

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: **HBC 156 of 2024**

BETWEEN : **PERIDOT CORPORATION LTD** a limited liability company having its registered office in Suva, in the Republic of Fiji

PLAINTIFF

AND : **PACIFIC CONFERENCE OF CHURCHES** a charitable trust registered in the Fiji Islands and having its registered office in Veiuto, Suva, in the Republic of Fiji.

DEFENDANT

Coram : **Banuve, J**

Counsels : **FATIAKI Law**, Counsels for the Plaintiff
VAMA Law. Counsels for the Defendant

Date of Hearing : 3 September 2024
Plaintiff's Submissions 22 October 2025
Defendant's Submissions on 12 November 2025

Date of Ruling : **18 February 2026**

RULING

A. Originating Summons

1. An Originating Summons was filed on 16 May 2024 by the Plaintiff in which the following relief were sought;
 1. AN ORDER that the Defendant immediately specifically perform the Sales and Purchase Agreement dated 3 March 2021 by:
 - i) executing the Mortgage document securing the Plaintiff's interest over Certificate of Title No. 40926.
 - ii) attending to registration of the said mortgage document at the Registrar of Titles Office.
 - iii) delivering to the Plaintiff a duly executed and registered copy of the said mortgage document together with the duplicate Certificate of Title No.40926.
 2. AN ORDER that the Defendant comply with Order (1) above within 14 days.
 3. AN ORDER for general damages for breach of contract.
 4. ALTERNATIVELY an order that the Defendant pay to the Plaintiff the balance amount of the loan outstanding pursuant to Schedule D or the Sales and Purchase Agreement dated 3 March 2021
 5. AN ORDER that costs be awarded against the Defendant on a Solicitor/Client indemnity basis.
 6. Such other grounds as this Honorable Court deems just.
2. On 3 September 2024, the date set for the hearing of the Summons, the Defendant admitted part of the Plaintiff's claim leading to the parties entering into orders by consent, in terms of paragraph 1 of the Originating Summons, with the outstanding issues of costs and damages to be dealt with by way of written submissions.

3. Based on the consent orders, the mortgage document was lodged for registration on 23 September 2024.
4. Upon registration of the mortgage, the Plaintiff issued a formal demand notice under the mortgage on 24 January 2025 for the payment of the total amount secured. An agreement was reached by the parties on a payment plan to clear the balance of the principal.
5. The Plaintiff wrote to the Defendant requesting payment of the outstanding balance secured by the mortgage and sought compensation for damages and legal costs incurred in initiating proceedings relating to the Defendant's failure to register the mortgage for more than three years.

B. Summons for Leave to Adduce Further Evidence

6. The parties were unable to reach agreement on the issue of legal costs and damages leading to the Plaintiff filing a Summons on 9 July 2025 seeking further relief as follows;
 1. *Leave be granted to the Plaintiff to adduce and rely on further evidence annexed to the affidavit in support filed herewith, post hearing of the Originating Summons relating to the calculation of damages and costs being:*
 - (i) *Copy of Certificate of Title No. 409260.*
 - (ii) *Lodgment Slip No.506702*
 - (iii) *Correspondence between parties respective solicitors.*
 - (iv) *Fatiaki Law Proforma Bill of costs dated 9 March 2025.*
 2. *Further directions that the Court may deem necessary;*
 3. *The costs of and incidental to this application be paid by the Defendant.*
7. The Plaintiff seeks leave to adduce further evidence listed in the Summons. The Defendant opposes the grant of leave on the basis that the issue of costs has been addressed at the hearing and the new evidence comprising the true certified copy

of CT 409260, copies of correspondence between counsels and Fatiaki Pro-forma Bill of Costs dated 9 March 2025 does not alter any matter considered by the Court.

8. Whilst the Court agrees with the characterization placed by the Defendant that the new evidence does not create any issues that is already before the Court, it will nevertheless allow it, in the interest of justice, to be adduced on the basis that it does not raise any obvious issues which would take the Defendant by surprise or cause it prejudice -*Yougendra v Deo* [2024] FJHC 753 .
9. The material sought adduced relate to matters that have occurred subsequent to the hearing, including the eventual registration of the mortgage, further negotiation between the parties, partial settlement of the principal debt and ongoing dispute regarding damages and costs.
10. Both Parties have filed written submissions which the Court has found useful in understanding their respective positions.

