

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 296 of 2025

BETWEEN : CHUNG YUEN INVESTMENTS PTE LIMITED

Plaintiff

AND : 786 HYPER MART PTE LIMITED

Defendant

Counsel : Mr B Solanki for Plaintiff

Mr H Dean for Defendant

Hearing Date : 3 November 2025

Judgment : 5 November 2025

EXTEMPORE JUDGMENT

(Originating Summons seeking vacant possession)

[1] The plaintiff seeks vacant possession of two shops occupied by the defendant. The property that is the subject of this proceeding is described in the plaintiff's originating summons as '*shops 2 and 3 situated at 37 Matua Street, Walu Bay, Suva, comprised and described in Crown lease No. 2545, described as Lot 3, Section 89, Suva Foreshore, Suva, Rewa, 36 perches*'.

[2] The defendant is in arrears of its rent. Nevertheless, the defendant resists any eviction, claiming it has a valid lease and arguing that the plaintiff has not properly complied with the terms of the lease in order to be entitled to orders of vacant possession.

Background

[3] The two parties are in a contractual relationship by way of two leases for the two shops in question. The plaintiff is the lessor while the defendant is the lessee; the plaintiff being the owner of the two shops.

[4] A copy of the Crown Lease is annexed to the supporting affidavit of Fuen Joe Chung, a Director of the plaintiff company. According to the memorials, the Crown Lease was registered in the name of the plaintiff on 8 March 2022. There is a commercial building on the property with seven shops. The plaintiff has leased shops 2 and 3 to the defendant.

[5] In respect to shop 3, a lease was signed between the parties on 18 December 2023. It is for a two-year period, commencing on 1 January 2024, with a monthly rental payment of \$2,800 plus VAT. The second lease, for shop 2, was signed by the parties on 1 June 2024 and is for a two-year period commencing on 1 June 2024. The same monthly rental is payable by the defendant. Copies of the two leases are annexed to Mr Chung's affidavit. The terms in the two leases are identical, except for the period of the lease.

[6] The terms that are of interest in this proceeding are clauses 9 and 11, which read:

9. Termination

Either party may terminate this lease by giving at least three (3) months' notice in writing to the other party.

11. *Dispute Resolution*

Any dispute or difference arising between the Lessor and the Lessee on the operation or construction of any of the provisions of this agreement or on the rights and liabilities of either party under this agreement shall be determined by arbitration in accordance with the provisions of the Arbitration Act. If the parties are unable to agree on an arbitrator, an arbitrator shall be appointed, upon the request of any party, by the President or (failing him) the Vice President for the time being of the Fiji Law Society. The appointment shall be binding on all parties to the arbitration and shall not be subject to appeal.

[7] Clause 9 allows either party to terminate the lease by providing the other party with three months' notice in writing to terminate. Clause 11 requires the parties to enter into arbitration in the event that there is a dispute or difference between the parties in respect to the construction of the provisions of the lease. I note that the lease is silent as to the consequences arising from any breach of the terms of the lease, including in respect to any default by the defendant with payment of rent.

[8] In terms of the relevant events, from April 2025 the defendant has been in default of its rental payments for both leases. On 16 July 2025, the plaintiff's solicitors sent a notice to vacate to the defendant, requiring that it vacate both shops within one month. At that time, the defendant was in arrears of \$19,320.

[9] The defendant did not vacate. Hence these proceedings were filed on 4 September 2025. The arrears by this time were \$38,360. It appears that at the time of the hearing the figure was \$50,960.

[10] The order sought in the plaintiff's originating summons is immediate vacant possession of the two shops in question, plus costs. The plaintiff has filed an affidavit

in support from one of its directors. In response, the defendant has filed an affidavit for Mohammed Kannukarthi the general manager of the defendant - the same being filed on 22 October 2025. The plaintiff filed an affidavit in reply for Mr Chung on 28 October 2025.

Land Transfer Act

[11] The plaintiff seeks orders under s 169 of the Land Transfer Act 1971. The provision reads:

The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:

- (a) *the last registered proprietor of the land;*
- (b) *a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;*
- (c) *a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.¹*

[12] Pursuant to s 170 '*[t]he summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons*'.

¹ My emphasis.

[13] Section 172 reads:

*If the person summoned appears he may show cause why he refuses to give possession of such land and, **if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor**, mortgagee or lessor or he may make any order and impose any terms he may think fit; Provided that the dismissal of the summons shall not prejudice the right of the Plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled: Provided also that in the case of a lessor against a lessee, if the lessee before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.²*

Decision

[14] Pursuant to ss 169 and 170 of the Land Transfer Act, the plaintiff must show that it is the registered proprietor of the land in question, and the summons contains a description of the land. I am satisfied that both conditions are met here - there being no dispute that that is the case.

[15] In addition to being the registered proprietor of the property, being one of the requirements under s 169, there is an alternative avenue available for the plaintiff under s 169(b), to seek vacant possession; namely, as a lessor with power to re-enter the property where the lessee is in arrears for one month.

² My emphasis.

[16] The defendant has been properly served with these proceedings, as is evidenced by the fact that its counsel was present at the hearing and it has filed an affidavit in opposition.

[17] Accordingly the onus now shifts to the defendant under s 172 to prove to the satisfaction of the Court a right to possession of the land. This is the only real issue that arises in this proceeding.

