

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 88 OF 2013

BETWEEN : **VISHAN RAGHUVER SINGH RAJPUT** t/as **VISHAN INFOTECH** situated at Lot 19 at 111 Vitogo Parade, Lautoka.

PLAINTIFF

A N D : **MADHU KANT GOVIND** of 4641 La Mirada Avenue, Aprt No. 4, Los Angeles, CA 90029, USA.

1ST DEFENDANT

A N D : **SHAMENDRA KUMAR RAM** of Saru Back Road, Lautoka, Bailiff.

2ND DEFENDANT

Appearances : Mr R. R. Gordon with Mr P. Chauhan for the plaintiff
Ms N. Khan for the first defendant

Date of Hearing : 21 August 2018

Date of Ruling : 21 August 2018

R U L I N G

[01] This is an application by the plaintiff for release of the money deposited into the court as security for obtaining an interim injunction. The sum deposited is \$22,367.00 which was the outstanding rent demanded by a notice of distress dated and issued on behalf of the first defendant as recoverable from the plaintiff ('V5' in the plaintiff's supporting affidavit filed 21 May 2013).

[02] The first defendant opposes the money being released to the plaintiff. He says he is entitled to the money as it was outstanding rent payable to him by the plaintiff.

[03] The circumstances under which the money was deposited into court is that: the first defendant issued a notice of distress to recover the outstanding rents in the sum of \$22,367.00 payable to the first defendant by the plaintiff on account of

three flats he was occupying. The plaintiff filed an action against the defendants claiming among other things a declaration that the distress notice issued by the first defendant was unlawful. He also sought an interim injunction to restrain the defendants from proceeding with the distress warrant. The court granted an interim injunction against the defendants restraining them from levying under the distress, however subject to the condition that the plaintiff deposits a sum of \$22,367.00 as s security. In a separate judgment delivered on 28 May 2018, I dismissed the plaintiff's claim as well as the counterclaim of the first defendant where he claimed damages for loss of *mesne* profit.

[04] In my judgment, I said (at para 36):

"[36] The first defendant claims mesne profits from 2010. The plaintiff was paying rent to the first defendant from 2010 and he defaulted in the payment of rentals. That is why the distress for rent was levied against the plaintiff. The plaintiff has deposited a sum of \$22,367.00 into court for rentals payable to the first defendant. The first defendant did not press on the counterclaim he has made in his further amended statement of defence and there is no sufficient evidence showing that the first defendant is entitled to judgment as per his counterclaim." (Emphasis added)

[05] The plaintiff sought the interim injunction on the basis that the notice of distress was unlawful and that there was no outstanding rent.

[06] Both parties were unsuccessful in their claims. This translates that the plaintiff had failed to establish that there was no outstanding rent payable to the first defendant at the time when the first defendant attempted to levy distress. As a result of it, the plaintiff is not entitled to claim the money deposited into court as a security for obtaining the injunctive order against the first defendant. The sum that has been deposited into court is the same sum claimed by the first defendant as outstanding rent under notice of distress. I agree with the first defendant that that the money deposited should be released to the first defendant as it is outstanding rental deposited as it was a pre-condition for granting an interim injunction against the first defendant which effectively stopped the first

defendant from levying distress for the recovery of the outstanding rent payable by the plaintiff.

[07] There was no evidence that the plaintiff was not in arrears of rental in the sum of \$22,367.00 at the time when the first defendant issued the notice of distress. In the absence of such evidence, the first defendant should be entitled to claim that sum. I would, therefore, order for the release of the money deposited into court (\$22,367.00) to the first defendant. There will be no order as to costs.

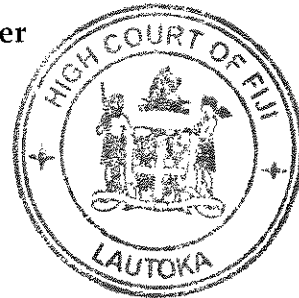
The outcome

1. The registry will release the sum of \$22,367.00, the money deposited into court by the plaintiff to the first defendant.
2. There will be no order as to costs.

M.H. Mohamed Ajmeer
..... 21/8/18

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

21 August 2018

Solicitors:

For the plaintiff: M/s Gordon & Co, Barristers & Solicitors

For the first defendant: M/s Natasha Khan & Associates, Barristers & Solicitors