

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

Scan & file

Solicitor Gen

05/09/12

CV 273 of 2009

**BETWEEN: AUSTRALIA AND NEW ZEALAND BAKING GROUP
LIMITED**

- **Plaintiff**

**AND : 1. PAEA MOALA
2. PULI TUITA**

- **Defendants**

Mrs P. Tupou for the Plaintiff

L.M. Niu for the Defendant

DECISION


- [1] This is an application by the Plaintiff for summary judgment against the Defendants on the ground that they have no defence to the claim against them filed on 28 November 2009.
- [2] The Statement of Claim is to the effect that the Plaintiff and the Defendants entered into an agreed personal loan facility but that the Defendants have failed to comply with the repayment terms of the facility. The Plaintiff says that the Defendants, as at 28 November 2009, owed the sum of \$72,729.50 with interest accruing at the rate of 16%. There is also said to be a smaller amount outstanding in a current account.

- [3] In January 2010 the Defendants filed a Defence and Counterclaim. Among other matters raised, the Defendants say that two vehicles belonging to them were repossessed without their value being credited to them. As to the current account debt it is said that the Plaintiff negligently transferred a sum of \$6000 into the Defendants' current account. In the Counterclaim conversion of the vehicles is alleged and damages are claimed for "wrongly instituting these proceedings".
- [4] In a Reply and Defence to Counterclaim filed in July 2010 it is pleaded that the vehicles were repossessed by the guarantor of the loan and without the Plaintiff's knowledge. An "oversight" in regard to the current account is admitted. The Defence to the Counterclaim amounts to a series of bare denials.
- [5] Applications for summary judgment are brought subject to the provisions of RSC. O15 and the principles governing such applications are well known and are conveniently set out and explained in the commentary to Order 14 contained in the 1988 Edition of the White Book.
- [6] The purpose of the procedure is to enable a Plaintiff to obtain summary judgment without having to go to trial if he can prove his claim clearly and if the Defendant is unable to set up a *bona fide* defence or raise an issue against the claim which ought to be tried (*Roberts v Plant* [1895] 1 QB 597). Where there are circumstances which require to be closely investigated there ought to be a trial and summary judgment is not appropriate (*Miles v Bull* [1969] 1 QB 258). In addition, where there is uncertainty as to the amount actually due,

summary judgment should be refused (*Lynde v Waithman* [1895] 2 QB 180).

- [7] In the present case among other matters, it is not clear to me that the effect of the repossession of the vehicles by the guarantor has been correctly assessed. I do not find myself sufficiently satisfied that the Plaintiff has established that the whole amount claimed is actually owed. It is only in clear and straightforward cases that a defendant should be deprived of the right to go to trial. I do not find this to be such a case and accordingly the application is refused.

DATED: 24 August 2012.


M.D. Scott
CHIEF JUSTICE

N. Tu'uholoaki
24/8/2012