

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 368 of 2023

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

PLAINTIFF

AND : **GIANT WHALE PROPERTY PTE LTD** a limited liability Company having its registered office at Lot 1, Atoll Place, Pacific Harbour, Viti Levu.

1ST DEFENDANT

AND : **MA LI** of 301 Princess Road, Tamavua.

2ND DEFENDANT

AND : **GIANT WHALE ENTERTAINMENT (FIJI) PTE LIMITED** a limited liability Company having its registered office at Giant Whale Restaurant, Rona Street Walubay, Suva, Viti Levu.

3RD DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Lajendra N. with Ms Singh P.** for the Plaintiff/Respondent

Ms. Raj D. for the Defendant/Appellant

DATE OF JUDGEMENT: 26th February, 2026

JUDGMENT

[Inter Parte Summons for Leave to Appeal Interlocutory Decision]

A. Introduction

1. The Defendants have filed this inter-Parte Summons and sought for the following orders:
 - (1) That the Defendants be granted Leave to Appeal to the Court of Appeal the Interlocutory Decision of Mr. Justice Vishwa Datt Sharma delivered on 27th March, 2025.
 - (2) That in the event leave be granted, the time for filing and serving the Defendant's Notice to Appeal be Extended by seven (7) days from the date leave is granted to Appeal to the Court of Appeal and that the order for payment of \$2,000 be Stayed if Leave is granted to Appeal to the Court of Appeal; and
 - (3) Any further orders this Honourable Court deems just, fit and expedient.
2. The application is made in support of the Affidavit deposed by MA LI.
3. However, the Defendants Inter-Parte Summons is opposed by the Plaintiff.

Test for Leave to Appeal

4. The test when considering whether or not to grant Leave to Appeal an Interlocutory order or Judgment is that whether the Appeal, if Leave is granted, has a Real Prospect of Success.
5. The Appellant must demonstrate that his case has some prospect of success in the sense that there is a Substantial Question to be argued in the Appeal.
6. As far as this Court is concerned, it is only required at the Leave Stage to determine and make a decision whether Leave should be granted to Appeal the Interlocutory Ruling or Judgment delivered on 27th March, 2025, seeking an order for **Setting Aside of Default Judgment**.
7. At this stage of the proceedings, I am not required to delve myself in analysing the success of the Proposed Grounds of Appeal filed with the Leave application, but merely **whether there is a real prospect of success**.

The Law

8. The Law relating to granting **Leave to Appeal Interlocutory Orders** have been discussed at length in the following cases:

- In **Niemann v Electronic Industries Ltd** [1978] V.R 431 at page 441 where Supreme Court of Victoria held-

"...leave should only be granted to Appeal an Interlocutory Judgment or Order, in cases where substantial injustices is done by the judgment or order itself. If the order was correct then it follows that substantial injustices could not follow. If the order is seen to be clearly wrong, this is not alone sufficient. It must be shown, in addition, to affect a substantial injustice by its operations. It appears to me that greater emphasis is therefore must be on the issue of substantial injustice directly consequent on the order. Accordingly, if the effect of the order is to change substantive rights, or finally to put an end to the action, so as to effect a substantial injustice if the order was wrong, it may be more easily seen that leave to appeal should be given."

- In **Khan v Suva City Council** [2011] FJHC 272; HBC406.2008 (13th May 2011) - following observations were made in regards to application for Leave to Appeal;

"It is trite law that leave will not generally be granted from an interlocutory order unless the Court sees that substantial injustice will be done to the Applicant. Further, in an application for Leave to Appeal, it is incumbent on the Applicant to show that the intended Appeal will have some realistic prospect of succeeding.

- In **Kelton Investment Ltd & Tappoo Ltd. v Civil Aviation Authority of Fiji and Motibhai & Company Limited** Civil Appeal No. ABU 0034 of 1995, the Court of Appeal observed as follows;

"The Court have thrown their weight against Appeals from Interlocutory Orders or Decisions for very good reasons and hence Leave to Appeal are not readily given. Having read the affidavits filed and considered the submissions made, I am not persuaded that the application should be treated as an exception. In my view, the intended Appeal would have minimal or no prospect of success if leave were granted. I am also of the view that the applicants will not suffer any irreparable harm if stay is not granted.

