

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 76 of 2018

BETWEEN : **CREDIT CORPORATION (FIJI) PTE LIMITED** a limited liability company having its registered office at Credit House, 10 Gorrie Street, Suva, Fiji Islands
PLAINTIFF

AND : **VATIA DEVELOPMENT LIMITED** a limited liability company having its registered office at 9 Westfield, Nadi in the Republic of Fiji Islands.
DEFENDANT

Counsel : Mr. Nilesh Virendra Kumar for the Plaintiff
: The Defendant is absent and unrepresented

Date of Hearing : Friday, 11th May 2018
Date of Ruling : Monday, 04th June 2018

RULING

- (1) On 04th April 2018, the Plaintiff issued a Writ of Summons seeking *inter alia* to recover \$304,182.52 from the Defendant.
- (2) On 13th April, 2018, the Plaintiff filed an 'Amended Ex-parte Notice of Motion' seeking the following orders;

(a) The Plaintiff and/or its servants/agents/employees/bailiffs take immediate possession of the following vehicles together with all the other parts/tools

and/or accessories with the assistance of Police and/or the Land Transport Authority Officers:-

- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HU472 (with Engine No. L3753087960680 and Chassis No. LGHXP6X7EH112461)*
- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HV072 (with Engine No. L37530S031011E and Chassis No. LGHXP6XXEH113023)*
- *One Only New Triring 6 Wheeler Water Tank Truck Registration No. HY764 (with Engine No. B1703378043969 and LS3T3CE13E0110626)*

(b) An order requiring the Defendant whether by itself , its servants and/or agents to immediately release the custody and possession of the following vehicles together with all the other parts/tools and/or accessories to the Plaintiff and/or its servants/agents/employees/bailiffs:

- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HU472 (with Engine No. L3753087960680 and Chassis No. LGHXP6X7EH112461)*
- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HV072 (with Engine No. L37530S031011E and Chassis No. LGHXP6XXEH113023)*
- *One Only New Triring 6 Wheeler Water Tank Truck Registration No. HY764 (with Engine No. B1703378043969 and LS3T3CE13E0110626)*

(c) An injunction restraining the Defendant whether by itself, its servants and/or agents from interfering with or obstructing or stopping the Plaintiff and/or its servants/agents/employees/bailiffs from taking possession and custody of the following vehicles together with all other parts/tools and/or accessories:

- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HU472 (with Engine No. L3753087960680 and Chassis No. LGHXP6X7EH112461)*
- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HV072 (with Engine No. L37530S031011E and Chassis No. LGHXP6XXEH113023)*
- *One Only New Triring 6 Wheeler Water Tank Truck Registration No. HY764 (with Engine No. B1703378043969 and LS3T3CE13E0110626)*

(d) That the Defendant whether by itself, its servants and/or agents be restrained from interfering with the Plaintiff's possession and disposal of the following vehicles together with all other parts/tools and/or accessories:

- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HU472 (with Engine No. L3753087960680 and Chassis No. LGHXP6X7EH112461)*
- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HV072 (with Engine No. L37530S031011E and Chassis No. LGHXP6XXEH113023)*
- *One Only New Triring 6 Wheeler Water Tank Truck Registration No. HY764 (with Engine No. B1703378043969 and LS3T3CE13E0110626)*

(e) That the Plaintiff dispose the following vehicles together with all other parts/tools and/or accessories in accordance with the Asset Purchase Agreements respectively upon repossession:

- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HU472 (with Engine No. L3753087960680 and Chassis No. LGHXP6X7EH112461)*
- *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HV072 (with Engine No. L37530S031011E and Chassis No. LGHXP6XXEH113023)*
- *One Only New Triring 6 Wheeler Water Tank Truck Registration No. HY764 (with Engine No. B1703378043969 and LS3T3CE13E0110626)*

(f) An Order that the Police and/or Land Transport Authority Officers assist the Plaintiff in enforcing the above Orders and/or to maintain peace; and

(g) Costs

(h) Such further or other relief as the Court may deem just.

- (3) The court made the Notice of Motion inter-parte and directed the Plaintiff to serve the Notice of Motion on the Defendant.
- (4) According to the 'Affidavit of Service' filed by the Plaintiff, the 'Inter-parte Notice of Motion' was served at the office of the Defendant Company on 20th April 2018.

