IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 59 of 2004

BETWEEN : SIGAMANI, DORSAMI and MANIKAM
ORIGINAL 1st DEFENDANTS/1st JUDGMENT CREDITORS

AND : ESTATE OF LAKSHMI
ORIGINAL 2nd DEFENDANTS/2nd JUDGMENT CREDITOR

AND : DEO NARAYAN and DHANBAGIAM NARAYAN
ORIGINAL PLAINTIFFS/JUDGMENT DEBTORS

AND : BRED BANK (FIJI) LIMITED
GARNISHEE

Appearances : Maqbool & Co. for the Judgment Creditors
: Kohli & Singh Suva for the Judgment Debtors
: No appearance for the garnishee

RULING

Background

1. On 5 September 2008 following a trial, the High Court dismissed the Plaintiff/Judgment Debtors' application for vacant possession against

the Defendants/Judgment Creditors, and awarded costs against the Plaintiffs in the sum of $3,000.

2. Aggrieved by the decision, the Plaintiffs appealed to the Court of Appeal which dismissed the appeal on 18 May 2011 and ordered further costs against the Plaintiffs in the sum of $3,500.

3. The Judgment Debtors failed to pay costs and the Judgment Creditors commenced these garnishee proceedings pursuant to Order 49 of the High Court Rules, 1988 (the Rules). An *ex parte* application for the Garnishee to show cause was granted and a garnishee order nisi made, attaching the sum of $8,915.24 in the hands of the Garnishee for the purposes of answering the orders for costs in favour of the Judgment Creditors.

4. Though served, the Garnishee failed to appear when the matter was called for further consideration. However, the Judgment Debtor responded to the summons to show cause and filed an affidavit opposing the Judgment Creditors' application on the grounds that:

   (i) the 1st Judgment Creditors are deceased;
   (ii) the 1st Judgment Debtor is deceased;
   (iii) the Applicant did not disclose the death of the said parties; had deposed he was duly authorized to swear the affidavit on behalf of the other Judgment Creditors when they were dead;
   (iv) she had paid $2000 under duress;
   (v) she had not been served with a copy of the sealed order in 2008;

(vi) she had cooperated with the Judgment Creditors and the Lands Department for the issue of a lease in the names of the Judgment Creditors, and the latter had therefore waived the costs;

(vii) the amount claimed by the Judgment Creditor is disputed;

(viii) the Judgment Creditors are not entitled to claim interest for 3921 and 2936 days as both are beyond the 6 year limitation period;

(ix) the Judgment Creditors failed to discount the amount paid from the security for costs deposited in the Court of Appeal Registry;

(x) she objects to the payment of $2000 solicitors' costs as there is no order for payment of such costs, and;

(xi) there has been considerable delay in claiming costs.

The law

5. Order 45 of the High Court Rules contains general provisions for the enforcement of judgments and orders of the Court. One of the ways by which a judgment or order for the payment of money (not being an order for money to be paid into Court) may be enforced is through garnishee proceedings. (Order 45 Rule 1 (b))

6. *Halsbury's Laws of England*, Vol 17, 4th edition, pg 325, para 525 describes the nature of garnishee proceedings as being:

> ...a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing due to the judgment debtor which form part of his property available in execution.

7. Such proceedings are governed by the provisions of Order 49 and may be taken by a judgment creditor for the purpose of enforcing his judgment against a judgment debtor. Through garnishee proceedings, a judgment creditor may attach debts owed to the judgment debtor by others.

8. So for instance, a judgment creditor may, through garnishee proceedings, seek to attach monies standing to a judgment debtor's credit at a bank. (*Rogers v. Whiteley* [1892] A.C. 118). A garnishee therefore is a debtor of the judgment debtor.

9. Monies paid into the account after service of the garnishee summons are not attachable however. (*Heppenstall v Jackson and Barclays Bank Ltd (Garnishees)* [1939] 1 K.B. 585, CA)

10. Rule 1 of Order 49 states:

> (1) Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
>
> (2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified

> in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

11. The *ex parte* order nisi to show cause is required to be served:

> (1) on the garnishee personally at least 15 days;
>
> (2) on the judgment debtor at least 7 days after service thereof on the garnishee, and at least 7 days before the time appointed by the order for further consideration of the matter. (Order 49 rule 3)

12. The failure of the garnishee to attend Court or to dispute liability when the application is called for further consideration allows the Court to exercise its discretion in favour of an order absolute against the garnishee. (O.49, rule 4)

13. Rule 5 then provides:

> Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried, without, if it orders trial before a master, the need for any consent by the parties.