- In **Totis Inc. Sport (Fiji) Ltd v. John Leonard Clark and another**, Fiji Court of Appeal No. ABU 35 of 1996s, wherein the Fiji Court of Appeal expressed the following:

"It has long been settled law and practice that Interlocutory Order and Decisions will seldom be amenable to Appeal. Courts have repeatedly emphasized that Appeal against Interlocutory Orders and Decisions will only be rarely succeed. Fiji Court of Appeal has consistently observed that above principle by granting leave only in most exceptional circumstances."

Defendants'/Appellant's Contention

9. The Affidavit deposed by MA-LI as the Second Defendant and the Director of the Giant Whale Property Pte Ltd and Giant Whale Entertainment (Fiji) Pte Limited, the First Defendant and Third Defendant respectively:
- 'On 13 December 2023, the Plaintiff/Respondent filed a Writ and an Inter-Parte Summons with an Affidavit in Support of Abdul Hakim for Extension of Caveat.
 - That the Plaintiff did not serve the Defendant's Solicitors, Tonganivalu Legal, rather they had served at my (Defendant - MA-LI's) previous location and I was not aware of the time limits to have my Statement of Defence drafted.
 - On 26 February 2025, a Default Judgment was entered against the Defendant.
 - On 14 March 2024, Defendants had filed a Summons to Set Aside Default Judgment with an Affidavit in Support of Elena Magitilevu and was served to the Plaintiff's Solicitors on 12 April 2024.
 - That paragraphs 6 and 7 therein has no date mentioned as I did not instruct the same to Solicitors.
 - There were many transitions in the solicitor's office that my case was handled with different directors. I am certain that it is now in good hands.
 - On 27 March 2025, the application to Set Aside Default Judgment was dismissed entirely.
 - If the High Court's decision is not reversed, it will cause substantial injustice to the Defendants and myself [MALI], being without a proper trial.
 - The Defendant's Grounds of Appeal has merit and have Exceptional Chances of Success.
 - That I seek an order that if this Court is minded to grant the Defendant's Leave to Appeal, that Extension of time to file and serve with Notice of Appeal on the Plaintiff from date of grant of Leave to Appeal.

Plaintiff/ Respondent's Contention.

10. The High Court has evaluated the full scope of the proposed Statement of Defence seeking to Set Aside Default Judgment. The Court was satisfied that the proposed Statement of defence is not arguable as it lacks merit. The High Court upon evaluation seem fit to dismiss the Defendant's application to Set Aside the Default Judgment.
11. Defendants do not meet the criteria in law to seek Leave to Appeal the Interlocutory Decision of 27 March 2025.

12. Plaintiff/Respondent relies on the Affidavit in Opposition filed on 10 June 2025 since it contains pertinent facts to show Defendants are only pursuing the frivolous appeal.
13. Refer to Defendant's Grounds of Appeal.
14. Relies on the written submission
15. Seek the Defendant's Leave to Appeal the Judgment of 27 March 2025 be dismissed with costs.

Analysis and Determination

16. The Defendant's Summons is seeking for an order for **Leave to Appeal** the Ruling/Judgment delivered on 27th March 2025. It further seeks that an Extension of time be granted to file and serve the Defendant's Notice of Appeal and payment of \$2,000 be stayed if Leave to Appeal is granted by the Court.
17. Therefore, the essential issue in this proceedings is the consideration of the prospect of the intended Appeal.
18. Further, it is trite law that leave will not be generally granted unless the Court determining the application for Leave to Appeal sees that substantial injustice will be done and/or caused to the Defendant's/Appellant.
19. Based on the Legal Principles enumerated at paragraph 8, hereinabove the Defendants/Appellants in order to succeed must show to this Honourable Court that substantive injustice will be caused if Leave to Appeal the Interlocutory Order/Judgment is not given. Further, the Defendants/Appellants are required to show that it has a meritorious appeal which has a realistic prospect of success.
20. It is worth noting that this Court when determining the Defendant's/Appellant's Summons to Set Aside the Default Judgment, had carefully evaluated the full scope of the proposed Statement of Defence which the Defendant/Appellants had advanced. The Court being satisfied that the proposed Statement of Defence advanced is not arguable as it lacks merits. The Court then had no alternative but so fit to dismiss the Defendant's/ Appellant's application to Set Aside the Default Judgment.
21. The Defendant's/ Appellant's have filed at least three (3) Grounds of Appeal.
22. From the perusal of the Defendant's/Appellant's Statement of Defence that was annexed to the Affidavit in Support in respect of Defendant's/ Appellant's application to Set Aside Default Judgment, the following defences were raised:

- (1) The Second Defendant was misled into signing the loan application by his former Solicitor Deepak Chand and a Bank Staff Amitesh Karan, and
 - (2) The loan amount of \$600,000 was directly paid to Solicitor Deepak Chand's Trust Account and Second Defendant did not receive anything for the loan money.
23. In order for the Defendant's to persuade and satisfy this Court to Set Aside Default Judgment, it must satisfy the Court that the proposed defences has a real likelihood of success and carries some degree of conviction. Further, the defence should be of such a nature that the Court should provisionally form the view that it will succeed.
24. The loan statement (Annexure F] within affidavit of Abdul Hakim, will show that the Defendant was consistent with loan prepayments for a period of five years from the time the loan was drawn down. This demonstrates that the Second Defendant knew fully well what he was signing and what his commitments were under the loan.
25. For the second defence - the Second Defendant through his company (First Defendant) had agreed to purchase Certificate of Title No. 15119 from solicitor Deepak Chand for \$665,000. Letter of offer verifies the same [Annexure B].
26. If we are to believe what the Second Defendant is stating [that he was to receive part of the loan money], then it is clear Second Defendant and Solicitor Deepak Chand had committed an act of fraud in overstating the sale price.
27. The two prospective defence raised does not have any prospect of success leave aside that it surpasses the legal test of real likelihood of success as it carries some Degree of Conviction. Further, the defence are nothing but a sham defence raised to frustrate and prolong the bank's enforcement and necessary efforts.

Prejudice to Plaintiff.

28. The Plaintiff will be prejudiced if Leave to Appeal is granted since this litigation will prolong and frustrate the bank's enforcement proceedings to recover the loan/debt. The action would continue to remain in the system until its disposition when there is no real defence that has any likelihood of success will support grave injustice. On the other hand, the Defendants will also be relieved from further costs.

Conclusion

29. On 13 December 2023, the Plaintiff's Writ was filed along with an Ex-Parte Summons seeking for Extension of Caveat and on 9th January 2024 Extension of Caveat was granted.
30. On 26th February 2024, Default Judgment was entered against the Defendants since no Statement of Defence was filed.

31. On 14th March 2024, the Defendants filed a Summons to Set Aside Default Judgment, however, on 27th March 2025, the application to Set Aside Default Judgment was dismissed.
32. On 15th April 2025, the Defendants filed an Inter- Parte Summons seeking Leave to Appeal.
33. The Defendants are only to blame themselves since it was the failure on the part of the Defendants to file /serve a Statement of Defence which resulted in Default Judgment entered against the Defendants.
34. Taking above into consideration coupled with the written and oral submission, I have no alternative but proceed to dismiss the Defendant's Leave to Appeal application in its entirety.

Costs

35. The application proceeded to full Hearing with both parties filing affidavits and written submissions.
36. It is only just and fair that the Defendants are ordered to pay the Plaintiff a summarily assessed costs of \$2,000 within 14 days time.

Orders

- (i) The Defendants Inter-Parte Summons filed on 15th April 2025 seeking an order for Leave to Appeal the Judgment delivered on 27th March 2025 is dismissed in its entirety.
- (ii) The Defendants to pay the Plaintiff summarily assessed costs of \$2,000 within 14 days timeframe.

Dated at Suva this 26th day of February ,2026.




VISHWA DATT SHARMA
PUISNE JUDGE

cc. Lajendra Lawyers, Suva
Toganivalu Legal, Suva