- (5) When the matter was mentioned before this Court on 04th May 2018, the Defendant was absent and unrepresented. Therefore, the hearing of the Notice of Motion was fixed for 11th May 2018.
- (6) On 11th May 2018, the application was heard before the Court. The Plaintiff relied on the affidavit of Dilraz Ali (the 'Collections Officer', of the Plaintiff's Company) sworn on 12th April 2018, in respect of the application.
- (7) In his affidavit supporting the Motion, 'Dilraz Ali' deposed as follows;

1. *I am Collections Officer in the employ of Credit Corporation (Fiji) Pte Limited ("Plaintiff"). Annexed hereto and marked "DA 1" is a copy of Credit Corporation's Authority dated 12th April 2018 authorizing me to swear this affidavit.*
2. *Where matters are known to me personally I depose from information contained in the Plaintiff's files.*
3. *I make this affidavit in support of the Plaintiff's Ex-Parte Notice of Motion filed herewith.*

Parties

1. *The Plaintiff is a duly registered company having its registered office at Credit House, 10 Gorrie Street, Suva and carrying on business there and elsewhere in Fiji as a financier.*
2. *The Defendant, Vatia Development Limited is a customer of the Plaintiff.*

Defendant's Accounts

3. *The Defendant has three existing accounts with the Plaintiff being Account Nos. 317709, 317818 & 318785.*
4. *The Defendant's Accounts were linked via a Deed of Collateralization dated 20/02/2015.*

Account No. 317709

5. *On 02nd February 2015, the Plaintiff agreed to offer to the Defendant loans for purchase of vehicle on the terms and conditions set out in its letter of offer which*

was accepted by the Defendant. The Defendant accepted the terms of the offer by countersigning the letter of offer on 20th February 2015.

6. The terms and conditions of the loan included the following:

- | | | |
|-----|---|--|
| (a) | Principal sum | \$159,075.00 |
| (b) | Interest to be paid on the principal sum at the rate of 8% per annum | \$63,630.00 |
| (c) | Repayment over the term of 60 months | \$3,711.75 per month for a term of 60 months |
| (d) | The Defendant to execute Asset Purchase Agreement in favour of the Plaintiff over motor vehicle registration number HU472 by way of security for the repayment of the loan and Personal Guarantee given by Faizal Parwez ali, Rehana Rojila Khan & Suresh Bhai. | |

Those copies of Letter of Offer, Asset Purchase Agreement and Personal Guarantee are annexed and marked with letter "ACT" in the Affidavit of Ashok Chand sworn on 27th March 2018.

Account No. 317818

7. On 19th February 2015, the Plaintiff agreed to offer to the Defendant loan for purchase of vehicle on the terms and conditions set out in its letter of offer which was accepted by the Defendant. The Defendant accepted the terms of the offer by countersigning the letter of offer on 20th February 2015.

8. The terms and conditions of the loan included the following:

- | | | |
|-----|--|--|
| (e) | Principal sum | \$159,075.00 |
| (f) | Interest to be paid on the principal sum at the rate of 8% per annum | \$63,630.00 |
| (g) | Repayment over the term of 60 months | \$3,711.75 per month for a term of 60 months |

- (h) The Defendant to execute Asset Purchase Agreement in favour of the Plaintiff over motor vehicle registration number HU472 by way of security for the repayment of the loan and Personal Guarantee given by Faizal Parwez ali, Rehana Rojila Khan & Suresh Bhai dated 12th February 2015 will bind this deal and Deed of Collateralization.

Those copies of Letter of Offer, Asset Purchase Agreement and Deed of Collateralization are annexed and marked with letter "AC2" in the Affidavit of Ashok Chand sworn on 27th March 2018.

Account no. 318785

9. On 30th July 2015, the Plaintiff agreed to offer to the Defendant loan for purchase of truck on the terms and conditions set out in its letter of offer which was accepted by the Defendant. The Defendant accepted the terms of the offer by countersigning the letter of offer on 31st July 2015.
10. The terms and conditions of the loan included the following:
- | | | |
|-----|---|--|
| (i) | Principal sum | \$112,817.00 |
| (j) | Interest to be paid on the principal sum at the rate of 8% per annum | \$42,306.38 |
| (k) | Repayment over the term of 60 months | \$2,585.39 per month for a term of 59 months and on the 60 th month the repayment to be \$2,585.37. |
| (l) | The Defendant to execute Asset Purchase Agreement in favour of the Plaintiff over motor vehicle registration number HY764 by way of security for the repayment of the loan and Personal Guarantee given by Faizal Parwez Ali, Rehana Rojila Khan & Suresh Bhai dated 12 th February 2015 will bind this deal and Deed of Collateralization dated 20 th February 2015. | |

Those copies of Letter of Offer and Asset Purchase Agreement are annexed and marked with letter "AC3" in the Affidavit of Ashok Chand sworn on 27th March 2018.