14. It is at once clear from the Rules that there are two stages in garnishee proceedings: the first being an order nisi or an order to show cause, and the second, a garnishee order absolute. An application for an order nisi must be made *ex parte*, supported by an affidavit setting out the name and last known address of the judgment

debtor; the judgment or order sought to be enforced, and the amount remaining to be paid at the time of the application; whether the garnishee is within the jurisdiction and indebted to the judgment debtor, and, if the garnishee is a bank, the name and address of the branch at which the judgment debtor's account is believed to be held.

15. The orders sought to be enforced in this application are orders for costs. Such orders may properly be enforced in garnishee proceedings. (*Halsbury's Laws of England*, Vol 17, pg. 326 at para 526. While it was earlier required for an application to be first made for payment, no such application need now be made, provided the costs consist of an ascertained sum.

16. In *Whittaker v Whittaker* (1881) 7 PD 15, the Court made a decree absolute for dissolution of marriage and awarded costs against the respondent husband in two sums of 79*l.* 18*s.* *and* 2*l.* 10*s.* 4*d.* The costs order was not complied with and an application for an order nisi attaching the debt was made. In support of the application, it was deposed that the Lancashire Cotton Spinning Company, Ltd, was indebted to the respondent in two separate sums of 800*l.* and 100*l.* The Court granted the order.

17. Pursuant to Order 32 rr 9 (h) and 19, the Master has jurisdiction to deal with applications for garnishee orders nisi, orders to third persons to attend garnishee proceedings under Order 49 rule 6, and garnishee orders absolute. It is with powers under these provisions that I now deal with this application.

18. Though the failure of the Garnishee to appear when the matter is called for further consideration may be sufficient reason for the Court

to make an order absolute, the 2nd Judgment Debtor is before the Court and has filed an affidavit in opposition.

19. The Rules are not specific on whether a judgment debtor may dispute liability or oppose an application for a garnishee order. I have therefore felt it necessary to deal first with this question as a decision on this point will determine whether I should consider the judgment debtor's objection, or make an order absolute for the failure of the garnishee to appear.

Analysis

20. The issues therefore for the Court's determination are:

(i) whether, in proceedings under Order 49, a judgment debtor may dispute liability or oppose the application for a garnishee order;

(ii) whether a garnishee order ought to be made in this case, and;

(iii) if so, the amount to be attached.

21. Order 49 rr 4 and 5 allow a garnishee to dispute liability. Rule 6 permits the Court to hear the claim of a third party alleging entitlement to the debt sought to be attached, or has a charge or lien upon it.

22. Garnishee proceedings begin with an *ex parte* application for a garnishee order nisi requiring the garnishee to show cause. In these *ex parte* proceedings a judgment debtor takes no part for at that stage, the only relevant parties are a judgment creditor and the garnishee. Such *ex parte* proceedings simply put the garnishee on notice, and

while it has the effect of freezing in his hands the sums standing to the judgment debtor's credit, the garnishee is not yet required to pay.

23. Order 49 Rule 3 requires the order nisi to be served on the judgment debtor at least 7 days after service on the garnishee, and at least 7 days before the time appointed in the order for further consideration of the matter. This rule appears to envisage that the judgment debtor is to have a right of audience when the Court comes to consider whether an order absolute ought to be made. Thus when the matter is called again for further consideration, proceedings are *interpartes* and parties before the Court are: the judgment creditor, judgment debtor, and garnishee.

24. Of the rule requiring service of the order nisi on the judgment debtor, *Halsbury's Laws of England* 4th ed. Vol 17 at para 535 states:

> It follows from this provision that a judgment debtor has a right to be heard in the proceedings to make the order nisi absolute, and that he is entitled to appeal if an order is made which affects him: *Dawson v Preston* [1955] 3 All ER 314 at 316, [1955] I WLR 1219 at 1221, DC, per Lord Goddard CJ.