[18] In *Sen v Singh* [2016] FJHC 808 (2 September 2016) Master Nanayakkara stated:

The Supreme Court in considering the requirements of Section 172 stated in Morris Hedstrom Limited v. Liaquat Ali (Action No. 153/87 at p2) as follows and it is pertinent:

*“Under Section 172 the person summoned may show cause why he refused to give possession of the land and if he proves to the satisfaction of the judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. **That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced.**”³*

[19] A claim for vacant possession of land under s 169 is a summary proceeding, available in clear cases only. The burden on the defendant to show that the order should be refused (ie that it has a right to possession of the land) is not high. The defendant must simply show that there is some tangible evidence supporting an arguable case.

³ My emphasis.

[20] The defendant's claim to a right of possession in respect to shops 2 and 3 is advanced on multiple grounds, set out as follows:

- i. That it has a lawful and valid lease which does not expire until 31 December 2026 – I am not sure how the defendant arrives at this date, as the first lease is for two years commencing from 1 January 2024 (thus expiring on 31 December 2025), and the second lease runs for two years from 1 June 2024 (expiring on 31 May 2026).
- ii. The plaintiff has not complied with the terms of the lease to evict the defendant. There are two bases raised here; firstly, under cl 9 of the lease the plaintiff must provide three months' notice to terminate the tenancy. Here, the plaintiff only provided one month's notice in its notice to vacate. Secondly, the plaintiff was required to enter into arbitration if there was a dispute and has failed to do so. Therefore, the present proceedings are premature.
- iii. The defendant has undertaken substantial renovations and installed furniture and fixtures.
- iv. The defendant wishes to continue to rent the two shops and intends to sell a separate property in order to pay the arrears. The defendant has supplied a sale and purchase agreement for the sale of a particular property which it owns. According to the content of the sale and purchase agreement, the sale price of the property is \$1.485 million. It is unclear when the settlement date will occur and unclear, from the documents supplied, whether the sale and purchase agreement has gone unconditional.
- v. Finally, the defendant argues that the plaintiff's representative, a Mr. Anthony, has been in discussion with the defendant and has agreed (on behalf of the plaintiff) to allow the defendant time to pay the arrears. The defendant claims that the plaintiff is therefore estopped from seeking the present orders.

[21] I will address each of defendant's arguments.

[22] The defendant claims that it has a valid lease and that the plaintiff has not complied with clauses 9 and 11 of the lease. In short, I am satisfied that this argument has no substance. The defendant's failure to pay rent since April 2025 undermines its position in respect to this argument.

[23] While, unhelpfully, the lease does not expressly deal with the consequences of any default on rent, as per s 91(c) of the Property Law Act 1971 there is an implied term that a lessor may re-enter the property where a lessee is in default of rent for one month or more. Section 91 reads:

In every lease of land there shall be implied the following powers in the lessor

(a)...

...

(c) that whenever the rent or any part thereof, whether legally demanded or not, is in arrears for the space of one month...he may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee...

[24] This implied term is consistent with s 169(b) of the Land Transfer Act which permits a lessor to seek vacant possession where the lessee is in arrears of rent for 1 month or more. Clauses 9 and 11 of the lease do not assist the defendant. They are intended for difference circumstances, not where a lessee is in default of rent.

[25] The plaintiff argues that the defendant has not produced sufficient evidence to support its contention that it has renovated shops 2 and 3. Even if there were evidence of the renovations, it is not a basis to deny a party an order for vacant possession. In *Jepsen v Mani* [2024] FJHC 674 (13 November 2024) Amaratunga J considered the same issue and stated at [79]:

Defendant may seek compensation for improvements. This can be done by way of proper civil action, but this clearly does not give Defendant a right to possession in terms of Section 172 of the Land Transfer Act 1971...


[26] The defendant claims that it will soon have the monies to pay the arrears and, therefore, ought to be permitted time to do so. The prospect that the defendant will soon be in a position to pay the arrears is far from clear. Nevertheless, it is not relevant to the application before the Court. What is relevant is the fact of the defendant's default of its rent for more than five months.

[27] With respect to the defendant's claim that it has an arrangement through a Mr. Anthony for an extension of time to pay the arrears and thus the plaintiff is estopped, in my view the defendant has failed to provide sufficiently probative evidence to support the same. The defendant refers to communications with Mr. Anthony, who the defendant describes as a director of the plaintiff company. However, Mr. Anthony is not a director of the plaintiff. It appears from the plaintiff's affidavit in reply that Mr Anthony is the son of one of the directors. There is no documentary evidence supplied by the defendant to support any arrangement for an extension of time; such as emails, electronic messages, etc.

Orders

[28] In light of the above, I make the following orders:

- i. The defendant must deliver to the plaintiff vacant possession of shops 2 and 3, situated at 37 Matua Street, Wailu Bay, Suva, comprised and described in Crown Lease 2545, described as Lot 3, Section 89, Suva Foreshore, Suva, Rewa 36 perches.
- ii. The execution of the order for vacant possession in i. is stayed to 30 November 2025 to allow the defendant time to relocate.
- iii. The plaintiff is entitled to costs summarily assessed in the amount of \$2,500 to be paid by the defendant within one month.



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D. K. L. Tuiqereqere
JUDGE

Solicitors:

Solanki Lawyers for Plaintiff

Benjamin Ram Lawyers for Defendant