Default

11. *That the Defendant defaulted in its obligations under the Asset Purchase Agreements and breached the Asset Purchase Agreements conditions with the Plaintiff.*

Account No. 317709

12. *The Defendant's account with the Plaintiff was not satisfactory from the initial stages of the loan due to late payments and later dishonored cheques were noted as a result arrears accumulated.*

The Defendant's account started being in arrears since May 2015. That copy of Account Statement is annexed and marked with letter "AC4" in the Affidavit of Ashok Chand sworn on 27th March 2018.

As such the Plaintiff issued Default Notices 27/01/16, 12/09/16, 04/11/16, 28/02/17, 16/06/17, 06/12/17 and 27/12/17 to the Defendant to update its account and clear the arrears. The Default Notice stated the amount of the installments due and requiring the said amounts to be paid to the Plaintiff within the time stated. Those copies of the Default Notices are annexed and marked with letter "AC5" in the Affidavit of Ashok Chand sworn on 27th March 2018.

13. *The last payment the Plaintiff received from the Defendant was on 06th November 2017 in the sum of \$7,500.00 and thereafter no payments have been made till to date.*

Account No. 317818

14. *The Defendant's account with the Plaintiff was not satisfactory from July 2015 due to late payments and as a result arrears accumulated. The Defendant's account started being in arrears since June 2015. That copy of Account Statement is annexed and marked with letter "AC6" in the Affidavit of Ashok Chand sworn on 27th March 2018.*

15. *As such the Plaintiff issued Default Notices 27/01/16, 12/09/16, 04/11/16, 28/02/17, 16/06/17, 06/12/17 and 27/12/17 to the Defendant to update his account and clear the arrears. The Default Notice stated the amount of the installments due and requiring the said amounts to be paid to the Plaintiff within*

the time stated. Those copies of the Default Notices are annexed and marked with letter "AC7" in the Affidavit of Ashok Chand sworn on 27th March 2018.

16. *The last payment the Plaintiff received from the Defendant was on 06th November 2017 in the sum of \$7,700.00 and thereafter no payments have been made till to date.*

Account No. 318785

17. *The Defendant's account with the Plaintiff was not satisfactory from the initial stages of the loan as it failed to do its first months repayments and thereafter arrears continued due to late payments.*
18. *The Defendant's account started being in arrears since September 2015. That copy of Account Statement is annexed and marked with letter "AC8" in the Affidavit of Ashok Chand sworn on 27th March 2018.*
19. *As such the Plaintiff issued Default Notice 27/01/16, 12/09/16, 04/11/16, 28/02/17, 16/06/17, 06/12/17 and 27/12/17 to the Defendant to update his account and clear the arrears. The Default Notice stated the amount of the installments due and requiring the said amounts to be paid to the Plaintiff within the time stated. Those copies of the Default Notices are annexed and marked with letter "AC9" in the Affidavit of Ashok Chand sworn on 27th March 2018.*
20. *The last payment the Plaintiff received from the Defendant was on 06th November 2017 in the sum of \$5,800.00 and thereafter no payments have been made till to date.*

Repossession

21. *Despite the issuance of the Default Notices, the Defendant continued to default in its payments. As a result, the Plaintiff became entitled to exercise its rights over its securities being Vehicle Registration Nos. HU472, HV072 and HY764. It therefore issued repossession notices dated 28/06/17, 27/07/17, 10/01/18 and 05/02/18 against the Defendant for Account Nos. 317709, 317818 and 318785. Those copies of the Repossession Notices are annexed and marked with letter "AC10" in the Affidavit of Ashok Chand sworn on 27th March 2018.*
22. *Despite several attempts made, the Plaintiff's bailiff has not been able to recover*

possession of the said Vehicle Registration Nos. HU472, HV072 and HY764. That copy of Plaintiff's bailiff's report stating the attempts he had made is annexed and marked with letter "AC11" in the Affidavit of Ashok Chand sworn on 27th March 2018.