25. This view is consistent with the principles of fair hearing and natural justice for the judgment debtor whose account it is that is being attached and this applies both at the stage when the Court considers whether to make absolute the earlier garnishee order nisi, and also on appeal.

26. The parties in proceedings for a garnishee order absolute are therefore: the judgment creditor, garnishee, and judgment debtor upon whom the order nisi is required by Order 49 rule 3 to be served.

27. In view of *Dawson* and Order 49 rule 3 above, I hold that the Judgment Debtor has a right of audience at this second stage of garnishee proceedings.

28. The Judgment Debtor raises a number of objections to a garnishee order. The first of these is delay in enforcing judgment.

29. The orders for costs were made in 2008 and 2011, a period of 11 and 9 years respectively. I have considered whether it is possible to enforce costs given the period of delay.

30. Section 4 (4) of the Limitation Act provides:

> An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

31. In *Central Trading Co. v Chandra Kanta* Civil Appeal No 39 of 1977, the Court of Appeal (per Gould V.P; Marsack, Henry, JJA) dealt with an appeal from a refusal of leave to issue execution in respect of a 16 year old judgment and costs against the respondent. By the time the appeal was heard, the judgment debtor had died and the application for leave to issue a writ of execution had been served on his executrix. At the hearing of the application for leave, the learned Judge held that section 4 of the Limitation Act 1971 precluded the making of an order for leave.

32. On appeal, the Court held that section 4 of the Limitation Act 1971 did not apply to an application for leave to issue writ of execution.

The Court referred to *W.T. Lamb & Sons v. Rider* (1948) 2KB 331, where the Court of Appeal stated at p.337:

> It follows from the above brief survey that the right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and that the two conceptions have been the subject of different treatment. Execution is essentially a matter of procedure - machinery which the court can, subject to the rules from time to time, in force, operate for the purpose of enforcing its judgments or orders.

33. The question for the Court is whether the time limitation under section 4 (4) of the Limitation Act Cap 35 (supra) applies to garnishee proceedings. Section 4 of the Limitation Act is similar to section 24 (1) of the Limitation Act 1980 of the UK, the only difference being that the UK Act bars the bringing of an action upon any judgment after the expiration of 6 years, whereas in Fiji, time is limited to 12 years.

34. In *Lowsley & Anor v Forbes (Trading as L.E. Design Services* [1998] UKHL 34; [1998] 3 All ER 897, the Court considered whether section 24 of the Limitation Act 1980 barred execution of a judgment after six years, or only the filing of a fresh action on the judgment. After reviewing the history and development of relevant statutory provisions and the common law, the Court held that the word "action" in section 24 (1) referred to a fresh action and did not include proceedings by way of execution.

35. Of the phrase "An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the

judgment became enforceable...", Brandon J stated in *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2 All ER 117 at 126:

> The word 'enforceable' in s 2 (4) of the Limitation Act 1939, does not have the meaning which this argument ascribes to it. I think that it means 'enforceable by action on the judgment' and not 'enforceable by execution on the judgment'...This distinction between the right to sue on a judgment (which is a substantive right) and the right to issue execution under it (which is a procedural right or remedy) has always been recognized in the law of limitation...

36. *Halsbury's Laws of England* 3rd Ed., Vol 16 at pg 85, para 127, states:

> Garnishee proceedings may be taken at any time after the judgment or order has been pronounced *(k)* and has become effective *(l)*. Leave is unnecessary, even though a period of more than 6 years has elapsed since the date of the judgment or order *(m)*

37. In *Fellows v. Thornton* (supra, at 337), Coleridge C.J. referred to attachment of debt proceedings saying:

> In that order, which relates to attachment of debts in the hands of debtors, there is not a word about six years having elapsed since judgment. When a judgment has been obtained and is not satisfied, the garnishee may be required to shew cause why he should not pay the money to the judgment creditor. No doubt the garnishee may, on shewing cause, urge before the judge that a long time has elapsed since the judgment, and any other defence, but when he has done so, if the judge is satisfied that there is no good reason why the order should not issue, it may be made.

