

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. 38 of 2012

BETWEEN: **DAVID ANDERSON** of 15 Picardy Court, Rose Street,
Aberdeen AB101UG, Scotland, UK

PLAINTIFF

AND : **YORKSHIRE HOLDINGS LIMITED** a limited liability
company having its registered office at Top Floor, HLB
House, 3 Cruickshank Road, Nadi.

DEFENDANT

L Lagilevu for the Plaintiff

No appearance for the defendant

Date of Hearing: 4.3.2016

Date of Judgment: 4.3.2016

JUDGMENT

Introduction

1. The plaintiff, David Anderson brought these proceedings against the defendant, Yorkshire Holding Limited claiming return of the monies remitted to the defendant for investment.
2. The trial of the action was set down for 16 October 2015 when the defendant defaulted in appearance. Ms Lagilevu, counsel appearing for

the plaintiff then made an application to strike out the defence and to assign a date to proceed with the trial in the absence of the defendant. The court accordingly struck out the defence and set the matter for the trial in the absence of the defendant on 1 December 2015 pursuant to O. 35, r.1(2) of the High Court Rules 1988 ('HCR') which provides:

'(2) If, when the trial of an action is called on, one party does not appear; the judge may proceed with the trial of the action or any counterclaim in the absence of that party.'

3. When the matter was called on 1 December 2015 for the trial in the absence of the defendant, counsel appearing for the plaintiff informed the court that the plaintiff is not available for giving evidence as he is a resident in the UK and sought an adjournment of the trial while indicating that the plaintiff will give evidence via affidavit. After few adjournments on the request of the plaintiff, the plaintiff eventually filed his affidavit on 11 February 2016.
4. The court proceeded with the trial of the action today (4 March 2016) when Ms Lagilevu, stated the plaintiff's case and informed the court that the plaintiff will rely on the affidavit evidence already adduced in court.

Facts

5. David Anderson, the plaintiff is an individual investor. He is residing in the UK. Yorkshire Holding Limited ('YHL'), the defendant is a limited liability company. YHL is operating a hotel trading under the name and style of Natavora Waters Resort in Sigatoka. YHL was building a resort hotel in Fiji. Anderson wanted to invest in that project. In July 2008 he advanced cash facilities of AUD\$120,000.00 into YHL in exchange of 5% shareholding of the Company. YHL upon receipt of the AUD\$120,000, advised Anderson to visit one David Brown an existing Director of the Company who lived in Melbourne, and upon his arrival was advised that

there was another 9% shareholdings at stake and an offer was tendered to Anderson for its purchase. The offer by David Brown included the attainment of shareholdings and the construction of 3 residential houses on the beach front at the Coral Coast in Fiji intended for 2 Directors and Anderson.

6. In reliance of the above promises, Anderson agreed to advance a further AUD\$180,000 by early January 2009, which resulted in Anderson holding 15% shareholdings.
7. In 2009, Anderson travelled to Fiji on the request of David Brown (Director of YHL) and he was told that he would be reimbursed money spent on travel expenses. While in Fiji Anderson was informed in December 2009 to vacate the bure as the coffee shop/restaurant would open on January 15th, 2010. The coffee shop/restaurant did not open until October 15th, 2010. The plaintiff lived in Fiji for eight weeks and had to pay for his own accommodation expenses.
8. In November 2009, YHL through its Directors (i.e. Graham Copson) issued a letter dated 12th November 2009 to Anderson confirming that 15% of ordinary shares issued in YHL have been allotted to him (Anderson). Anderson conducted a search at the registrar of Companies and realised that he has never been a registered shareholder of the Company despite all the promises advanced by the present Directors.
9. Anderson invested in the sum of AUD300, 000.00 with YHL. He was never issued certificate of shareholdings. He claims return of the monies remitted into YHL for investment.

Plaintiff's evidence

10. The plaintiff gave evidence through affidavit. He produced some 22 documents marked with the letter 'A' to 'Q' in support of his claim. He in evidence states that, it was arranged that he would advance the sum of

AUD\$100,000.00 into YHL for a 5% shareholding. He remitted into the company's account in about the months of June to July 2009 a sum of GBP which is equivalent to AUD 118,170.00. He produced copy of the payment record he had (see, document marked 'C'). YHL contacted him via email, through a Mrs Vicki Brown, and confirmed receipt of the funds remitted by him (see, document marked 'D').

11. He also states that, it was discovered that he had remitted an extra AUD\$18, 170.00 due to an internet banking error. The company offered to return the extra funds remitted or the sum could actually buy him a 6% shareholding in the said Company instead of the 5% initially agreed upon. He then agreed that the extra funds remitted would not be returned to him and that he would now have a 6% shareholding in the Company. This agreement is highlighted in the email correspondence exchanged between Viki Brown and the plaintiff (see, document marked 'D').
12. He further states that, about the month of July 2008, he was invited by the company to meet a Mr David Brown, one of the Directors of the company who resided in Melbourne, Australia for further discussions on more investment opportunities with the Company. Upon meeting Mr David Brown informed him that there was another 9% shareholding available and an offer was made to him to purchase it. This offer included: i. Extra 9% added to the 6% shareholding that he initially purchased and ii. The construction of 3 residential houses on the beach front at the coral coast for the benefit of two Directors of the Company and one for him. He agreed to further advance the sum of AUD\$180,000.00 by early January 2009 and the sum of AUD\$180,000.00 was advanced to the company resulting in him holding a 15% shareholding in the company.
13. He further states that, he also invested into the company in the form of safety reflectors. He brought up the project idea which would not only

market the company but at the same time save lives on the roads of Fiji. Mr David Brown approved his undertaking of the project with the assurance that the money used in the funding of the discussed project would be reimbursed at a later date. Mr David Brown's email of 15 October 2009 confirms this arrangement. (See, document marked 'E'). The plaintiff states that the sum of AUD\$3,000.00 was used in the purchase of the safety reflectors from the United States.