C. Costs

11. In the Originating Summons filed on 16 May 2024 the Plaintiff seeks an order that costs be awarded against the Defendant on an indemnity basis. The breach for which indemnity costs are sought, as clarified in submissions,¹ and which the Court, in the exercise of its discretion, may take account of the following;
 - (i) The full extent of costs incurred by the Plaintiff to obtain relief that the Defendant should have granted without litigation;
 - (ii) The Court to summarily exercise its discretion to assess costs on the higher end of the scale, taking account the \$42,016.37 expended to obtain specific performance and to protect its security interest.
12. Indemnity costs are a higher scale costs awarded in legal proceedings typically granted in circumstances where the conduct of the paying party justifies a departure from the standard “party and party” or “ordered costs” scale. They serve as a punitive or deterrent measure, ensuring the successful party is not out of pocket due to the unreasonable or improper conduct of the other party.²

¹ Written Submissions [on behalf of the Plaintiff] filed on 22 October 2025

² *Andrew Hugh Griffiths v McGrath, Strawbridge & Anor* –Civil Appeal No ABU 0063 of 2024 per Prematilaka JA

13. This Court in *Prasad v Divisional Engineer Northern (No.2)* [2008] FJHC 234; HBJ03.2007 (25 September 2008)³; *Kento (Fiji) Ltd v Naobeka Investment Ltd* [2018] FJHC 169. HBC44.2016 (9 March 2018)⁴, have set out the principles relating to indemnity costs,⁵(relevant principles applicable to the circumstance of this case cited)
- (i) A court has absolute and unfettered discretion vis-à-vis the award of costs but discretion must be fettered judicially: *Trade Practices Commission v Nicholas Enterprises* (1979) 28 ALR 201, at 207.
 - (ii) The question is always ‘whether the facts and circumstances of the case in question warrant making an order for payment of costs other than by reference to party and party, *Colgate –Palmolive Company and Colgate Palmolive Ltd v Cussons Pty Ltd*; [1993] FCA 536; (1003) 46 FCR 225, at 234, per Sheppard, J.
 - (iii) It has been suggested that the order of costs on a solicitor and client basis should be reserved to a case where the conduct of a party or its representatives is so unsatisfactory as to call out for a special order. Thus if it represents an abuse of process of the Court the conduct may attract such an order: *Dillon and Ors v. Baltic Shipping Co (‘The Mikhail Lermontov’)* (1991) 2 Lloyds Rep 155, at 176, per Kirby, J
 - (iv) Similarly where the defendant’s actions in conducting any defence to the proceeding have involved an abuse of process of the Court whereby the Court’s time and litigant’s money has been wasted on totally frivolous and thoroughly unjustified defences: *Baillieu Knight Frank (NSW) Pty Ltd v Ted Manny Real Estate Pty Ltd* (1992) 30 NSWLR 359, at 362 per Power, J .
 - (v) However, a case should not be characterized as “hopeless” too readily so as to support an award of indemnity costs, bearing in mind that a party should not be discouraged by the prospect of an unusual costs order, from persisting in an action where its success is not certain for uncertainty is inherent in many

³ Per Scutt, J

⁴ Per Mackie, J

⁵ Principles only will be cited. Relevant case authority reference can be fully sourced from the **Kento** Ruling delivered on 9 March 2018.

areas of law and the law changes with changing circumstances: *Quancorp Pty Ltd & Anor v McDonald & Ors* [1999] WASC 101, at para [6] and [7].

(vi) The purpose of indemnity costs is not penal but compensatory, so awarded where one party causes another to incur legal costs by misusing the process to delay or to defer the trial and payment of sums properly due; the court ought ensure so far as it can that the sums eventually recovered by a plaintiff are not depleted by irrecoverable legal costs: *Willis v Redbridge Health Authority*(1960) 1 WLR 1228, at 1232 per Beldam,J

14. A review of the facts and circumstance of the case is necessary to elicit whether the Court in the exercise of its discretion to grant an order for costs, other than by reference to party and party, is warranted.

(i) On 3 March 2021, the Plaintiff and the Defendant entered into a Sales and Purchase Agreement for the property described in CT No. 40926, as a going concern.

(ii) The agreed purchase price was \$1,200,000.00 plus VAT (if applicable). PCC paid a total of \$500,000.00 (\$120,000 as deposit and \$380,000 on settlement) with the balance of \$700,000 to be repaid by loan in accordance with the repayment terms set out in Schedule D of the agreement.

(iii) It was an express term of the agreement that the balance of the purchase price would be secured by a first registered on-demand mortgage in favor of the Plaintiff, to be executed and registered simultaneously with the transfer of the property.

(iv) On 7 July 2021, PCC's solicitors informed the Plaintiff that due to the death of one of its trustees, the mortgage document could not be executed immediately. The Plaintiff nevertheless undertook to execute and register the mortgage once a new trustee was appointed. Based on that undertaking settlement proceeded, and the transfer of the property was lodged for registration on 8 July 2021.

(v) On 19 August 2021, the Plaintiff's then solicitors wrote to the Defendant seeking consent to register a caveat over the property to protect the Plaintiff's interest pending registration of the mortgage. The Plaintiff through its

solicitors, confirmed in writing on 27 August 2021 that it agreed to the caveat, which was lodged as Dealing No. 906825.