38. Indeed, on limitation in garnishee proceedings, *The Supreme Court Practice Vol 1* states at 49/1/3:

> It is open to obtain a garnishee order by way of procedural machinery to enforce a judgment even though the statutory period of limitation under section 24 (1) of the Limitation Act 1980 for bringing an action on the judgment has expired (*Lowsley v. Forbes* (1996) *The Times*, April 5, CA, applying *National Westminster Bank Plc v. Powney* [1991] Ch. 339, CA; and see *Fellows v. Thornton* at para. 49/1/9...)

39. In light of the authorities above, I hold that section 4 (4) of the Limitations Act is no bar to attachment of debts.

40. The Judgment Debtor also says she had not been served with the sealed order of 2008. I note from the record that the Judgment Debtors' counsel had been in Court when Judgment was delivered on 5 September 2008. Additionally, it was the Judgment Debtors' dissatisfaction with that Judgment which lead to the appeal to the Court of Appeal and resulted in a further order for costs against them upon dismissal of that Appeal.

41. I have no doubt whatsoever that the parties are aware and have been aware all this time of not only the decisions of the Court, but also of the costs order.

42. I deal next with whether the demise of the 1st Plaintiff and/or 1st Defendant should have any effect on this application.

43. Order 49 is clear that the applicant for attachment of debt must be the "judgment creditor" defined in Rule 1 of the Order as "a person [who] has obtained a judgment or order."

44. In this case, the Judgment Creditors are Sigamani, Dorsami, Manikam, and the Estate of Latchmi. All of them were the original defendants in whose favour the Court had found and accordingly awarded costs sought to be enforced in this application. They are therefore judgment creditors in terms of Order 49 rule 1 and I hold that they are entitled to bring this application for attachment of debts.

45. The first named Judgment Debtor says that the first and second named Judgment Creditors and second named Judgment Debtor are deceased. Death certificates purported to be those of the said deceased parties are annexed to the answering affidavit. The Judgment Debtor deposes that the application did not disclose these deaths and that the third named Judgment Creditor had sworn to having been duly authorized to swear the affidavit on behalf of the other Judgment Creditors when in fact they were dead.

46. The Applicant does not dispute the deaths of Judgment Creditors Sigamani and Dorsami, or the death of Deo Narayan, but says that he is entitled to swear the affidavit on behalf of the representatives of the "plaintiffs" and the action does not abate by reasons of death of a party to the proceedings.

47. Order 15 rule 8 (1) provides that

> Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

48. While an action does not necessarily abate by reasons of the death of a party to the proceedings, the question really is whether a surviving Judgment Creditor can on his own, bring garnishee proceedings against Judgment Debtors one of whom is deceased.

49. *Halsbury's Laws of England* 4th edn., vol 37, para 220 states:

> If there are two or more plaintiffs or defendants, and one of them dies or becomes bankrupt, the action will continue as between the surviving parties, but where a sole plaintiff or a sole defendant dies or becomes bankrupt, the action cannot continue unless and until an order is duly obtained from the court to carry on the proceedings.

50. There is no doubt in my mind that the action has not abated or that the surviving judgment creditor is not properly before the Court, with an application for attachment against the surviving judgment creditor.

51. In *Miller v Mynn* (1859) 28 L.J.Q.B. 324, the Court dealt with whether, under section 61 of the Common Law Procedure Act 1854 (the provisions of which is similar to those of our Order 49 rule 1), it was possible on a joint judgment against three or more jointly, to attach a debt due to one or more of them. Lord Campbell, C.J. stated:

> The writ of execution must follow the judgment, but that is no reason for saying you cannot seize goods of one on a *fi. fa.* against two.
>
> There is no authority in the books for saying that you can seize under a *fi. fa.* against two the goods of one; though such has always been understood to be law…There can be no doubt of it…
>
> …The object of the 61st section was to make debts due to a judgment debtor in the nature of chattels, and to make them as it were liable to be taken in execution; the analogy of what is done under a *fi. fa.* appears to me to be very clear and applicable to an attachment. It is undisputed law, that under a *fi. fa.* against several, a chattel belonging to one or more

> of them may be taken; and so, on a judgment against several, may the debt due to one or more be taken.