14. He also states that, on the Defendant's request he travelled to Fiji on 29th September 2009 and also knowing that he would be living rent free in one of the already constructed bures belong to the company. When he arrived in Fiji, Mr Brown asked him not to inform the locals that he was a shareholder in the Company as according to him, "*the locals liked to gossip*". In November 2009 he went to Baku in Azerbaijan to attend to some urgent matters. on the 28th day of November 2009, whilst still in Baku in Azerbaijan, he received an email from David Brown informing him that the bure that he was occupying had to be vacated, as a restaurant/coffee shop would be opened on the said premises on January 15th 2010 and requested not to return to Fiji and even offered to return his household belongings that were in the said bure he was residing in for free. The email correspondence exchanged between David Brown and the plaintiff confirm this, (see, documents marked 'H' and 'T'). He (plaintiff) refused the offer made by Mr David Brown and returned to Fiji on 24 December 2009. The plaintiff states that on the 4 January 2010, he moved out of the bure and moved to Crusoe's Retreat to make way for the opening of the coffee shop/restaurant.

15. The plaintiff also states that, after investing the total sum of AUD\$300,000.00 into the company, he requested the company to provide him with a shareholding certificate. Few correspondence took place between the company and the plaintiff, see document marked 'J'. He eventually received a letter dated 12th November 2009 from a Graham Copson, director of YHL confirming that he (plaintiff) owned

15% of Ordinary shares with the company and he also had full voting rights (see document marked with the letter 'K'. He was not given a shareholding certificate though requested for the same (see email correspondences between his former solicitors, Ms Tina Ravulo marked with letters 'M' to 'P').

16. The plaintiff further states that, he was assured by the Company that he would have dividend pay-out on his investment (see email correspondence marked with the letter 'Q'. But he has not received a single dividend return for his investment, nor has he received a shareholding certificate for the 15% of shares that he had bought.

Analysis

17. The plaintiff's claim stems from an investment he made with the defendant in the sum of AUD\$300, 000.00. He also claims against the defendant the reimbursement of AUD\$3,000.00 for the safety reflectors and further reimbursement of AUD\$5,800.00 for travel and accommodation spent by him with interest and costs.
18. In evidence the plaintiff stated that he remitted the fund in the total sum of AUD\$300,000.00 into the defendant company. This has happened following an arrangement made between the defendant company and the plaintiff. Receipt of remittance of AUD\$ 300,000.00 has been acknowledge and admitted by the defendant in an email sent to the plaintiff (see copy of the email produced marked with the letter 'D').
19. The plaintiff also stated in the evidence that he spent some AUD\$3,000.00 for the safety reflectors and he claims the reimbursement of that sum. Mr David Brown, a current Director of the defendant company approved, through email sent to the plaintiff on 15 October 2009, the plaintiff's undertaking of reflector project with the assurance

that the money used in the funding of the project would be reimbursed at the later date, see a copy of the email marked with the letter 'E'.

20. It is also evidence of the plaintiff that, the defendant company requested him to travel to Fiji and promised that all his travel expenses would be reimbursed. This is evidenced by an email sent to the plaintiff by Viki Brown (see, a copy of the email marked with the letter 'F').

21. All evidence given by the plaintiff has been supported by documents, i.e. by email correspondences. He has given black and white evidence in respect of his claim. And more importantly the plaintiff's evidence stands unchallenged. As such, I have no reason to disregard his evidence. I therefore accept evidence adduced by the plaintiff via affidavit. I am satisfied that the plaintiff has proved his case on balance of probability. There has been no defence for the defendant company to the plaintiff's claim. I accordingly give judgment for the plaintiff in the sum of AUD\$308,800.00 which sum comprises AUS\$300,000.00 being the sum remitted into the defendant company for investment, AUD\$3,000.00 for the reimbursement of safety reflectors and AUD\$5,800.00 for reimbursement of travel and accommodation expenses spent by the plaintiff.

Interest


22. The plaintiff claims flat sum of AUD\$31,500.00 as interest. There is no explanation as to how the plaintiff came by this amount. Nor is there any agreed interest rate. In the absent of any agreed interest rate, the plaintiff is not entitled to flat figure as interest. It would, in my view, be appropriate to calculate interest at the rate of 5%. I accordingly order the defendant company to pay interest on the judgment amount at the rate of 5% to be calculated from the date of writ, i.e. 1.3.2012 till the date of judgment.

Costs

23. The plaintiff seeks cost on a full scale indemnity basis. As a winning party the plaintiff is entitled to the cost of these proceedings. I, taking all the matters into my account, summarily assess the cost at \$2,500.00. I accordingly order the defendant company to pay the summarily assessed cost of \$2,500.00 to the plaintiff.

Final Outcome

- (i) There will be judgment in favour of the plaintiff for the sum of AUD\$308,800.00.
- (ii) The defendant will pay interest on the judgment sum at the rate of 5% (p a) to be calculated from the date of writ, i.e. 1 March 2012 till the date of this judgment.
- (iii) The defendant company will also pay summarily assessed cost of \$2,500.00 to the plaintiff.
- (iv) Orders accordingly.


.....4/3/16.....

M H Mohamed Ajmeer

JUDGE

At Lautoka

This 4th day of March 2016

Solicitors:

Lagilevu Law, Barristers & Solicitors for the plaintiff