(vi) Despite repeated assurances, the Plaintiff failed to execute and register the mortgage for over three years, only doing so on 23 September 2024, a delay of 3 years and 27 days from the date PCC provided its undertaking, leading to the Plaintiff issuing a demand letter dated 18 April 2024 requesting that the Plaintiff attend to registration of the mortgage failing which court proceedings would be commenced.

(vii) The Defendant filed a reply admitting the Plaintiff's claim but providing reasons for the delay in registration including the appointment of a new trustee in November 2023. An affidavit in response was filed by the Plaintiff on 5 July 2024.

(viii) On 3 September 2024, the date set for the hearing of the Summons parties agreed that orders in terms of paragraph 1 of the Originating Summons filed on 16 May 2024 and the only outstanding matters to be dealt by way of submissions were damages and costs.

15. The Defendant's breach, was the failure to register the mortgage within a reasonable time, which it states was due to circumstances beyond its control. The Defendant, a regional institution is set up as a charitable trust, and at the relevant time, one of its trustees had passed away and could not be replaced until its General Assembly met and chose a successor in November 2023. There was difficulty in convening the Assembly during the subsistence of the Covid-19 Pandemic.
16. Despite the delay in registering the mortgage, the Defendant regularly maintained its monthly payments of the amounts owed to the Plaintiff. After the mortgage was registered 23 September 2024, an 'on demand' notice was issued pursuant to the terms of the registered mortgage made by the Plaintiff, which was then honored by the Defendant in full on May 2025.

D. Analysis

17. The Court has an absolute and unfettered discretion to award costs, although it must be exercised judicially, and notes that whilst there was a delay attributable

to the Defendant in the registration of the mortgage, it finds it difficult to find a basis for the grant of indemnity costs, as sought by the Plaintiff, as opposed to its grant on a party-party basis, for the following reasons;

- (i) All payments that were to be made by the Defendant, (to have been secured by a registered mortgage), were in fact made on time, and at least on 2 occasions payments were accelerated, despite the mortgage not being registered until 23 September 2024.
 - (ii) On registration of the mortgage on 23 September 2024, an 'on demand' notice was made by the Plaintiff pursuant to clause 1 of the Mortgage for the full settlement of the outstanding amount owed to the Plaintiff under the Sales and Purchase Agreement of 3 March 2021, which was then honored in full in May 2025, well ahead of the period tabulated in Schedule D of the Agreement.⁶
18. The Court does not see anything in this narrative to establish that there was anything unreasonable or improper in the conduct of the Defendant, or its counsel,⁷ to warrant a punitive or deterrent element to be reflected in costs. The Defendant did not misuse the Court process to delay the trial or the payment of the sums properly due- *Willis v Redbridge Health Authority* (1960) 1 WLR 1228 at 1232.
19. The Plaintiff is entitled to costs on a party-party basis given the delay in registration of the mortgage by some 3 years, and the Court so orders.

E. Damages

20. The basic test of whether damages are general or specific is whether particularity is necessary and useful to warn the Defendant of the type of claim and evidence of the specific amount of the claim that it will be confronted with at trial. General damages consists of all items loss of which the Plaintiff is not required to specify in his pleadings whereas special damages consists of all items which must be

⁶ 1 April 2031

⁷ *Dillon and Ors v Baltic Shipping Co ('The Mikhail Lermontov')* (1991) 2 Lloyd's Rep 155 at 176. Note the comment of Scutt about the conduct of counsel, J in *Prasad v Divisional Engineer (No 2)* [2008] FJHC 234 (failure to appear on a number of occasions, failure to notify the Court on the revival of suspension).

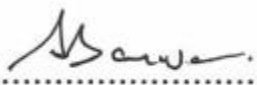
specified before they are proven and recovered-*Credit Corporation (Fiji) Ltd v Wasal Khan and Anor* –Civil Appeal No. ABU 0040 of 2000S.

21. The Plaintiff accepts that it cannot prove substantial loss but that a nominal award is appropriate given its rights have been infringed by the delay in registering the mortgage.⁸
22. On the peculiar facts of this case the Court is unable to resolve the issue of costs and damages without further assistance of the parties

FINDINGS:

1. **Order 5 sought by the Plaintiff in the Originating Summons filed on 16 May 2024 that costs be awarded against the Defendant on a solicitor/client indemnity basis is refused and substituted with a costs order on a party-party basis, to be agreed to by the parties and to be taxed if not agreed.**
2. **Damages to be assessed on a date to be assigned by the Court.**
3. **Parties to bear their own costs for this matter.**




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Savenaca Banuve
Judge

Dated at Suva this 18th day of February, 2026.

⁸ Paragraph 3.19 –Written Submissions [on behalf of the Plaintiff]