52. At 325, Erle J similarly stated:

> A judgment binds the judgment debtors jointly and severally, and the analogy between writs of execution and an attachment of debts seems to me complete; and under a *ca. sa.* or *fi. fa.* against several you may take the persons or goods of one or all. This construction seems to me to be the literal meaning of the act, without resorting to any interpolation of words: each one of several judgment debtors is a judgment debtor; and the garnishee is indebted to the judgment debtor, whether he be indebted to one or more.

53. The costs orders both in the High Court and the Court of Appeal were made in favour of the Judgment Creditors. Order 62 Rule 3 (3) provides:

> If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

54. The default position therefore for a costs order is that it follows the event. Where costs follow the event, the general rule is that all plaintiffs and all defendants are jointly and severally liable for all costs awarded against them. (*Stumm v Dickson* (1889) 22 QBD 529 at 536).

55. This being the case, I hold that an attachment order may be made against only one of joint judgment debtors.

56. The next issue for the Court now is the amount to be attached. The High Court awarded $3,000 and the Court of Appeal, costs of $3,500 in favour of the Judgment Creditors. Of the total costs of $6,500, the judgment debtor Dhanbagiam Narayan has paid $2,000. The balance therefore is $4,500.

57. While the Judgment Debtor says that the Judgment Creditors had waived the costs when she cooperated with them and the Lands Department for the issuance of a lease in the Judgment Creditors' names, no such evidence is before the Court. I hold that the judgment creditors are entitled to costs of $4,500.

58. Similarly, the Judgment Debtor deposes that the Judgment Creditor had failed to discount the amount paid from the security for costs deposited in the Court of Appeal Registry. She does not say how much nor is evidence given of such a deposit. I do not consider the objection on this ground is made out.

59. The Judgment Creditors claim interest on the judgment debt. As with payment of the judgment debt, the Judgment Debtor resists interest on the ground of delay and on the basis that there was no order for interest on costs.

60. In *Shell Fiji Ltd v Sushil Chand*[2012] FJLawRp 87; (2012) 2 FLR 214 at 216 (7 August 2012), Gates P referred to authorities establishing that costs attract post judgment interest: *Hunt v R M Douglas (Roofing) Ltd* [1988] 3 All ER 823 applying *Pyman and Co v Burt Boulton* [1884] WN100; *Boswell v Coaks* (1887) 57 LJ Ch 101.

61. On post judgment interest, the Court stated:

[9] By virtue of section 22 of the High Court Act, Cap 13 section 17 of the (Imperial) Judgments Act 1838 remains in force in Fiji. This section provides that "every judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment until the same shall be satisfied". **The interest accrues automatically and no order of the Court is necessary. It runs from the date of pronouncement of judgment in Court.** *Parsons v Mather & Platt Ltd.*(1977) 2 All ER 715 approved in *Erven Warnink B.V. v J. Townend and Sons (Hull) Ltd.* (No.2) (1982) 3 All ER 312.

[10] This interpretation has been applied in several cases in Fiji including *Charan v SCC* Civil App 12 of 1989, 27th October 1989; *Charan v SCC*[1994] FJHC 3; *Byrne v J.S. Hill & Associates Ltd* (unreported) Civil Appeal 33 of 1993; 19th August 1994; *Warner v Hagerman* HBC425.09S 13th August 2010; *Koya v Dominion Finance Ltd* HBC193.09L 9th March 2012.

[11] In *QBE Insurance (Fiji) Ltd v Ravinesh Prasad* Civil App No. CBV0003.09 18th August 2011 Calanchini JA in the Supreme Court pointed out that there was no specific provision in the Law Reform (Miscellanous Provisions) (Death and Interest) Act to cover interest after judgment. Section 22(1) of the High Court Act provided for the statutes of general application in force in England on 2nd January 1875 to be in force in Fiji. The Judgments Act 1838 was held to be such an Act.

[12] In the absence of specific legislation in Fiji, Calanchini JA considered that section 9 of the Interpretation Act had the effect of extending the application of the English rates of interest (as raised by statutory orders from time to time) to Fiji. For instance in 1983 the rate stood at 8%.

