

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

Civil Action HBC No. **312** of **2024**

IN THE MATTER of a mortgage action pursuant to Order
88 of the High Court Rules 1988 (as amended)

And

IN THE MATTER of Mortgage No. 857643 given by
**PRANEET PANDE, NATASHNI DEVI KUMAR, and
PRADEEP PANDE** all of Lot 22, Dadakulaci Road,
Nadawa, Nasinu, Company Manager, ICT Supervisor, and
General Manager respectively in favour of **HOME
FINANCE COMPANY PTE LIMITED** trading as **HFC
BANK** over the Housing Authority Sub-Lease Number
381718 being lot 22 on DP 7325 situated at lot 22,
Dadakulaci Road, Nadawa, Nasinu in the Province of
Vitilevu and District of Suva containing an area of 240 m².

BETWEEN : **HOME FINANCE COMPANY PTE LIMITED** trading as **HFC
BANK** a limited liability company having its registered office at
371 Victoria Parade, Suva, Fiji.

Plaintiff

AND : **PRANEET PANDE, NATASHNI DEVI KUMAR, and
PRADEEP PANDE** all of Lot 22, Dadakulaci Road, Nadawa,
Nasinu, Company Manager, ICT Supervisor, and General Manager
respectively **TOGETHER WITH THEIR FAMILY,
DEPENDANTS, AGENTS, SERVANTS, AND/OR INVITEES
WHO ARE NOT KNOWN TO THE PLAINTIFF
PRESENTLY OCCUPYING THE PROPERTY.**

Defendants

Representation:

Plaintiff: Mr. N. Prasad (Mitchell Keil)

Defendants: Mr. B. Ram (Benjamin Ram Lawyers)

Date of Hearing: 21st May 2025.

Ruling

A. Introduction

- [1] The Plaintiff's filed Originating Summons (pursuant to Order 88 for vacant possession) and an affidavit in support of Abdul Hakim, Acting Manager Asset Management Unit.
- [2] An affidavit in opposition of Praneet Pande was filed on 12th December 2024. An affidavit in reply of Abdul Hakim was filed on 11th March 2025.
- [3] The Defendants are registered proprietors or lessees of all that property comprised and described in Housing Authority Sub-Lease Number 381718 being lot 22 on DP 7325 situated at lot 22, Dadakulaci Road, Nadawa, Nasinu in the Province of Vitilevu and District of Suva containing an area of 240 m² together with all the improvements therein ("the Property"). The Defendants took a loan from the Plaintiff, they mortgaged the Property with the Plaintiff. The Plaintiff hold a first ranking mortgage over the property.
- [4] The Defendants fell into arrears and the sum due under the mortgage as at 10th November 2023 was \$17,682.00 being 255 days in arrears. The Plaintiff issued demand notice for payment within 30 days. They failed to pay with 30 days. They were informed of the bank's intention to sell the property to recover the debt without further notice. The Defendants failed to honor their obligations. They were issued with notice to deliver vacant possession. They failed to vacate. These proceedings then ensued.

B. The Law

- [5] Order 88 of the High Court Rules provides as follows:

"1.-(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely—

(a) payment of moneys secured by the mortgage[;]

(b) sale of the mortgaged property[;]

(c) foreclosure[;]

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property[;]

(e) redemption[;]

(f) reconveyance of the property or its release from the security[;]

(g) delivery of possession by the mortgagee.

(2) In this Order, "mortgage" includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) *An action to which this Order applies is referred to in this Order as a mortgage action.*

(4) *These Rules apply to mortgage actions subject to the following provisions by this Order.”*

C. Determination

[6] Couple of issues were raised by the Defendants lawyer. The first being of service of the demand notice on the 2nd and 3rd named Defendants. The affidavit of service provides that it was served on all and accepted by the 1st Defendant. This issue is not part of the affidavit of the 1st Defendant. He was duly authorized by the other Defendants to depose his affidavit. I do not find this an issue as none was averred in the 1st Defendants affidavit.

[7] The second issue relates to “without prejudice” communications. The Plaintiffs have raised concern that certain without prejudice in the 1st Defendant’s affidavit. On this issue I favour the approach taken by President of the Fiji Court of Appeal(as he then was), Justice Jitoko in **Bidesi v Bidesi [2024] FJCA 168; ABU0011.2022 (19 August 2024)** who at paragraphs 32 and 33 stated:

“[32] In order for the privilege to operate, it is essential that there must be some person in dispute or negotiation with another person, and the statement which it is sought to exclude from evidence must have some bearing on negotiations for a settlement of that dispute.

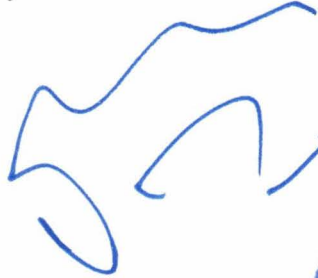
[33] The mere use of the words “without prejudice” in the communication does not operate to attract the rule, or privilege. The Court is required to consider the statement in its context and decide for itself whether the privilege applies. Thus a letter marked “without prejudice” which is not in fact a genuine attempt to settle a dispute, will not be privileged from being produced in evidence, and a letter which is so aimed will be privileged even if it is not marked “without prejudice.”.”

[8] It is not in dispute that the Defendants took a loan from the Plaintiff. The property is mortgaged to the Plaintiff. I have sighted the original mortgage. The Defendants are in arrears of the repayment to the Plaintiff. Demand notices were served to the Defendants. That has not been complied with. The Defendants have been provided the particulars of the debt. The Plaintiff has complied with Order 88 Rule 3 (3) of the High Court Rules 1988. The reasons advanced by the Defendants disputing the increase in repayments are explained by the variation letters sent by the bank to them. The issue of the increase in repayment are unjustified arguments by the Defendants when they have all the information relating to the payments to be made by them.

[9] I find on the information before me that the Defendants have failed to provide any lawful reason for me to restrain the Plaintiff from exercising their right under the mortgage requiring vacant possession of the property. I do not see any reason that I should refuse the orders sought by the Plaintiff.

D. Orders

- (a) The **Defendants are to deliver to the Plaintiff immediate vacant possession** of all that piece or parcel including a dwelling house comprised and described in Housing Authority Sub-Lease Number 381718 being lot 22 on DP 7325 situated at lot 22, Dadakulaci Road, Nadawa, Nasinu in the Province of Vitilevu and District of Suva containing an area of 240 m² together with all the improvements therein ("the Property") charged by the Defendants to the Plaintiff by Mortgage No. 857643 registered on 1st February 2018 to secure the monies therein mentioned.
- (b) The **Defendants, their families, servants, agents and employees are restrained** in all forms from damaging, removing or interfering with the improvements to the Property in any way as to diminish its value.
- (c) The **Defendants are to pay the Plaintiff \$1000.00** as costs within 21 days. The costs have been summarily assessed.



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Chaityanya S.C.A. Lakshman
Puisne Judge

23rd May 2025

