

29/05/18

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IN THE SUPREME COURT OF TONGA  
CIVIL JURISDICTION  
NUKU'ALOFA REGISTRY

CV 278 of 2009

**BETWEEN:**            **BANK OF SOUTH PACIFIC TONGA LIMITED**  
(formerly WESTPAC BANK OF TONGA)

**Judgment Creditor**

**AND:**                **'AHOVALEMOEMAPA FALETAU aka HON.**  
**'AKAUOLA**

**Judgment Debtor**

**BEFORE LORD CHIEF JUSTICE PAULSEN**

**Counsel:**    **Mr. R. Stephenson for the judgment creditor**

**Date of Hearing:**    **Ex parte application on the papers**

**Date of Ruling:**    **23 May 2018**

**RULING**

[1]    The judgment creditor (the Bank) has applied *ex parte* pursuant to O.29 Rule (1)(a) Supreme Court Rules for leave to take enforcement proceedings against the Hon. 'Akauola in respect of a judgment obtained on 2 February 2010.

[2]    The judgment was entered by consent and pursuant to an arrangement between the Bank and Hon. 'Akauola that the Bank would refrain from enforcing the judgment if monthly payments at an agreed rate were made. Payments were made but Hon. 'Akauola is now in default and the Bank wishes to take enforcement proceedings.

rec'd 29/05/18  
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- [3] The Bank has filed the application on an *ex parte* basis as it is entitled to do under O.29 Rule 1(2) with an affidavit in support.
- [4] Having considered the application and supporting affidavit I am satisfied that it is appropriate to grant leave because:
- [4.1] The judgment debt is substantial and has not been satisfied. There is T\$833,287 of the principal debt, along with substantial interest, owing under the judgment.
- [4.2] Although the judgment was entered in the name of Westpac Bank of Tonga this is regarded in law as the same legal entity as the abovenamed judgment creditor by section 3 of the Westpac Bank of Tonga (Amendment) Act. There has been no other change of the parties by death, bankruptcy or otherwise since judgment was entered.
- [4.3] Hon. 'Akauola has failed to make the payments agreed between the parties which was the condition upon which the Bank refrained from enforcing its judgment.
- [4.4] The Bank has provided satisfactory reasons for not taking enforcement proceedings earlier. Its reasons were that Hon. 'Akauola made payments to the Bank until May 2016 and consideration for Hon. 'Akauola's personal circumstances due to the illness of his wife.
- [4.5] It is only as a result of a recent change in Hon. 'Akauola's employment that the Bank now considers that enforcement proceedings will result in payment of at least some portion of the judgment debt.

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**Result**

- [5] The Bank is granted leave to make application for enforcement orders in respect of the judgment obtained in this action on 2 February 2010.
- [6] The leave granted pursuant to this ruling shall lapse if enforcement proceedings are not taken within 12 months of the date of this ruling.
- [7] A copy of this ruling and the sealed order must be provided by Mr. Stephenson to Hon. 'Akauola forthwith.



A handwritten signature in black ink, appearing to read "O.G. Paulsen".

O.G. Paulsen

NUKU'ALOFA: 23 MAY 2018.

LORD CHIEF JUSTICE