

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CIVIL APPEAL NO. ABU 004 of 2022**  
**[High Court Case No. HBC 140 of 2023]**

**BETWEEN** : **EMPIRE AUTOPARTS PTE LIMITED**

*Appellant*

**AND** : **B W HOLDINGS LIMITED**

*Respondent*

**Coram** : **Prematilaka, RJA**

**Counsel** : **Messrs. K. S. Law for the Appellant**  
: **Messrs. Sherani & Co. for the Respondent**

**Date of Notice of** : **14 November 2024**  
**Discontinuance**

**Date of Ruling** : **09 December 2024**

**RULING OF THE COURT IN CHAMBERS**

[1] The plaintiff (now the appellant) had caused writ to be issued with statement of claim claiming for special and general damages with costs and interest arising out of Sale and Purchase Agreement dated 8 March 1999, between the parties. The defendant (now respondent) had filed its statement of defence and counterclaim. The plaintiff had filed a reply to statement of defence and defence to counterclaim.

[2] At the end of the trial, the High Court in its judgment<sup>1</sup> had ordered as follows.

*(i) Plaintiff's claim is dismissed and struck out.*

*(ii) Plaintiff do pay Defendant the sum of \$35,000.00 plus interest on the said sum of \$35,000.00 at the rate of 10% per annum from 8 March 2000, to date of this judgment.*

*(iii) Plaintiff do pay Defendant's cost of this action assessed in the sum of \$3,000.00.*

[3] The plaintiff–appellant had lodged an appeal against the said judgment and issued summons for security for cost. The Chief Registrar had fixed security for cost at \$3000.00

[4] However, the solicitors for the plaintiff–appellant and the defendant–respondent had filed on 14 November 2024 a joint Notice of Discontinuance ('ND'), which has been forwarded to me for an order of court on 20 November 2024, informing that the appellant and the respondent wholly and completely discontinue the action on 'with no order as to cost' basis.

#### **Orders of court**

[1] *The joint application by the appellant and respondent to withdraw/discontinue the appeal is allowed.*

[2] *Appeal is accordingly dismissed in terms of section 20(1)(h) of the Court of Appeal Act.*

[3] *No order as to cost.*



*C. Prematilaka*  
Hon. Mr. Justice C. Prematilaka  
**RESIDENT JUSTICE OF APPEAL**

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<sup>1</sup> **Empire Autoparts Ltd v B W Holdings Ltd** [2021] FJHC 361; HBC140.2003 (8 December 2021)