

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

CIVIL ACTION NO. HBC 165 OF 2018

**BETWEEN** : **FIJI DEVELOPMENT BANK** a corporate body duly constituted under the Fiji Development Bank Act, Cap 214 and having its principal office at 360 Victoria Parade, Suva, Fiji.

**PLAINTIFF**

**AND** : **RATU SEMISI LEIENE T/A NAVUSAREKI LOGGINGS & PRUNING COMPANY** of 2<sup>nd</sup> Floor MY Khan Building, 21 Yasawa Street, Lautoka, Businessman.

**DEFENDANT**

**Appearances** : Mr E. Maopa for the plaintiff  
Non-appearance for the defendant

**Date of Hearing** : 6 August 2018

**Date of Ruling** : 6 August 2018

## **R U L I N G**

[01] This is an *ex parte* originating summons filed by the plaintiff to enter and take immediate possession of certain personal chattels comprised in the Bill of Sale ('*the application*'). The application is supported by an affidavit of Mr Sanjiv Kumar, a Debt Recovery Officer of the plaintiff, sworn on 25 July 2018.

[02] The application is made under the High Court Rules 1988, as amended ('*HCR*'), O 7, R 2 & 4 and section 2 of the Bills of Sale Act 1879 ('*BSA*').

[03] The HCR, O. 7, R 2 explains the form of summons to be used and the contents and the relief to be stated in the originating summons.

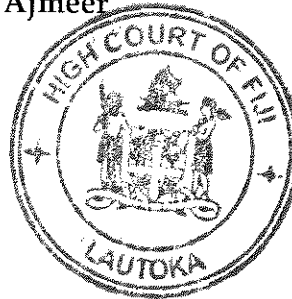
- [04] The BSA, section 2 states that: *“This Act shall apply to every bill of sale whereby the holder of grantee has power, either with or without notice, at any time to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.”*
- [05] The affidavit evidence states that the chattels sought to be taken possession of or seized are subject to the bill of sale and charged in favour of the plaintiff under a loan agreement in respect of financial accommodation provided by the plaintiff at the request of the Mortgagor (the defendant) totalling \$315,075.00 and that the defendant is in arrears of \$61,480.00 up to 1 June 2018. Under the bill of sale, the defendant had agreed to grant, bargain, sell, transfer, assign and set over unto the plaintiff all his rights, title and interest in the properties, the subject matter of the application (see ‘SK 3’).
- [06] The Bill of Sale is subject to the following conditions:
- i. Require that the defendant immediately pay FDB the secured money; and*
  - ii. Enter any premises where the property is kept or garaged and take or give possession (as often as FDB thinks necessary) of all or any part of the property and of any of rents and profits of the property; and*
  - iii. Appoint one or more receivers to all or any part of the property and its incomes; and*
  - iv. Deal with the property as if FDB owns it to the extent permitted by law (such as relocating it, leasing it, selling it in any way and to any person as FDB thinks fit); and*
  - v. Make good any default and recover from the defendant the reasonable costs of doing so (including paying any money that the defendant owe to FDB or that the defendant owe under any agreement relating to the property, and also includes the right to pay out any earlier security interests); and*
  - vi. Exercise all other right, powers and remedies that a mortgagee or owner has at law in relation to the property.*
- [07] The plaintiff states that their numerous attempts to exercise their power of seizure on the machines comprised in the bill of sale had failed as the defendant is refusing access to the bailiff and that they would be unable to exercise their right under the bill of sale without an order of the Court.

[08] Having considered the application, the supporting affidavit and the submissions advanced by counsel for the plaintiff, I am satisfied that the machines sought to be taken possession of or seized are subject to bills of sale, the defendant is in arrears of \$61,480.00 and a court order is needed as the defendant is refusing access to the bailiff to exercise the plaintiff's right of seizure under the bill of sale. I accordingly grant the orders the plaintiff seeks in the *ex parte* originating summons filed 6 August 2018.

*M.H. Mohamed Ajmeer*  
..... 6/8/18

**M.H. Mohamed Ajmeer**

**JUDGE**



**At Lautoka**

**6 August 2018**

Solicitors:

For the plaintiff: M/s Babu Singh & Associates, Barristers & Solicitors

For the defendant: No appearance