

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA, FIJI

ACTION NO: HBC 186 OF 2016

BETWEEN : **SILVER BEET INVESTMENTS LTD** a limited liability Company having its Registered Office at 3 Tukani Street, Lautoka, Fiji

PLAINTIFF

A N D : **AUTOMART LTD** a limited liability Company having its Registered office at 27 Sautamata Street, Lautoka, Fiji

1ST DEFENDANT

A N D : **LAND TRANSPORT AUTHORITY** having its Headquarters at Valelevu, Nasinu

2ND DEFENDANT

Counsel : Mr N S Khan for Plaintiff
Ms N Khan for first Defendant
Mr K Patel for second Defendant

Date of Hearing : 18.10.2016

Date of Extempore Ruling : 18.10.2016

EXTEMPORE RULING

1. This is an application filed by the first defendant to set aside the ex parte injunction orders granted in favour of the plaintiff on 1 September 2016. The application is supported by an affidavit of Suresh Patel sworn on 23 September 2016.

2. The plaintiff obtained the ex parte orders giving an undertaking as to damages and giving a further undertaking that the plaintiff will pay off the entire outstanding amount under Bill of Sale within a month. The one month deadline for payment expired on 01 October 2016. However, the plaintiff has failed to comply with the undertaking he gave when obtaining the ex parte orders against the first defendant. The court granted the ex parte orders on that condition.
3. Ms Khan, counsel for the first defendant, submits that the undertaking given by the plaintiff as to damages is of no value, for the lease annexed is an Agreement to Lease and not a Lease. She further submits that the Agreement to Lease is between iTLTB and Azmad Ali Transport & Sons and not the plaintiff Company.
4. The plaintiff did not file any affidavit in response to the affidavit filed by the first defendant.
5. However, on 4 October 2016, being the first returnable day, Mr Sahu Khan, counsel for the plaintiff informed the court that the parties have reached a temporary settlement. A hand written terms of settlement was filed on that day. According to the settlement, the plaintiff agreed to pay the sum of \$336,366.52 in 14 days. The plaintiff consented to some of the ex parte orders to continue until further order.
6. Ms Khan indicates that the plaintiff has even failed to comply with the temporary settlement reached on the last occasion.
7. The ex parte orders were granted on the condition that the plaintiff should pay and settle the entire outstanding amount under the Bill of Sale within one month from the date of the ex parte orders, i.e. 1 September 2016. The plaintiff has failed to comply with the condition upon which the ex parte orders were granted. The court may dissolve the ex parte orders on that ground alone.

8. I accordingly discharge the ex parte orders granted on 01 September 2016 with immediate effect. The plaintiff will pay \$2,500.00 as costs to the first defendant in 28 days.

Final Outcome

1. The ex parte injunctive orders granted on 01 September 2016 are discharged forthwith.
2. The plaintiff will pay summarily assessed costs of \$2,500.00 to the first defendant in 28 days.

M H Mohamed Ajmeer
18/10/16

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M H Mohamed Ajmeer
JUDGE

18 October 2016
At Lautoka

