

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 224 of 2014

BETWEEN

EXPRESS DIESEL SERVICE LIMITED a limited liability company
having its registered office at 3/185 Montgomerie Rd,
Ariport Oaks, Auckland, New Zealand.

JUDGMENT CREDITOR

AND

VISHA'S HOIST SERVICES LIMITED a limited liability company
having its registered office at 9 Rogovoka Road,
Delainavesi, Lami, Fiji.

JUDGMENT DEBTOR

AND

LAND TRANSPORT AUTHORITY a statutory body established under the
Land Transport Act 1998 having its registered office at Suva.

FIRST GARNISHEE

AND

PACIFIC ENERGY SOUTH WEST PACIFIC LIMITED of level 7,
Vanua House, Victoria Parade, Suva.

SECOND GARNISHEE

Counsel : Ms. V. Tokavou for the Judgment-Creditor
Ms. T. Colati for the First Garnishee

Date of Hearing : 03rd October, 2017

Date of Ruling : 07th November, 2017

RULING

[1] The Judgment-creditor filed this summons pursuant to Order 49 rule 1 and rule 2 of the High Court Rules 1988 seeking the following order against the 1st and 2nd garnishee:

1. THAT a Garnishee Order Nisi be issued against the 1st and 2nd Garnishee;
2. THAT all the debts due or accruing from the 1st and 2nd Garnishee to the Judgment-Debtor be attached to answer a judgment entered against the Judgment-Debtor in the Suva High Court civil action No. 224 of 2014 on the 8th day of May 2017 by the Judgment-Creditor in the total sum of NZD \$43,266.50 together with interest which remain due and unpaid.
3. THAT the 1st and 2nd Garnishee do pay the Judgment-Creditor the amount of any debt due or accruing due to the Judgment-Debtor from the 1st and 2nd Garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the Garnishee proceedings.
4. THAT costs of this application be costs in cause.

[2] The substantive matter between the judgment-creditor and the judgment debtor was settled and the court entered judgment as per the terms of settlement.

- [3] The judgment-creditor commenced these proceedings to recover the monies due and owing to the judgment-debtor, from the 1st and 2nd garnishee. The 2nd garnishee failed to appear after the summons was served and the court made orders as prayed for in the summons against the 2nd garnishee.
- [4] The position of the Land Transport Authority, the 2nd garnishee is that there is an agreement between them and the judgment-debtor where it has been agreed by the judgment-debtor to supply and install three Hydraulic Hoist Ramps for FJ\$75,000.00 and the judgment-debtor has supplied the agreed three Hoists and two of them have already been installed. The Land Transport Authority has paid \$67,500.00 out of the contract sum and \$7500.00 is being withheld until the last hoist is installed. These facts are not disputed by the judgment-creditor. The claim of the judgment-creditor is that the 1st garnishee is holding the said \$7500.00 for and on behalf of the judgment-debtor.
- [5] The agreement between the judgment-debtor and the 1st garnishee has not yet been completed. The 1st garnishee is yet to decide on the place where the 3rd hoist is to be installed. We must be mindful of the fact that the Land Transport Authority is not a party to the substantive matter and therefore, the judgment-creditor is not in a position to dictate terms on the Land Transport Authority as to the manner in which the agreement with the judgment-debtor should be performed. The judgment-debtor is certainly entitled to recover any money that is being held by the 1st garnishee to satisfy the judgment entered in its favour. The judgment-debtor only becomes legally entitled to recover the \$7500.00 from the Land Transport Authority only upon the completion of the contract that is after the installation of the 3rd hoist. Until such time the judgment debtor is not entitled to this money nor the judgment-creditor can claim the said amount from the 1st garnishee.
- [6] For these reasons the court makes the following orders:

1. The summons to garnishee against the 1st garnishee is struck out.
2. The parties will bear their own costs.




Lyone Seneviratne

JUDGE

07th November, 2017