that the vehicles have been removed unlawfully from the plaintiff.
7. The plaintiff owns property worth \$1.7m and gives undertaking as to damages. He gives that undertaking in his supplementary affidavit. I am satisfied with the undertaking given as to damages. The plaintiff also undertakes that he will pay off all outstanding amounts under the Bills of Sale within 30 days from today.

8. His counsel submits that the court may reverse the orders (if granted on our *ex parte* application) if the plaintiff subsequently failed as agreed to pay off the outstanding sums within 30 days from today.
9. For the above reasons, I am satisfied that I should grant the order the plaintiff is seeking in his application. I accordingly grant all orders sought in the *ex parte* Notice of Motion filed today except orders 4 & 10.
10. I also grant leave to the plaintiff to serve the orders together with all documents on the 1st defendant's place of business – 13 Namoli Avenue Lautoka, Fiji and on the 2nd defendant at their Lautoka office within 7 days.
11. The matter is adjourned for mention only at 9.30 am on 4 October 2016.

M H Mohamed Ajmeer
17/5/16

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M H Mohamed Ajmeer

JUDGE

At Lautoka
1.9.2016