> [13] Subsequent to the decision in *QBE Insurance* (supra) however, an amendment decree has been made stating that every judgment debt is now to carry interest at 4%: section 2 of the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree 2011 amending section 4 of Cap. 27. So the applicable rate on judgment debts is now fixed at 4%. It is to be levied on the entire judgment including the costs element and unpaid interest.

56. In light of the authorities above, there can be now no doubt that costs attract post judgment interest which accrues automatically without the need for an order of the Court on it.

62. The Law Reform (Miscellaneous Provisions) (Death and Interest) (Amendment) Act 2011 amended Cap 27, with section 4 reading:

> (1) Every Judgment Debt shall carry interest at the rate of four cents per centum per annum from time of entering up the Judgment until the same shall be satisfied, and such interest may be levied under a Writ of Execution on such Judgment.

63. The costs orders for enforcement were made on 5 September 2008 and 18 May 2011, a period of 11 and 8 years respectively. While garnishee proceedings may be enforced after 6 years have lapsed, section 4 (4) of the Limitation Act provides that

> ...no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

64. In *Lowsley v Forbes* (supra) the House of Lords dealt with: (1) whether section 24 (1) Limitation Act 1980 bars execution of a judgment after 6 years, and (2) whether, when a judgment is executed

after 6 years, section 24 (2) limits interest on the judgment to 6 years before the date of execution. At first instance, Tuckey J had held that interest on the judgment was limited to six years before the date of execution. On appeal, the Court of Appeal held that interest should run from the date of judgment.

65. On further appeal to the House of the Lords it was held that there was

> ...no reason why the relevant words in s.24 (2) 'no arrears of interest...shall be recovered' should not be given their ordinary meaning, so as to bar execution after six years in respect of all judgments.

66. Consequently, the judgment of Tuckey J on interest being limited to 6 years was restored.

67. Though initially the Courts expressed doubt as to whether attachment of debts could be "accurately described as an execution" (see *Re Smith, ex parte Brown* (1888) 20 QBD 321 at 329, CA, per Fry LJ; also *Fellows v Thornton* (1884) 14 QBD 335), more recent decisions treat attachment of debts as a form of execution, involving as it does the process of enforcement of a judgment or order of the court. (*Re Overseas Aviation Engineering (GB) Ltd* [1963] Ch 24 at 40, [1962] 3 All ER 12 at 16, see also 17 *Halsbury's Laws of England*, 4th ed., Vol 17, para 401)

68. In light of section 4 (4) of the Limitation Act and the decision in *Lowsley* (supra), interest on both costs order is limited to 6 years before the date of execution. The applicable interest of 4% pursuant to section 4 Law Reform (Miscellaneous Provisions) (Death and Interest) (Amendment) Act 2011 therefore applies.

69. I calculate interest payable as follows:

High Court costs	$ 3,000
Court of Appeal costs	$ 3,500
Less costs paid	$ 2,000
Total costs payable	$ 4,500

Plus:

Interest at 4% on $4,500 for 6 years:

= $ 0.49 per day x 2190 days

Post judgment interest on debt	$ 1,073.10
Grand Total	**$ 5,573.10**

70. The (*ex parte*) garnishee order nisi attached the sum of $8,915.24. For the reasons given above, the order absolute ought to be for attachment of the sum of $4,500 only, this being unpaid costs, and post judgment interest of $1073.10, the total sum being $5,573.10.

71. The last issue for the Court's consideration is that of costs of this application which the Judgment Creditors say I should fix in the sum of $3,000.

72. I take into consideration the *ex parte* application to show cause, the affidavits filed, written and oral submissions made at both the *ex parte* and *inter partes* hearing. I award costs of $1000 summarily assessed for the Judgment Creditor, to be paid by the Judgment Debtor.

73. Under Order 49 Rule 1, the Court has a discretion to make a garnishee order requiring "the garnishee to pay the judgment creditor the amount of any debt due ... to the judgment debtor from the

garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings." I consider the costs of this application should be added to the amount to be attached.

74. The orders of the Court therefore will be:

1. Garnishee order absolute against Bred Bank (Fiji) Ltd in favour of the Judgment Creditors in the sum of $5,573.10, with an additional sum of $1000 being for costs of these garnishee proceedings.

S.F. Bull
Master