23. *The Defendant has failed and refused and still fails and refuses to return and/or Hand over possession of the said Vehicle Registration Nos. HU172, HV072 and HY764 to the Plaintiff.*
24. *The Plaintiff is now seeking an order for delivery of possession of the said Vehicle Registration Nos. HU472, HV072 and HY764 from the Defendant. The right to possession arises because of the default in repayment to the Plaintiff. The Plaintiff is proceeding to exercise its powers under the said Asset Purchase Agreements.*
25. *The Defendant's possession of and its failure or refusal to hand over possession of the said Vehicle Registration No. HU472, HV072 and HY764 to the Plaintiff is unlawful as the Plaintiff has the legal right to possession under the said Asset Purchase Agreement.*
26. *If the Plaintiff is not able to repossess the said Vehicle Registration No, HU472, HV072 and HY764, the chances of recovering money from the Defendant is very little taking into account the Defendant's account history with the Plaintiff and its inability to make repayments and knowing what the Defendant had done to its one of the security being Vehicle Registration No. HU472, HV072 and HY764. As such, the Plaintiff believed that the Defendant is not in the position to pay damages to the Plaintiff.*
27. *The Plaintiff is afraid that unless the Court assists, its security being Vehicle Registration Nos. HU472, HV072 and HY764 may be at risk and the Plaintiff would not be able to repossess the same.*
28. *The Plaintiff seeks inter alia an order that the Plaintiff and/or its agents/employees/servants/bailiffs take immediate possession of the following vehicles with the assistance of Police and Land Transport Authority Officers and thereafter sell them in accordance with the said Asset Purchase Agreement:*
 - *One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HU472 (with Engine No. L3753087960680 and Chassis No. LGHXP6X7EH112461)*

- One Only New Dongfeng 12 Wheeler Tray Truck Registration No. HV072 (with Engine No. L37530S031011E and Chassis No. LGHXP6XXEH113023)
- One Only New Triring 6 Wheeler Water Tank Truck Registration No. HY764 (with Engine No. B1703378043969 and LS3T3CE13E0110626)

29. Any further delay will result in an increase in liability by way of interest and costs and will seriously prejudice the financial interest of the Plaintiff. It is in the interest of the Plaintiff and the Defendant that the Defendant deliver possession of the said Vehicle Registration Nos. HU472, HV072 and HY764 to the Plaintiff forthwith to allow the Plaintiff to sell it and recover part of the debt owed by the Defendant.

Undertaking as to damages

30. My legal advisers have explained to me the undertaking in damages which the Plaintiff has to give the court, and the Plaintiff is prepared to do so without reservation. The Plaintiff undertakes that, if, by reason of the making of the interim order so sought, the Defendant sustains damages (being damages which in the opinion of the court, the Plaintiff ought to pay), the Plaintiff will abide by any order which the court may make in respect of those damages. The Plaintiff is a profitable company with a substantial turnover. The Plaintiff has the means to satisfy any order which may be made against it under this section of this affidavit. That copy of Plaintiff's financial statement for the period ending 31 December 2017 which is a public document is annexed and marked with letter "AC12" in the Affidavit of Ashok Chand sworn on 27th March 2018.

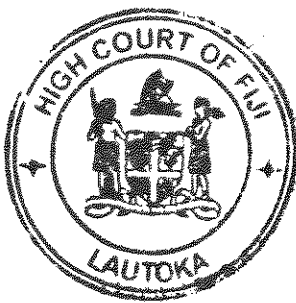
Conclusion

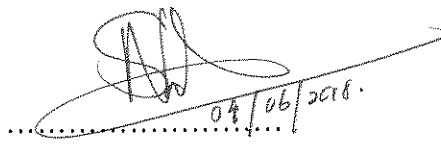
31. I verily believe that unless ordered by this Court, the Defendant will not let the Plaintiff has possession of the said Vehicle Registration nos. HU472, HV072 and HY764 and this is evident from the conduct of the Defendant.
- (8) In this case, the Plaintiff Company has offered finance facilities to the Defendant Company for purchase of three vehicles. The Defendant is in arrears of re - payment under the loan contract and despite the issuance of the default notices, the Defendant continued to default in its re - payments. Upon default of payments, the Plaintiff is entitled to take possession of the vehicles (securities) under the 'Asset Purchase Agreement'.

CONCLUSION

Taking into consideration the circumstances in which the Plaintiff is seeking the orders and upon being satisfied that the Plaintiff is entitled to the orders sought, the Court grants the orders as prayed for in paragraphs (a), (b), (c) and (f) in the Notice of Motion filed on 13th April 2018. Costs in the cause.

The substantive matter is listed for mention on 22nd June 2018 at 9.30 am.




04/06/2018
Jude Nanayakkara
Judge

At Lautoka

Monday, 04th June 2018