

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 106 of 2016

BETWEEN : **SHAVEENA KUMARI** of Jinnu Road, Lautoka, Domestic Duties.

PLAINTIFF

AND : **IFTIKAR IQBAL AHMED KHAN** of Lautoka, Barrister & Solicitor,
operating as **IQBAL KHAN AND ASSOCIATES**, Barristers and
Solicitors, Lautoka.

1ST DEFENDANT

AND : **SHAH NEWAZ KHAN** of Lautoka, Senior Law Clerk to **IQBAL KHAN**
AND ASSOCIATES, Barristers and Solicitors, Lautoka.

2ND DEFENDANT

Appearances : Ms F. Shah with Mr Z. Mohammed for the plaintiff
: First defendant in person
: Mr J. Singh for the second defendant

Date of Trials : 31 July 2017

Date of Written Submission : 23 August 2017 (plaintiff), 24 August 2017 (first &
second defendants)

Date of Judgment : 03 April 2018

J U D G M E N T

Introduction

[01] The plaintiff brings her action against the defendants and seeks among other things recovery of a sum of money \$37,000.00, general and pecuniary damages

and costs. Her claim is based on fraud, false misrepresentation and negligence and professional misconduct.

[02] The defendants in their joint statement of defence deny the plaintiff's claim and state that the plaintiff never paid any such amount of money into the first defendant's Trust Account but the plaintiff had informed the defendants that she had intended to an illegal dealing with the seller and the second defendant refused to entertain such request and advised the plaintiff that such dealing was illegal and as such transaction will not be entertained by their law firm.

The Claim

[03] The statement of claim of the plaintiff states as follows:-

1. The plaintiff is a 56 year old widow engaged in domestic duties.
2. The first defendant is a Legal Practitioner of Lautoka and the second defendant is the Senior Clerk to the said law firm.
3. On or about the month of January 2011, the plaintiff intended to purchase Housing Authority lease No. 189954, Lot 35 on DP No. 4128 from one **PREMA WATI NATH** of Surrey, Canada. (Hereinafter referred to as "the said Lease").
4. One Jai Singh, the grandson of the said Prema Wati Nath was the said Prema Wati Nath's agent in Fiji and he directed the plaintiff to visit his solicitors namely the first defendant to draw up the necessary transfer papers.
5. The plaintiff duly visited the first defendant's office and was attended to by the defendants.
6. The plaintiff is an illiterate and at all material times depended upon and acted on the advice of the defendants.
7. The plaintiff and the said Prema Wati Nath having agreed to a purchase price of \$12,000.00 for the said Lease confirmed to the defendants to prepare the necessary Sale and Purchase Agreement and transfer documents.
8. At the request of the defendants, the plaintiff signed the Sale and Purchase Agreement together with the appropriate transfer papers in the defendants' office.

9. The Sale and Purchase Agreement and the transfer papers prepared by the defendants reflected the agreed correct price of **\$12,000.00**.
10. At the request of the defendants by the 31 October 2011, the plaintiff had paid a total sum of approximately \$37,000.00 to the defendants.
11. Upon the plaintiff's query as to why the sum in excess of **\$12,000.00** was required the defendants represented to the plaintiff that the sale price had escalated.
12. By the 31 October 2011, the defendants represented to the plaintiff that the said Prema Wati Nath had resiled from the Sale and Purchase Agreement.
13. The plaintiff as a result of the said notification by the defendants demanded for the refund of all monies paid to the defendants.
14. The defendants failed and refused to refund any of the funds of the plaintiff and in lieu thereof handed to the plaintiff a document which the plaintiff later came to know was an "Acknowledgement of Debt and Undertaking" executed by the said Prema Wati Nath's agent and grandson, Jai Singh.
15. The plaintiff had at no stage any financial dealings with the said Jai Singh and did not at any stage demand for any monies from the said Jai Singh.
16. The defendants volunteered to the said Acknowledgement of Debt to the plaintiff without the knowledge consent or authority of the plaintiff.
17. The plaintiff took the said acknowledgement to another firm of solicitors who filed a claim against the said Jai Singh and the said Jai Singh filed for bankruptcy after the plaintiff had obtained a Judgment against him.
18. The defendants' conduct towards the plaintiff in the matter of the transfer of the said Housing Authority Lease was fraudulent.

PARTICULARS OF FRAUD

- a. Dishonestly obtaining the sum of **\$37,000.00** as purchase price against the agreed purchase price of **\$12,000.00**.
- b. Dishonestly attempting to convert the monies paid by the plaintiff to the defendants as a loan to Jai Singh.

- c. Continuing to demand and receive monies from the plaintiff with the full knowledge that the said Prema Wati Nath had aborted the Sale and Purchase Agreement.
 - d. Dishonestly convincing the plaintiff that the Sales and Purchase Agreement was afoot when in fact it was not so.
 - e. Deliberately and dishonestly misleading the plaintiff whilst acting as the Plaintiff's legal advisor in the matter of the Sale and Purchase of the said Housing Authority Lease.
19. The defendant falsely made misrepresentation to the plaintiff to obtain the sum of \$37,000.00 from the plaintiff.

**PARTICULARS OF FALSE
MISREPRESENTATION**

- f. Falsely stating to the plaintiff that the sale price had increased from \$12,000.
 - g. Falsely stating to the plaintiff that the transfer process was alive when in fact it was not so.
 - h. Continuing to demand and receive monies from the plaintiff in the face of an aborted Sale and Purchase Agreement.
20. The defendants also acted negligently and are guilty of professional misconduct in their dealings with the plaintiff as a client.

**PARTICULARS OF NEGLIGENCE
AND PROFESSIONAL MISCONDUCT**

- i. Acting for both the plaintiff and the Vendor and/or her nominee the said Jai Singh without proper and/or adequate advisement to the plaintiff.
- j. Failing to advise the plaintiff to seek independent legal advice in the first instance when acting for the Vendor and/or her nominee.

- k. Failing to explain any of the documents proffered to the plaintiff in a language capable of being understood by the plaintiff.
 - l. Failing to process the transfer of the plaintiff with due diligence.
 - m. Continuing to demand of the plaintiff and receive purchase monies in the face of an aborted transfer.
 - n. Failing to issue trust account receipts in respect of monies paid by the plaintiff towards the transfer.
 - o. Dishonestly attempting to convert trust monies paid by the plaintiff into an unauthorized loan to Jai Singh.
 - p. Failing to advise the plaintiff of the true status of the transfer and demanding and receiving monies from the plaintiff nonetheless.
 - q. Conducting themselves with deception and dishonest in discharging their duties as a legal practitioner towards the plaintiff.
21. The plaintiff has demanded of the defendants to make good the plaintiff's loss and the defendants have failed so to do.
22. By reason of the defendants fraudulent and deceptive and negligent conduct the plaintiff has suffered loss and damages.

The Defendants' case

[04] The defendants in their joint statement of defence plead:

"

1. *That the Defendants are unaware of the contents of paragraph 1 of the Statement of Claim and therefore cannot admit or deny the same.*
2. *That the Defendants admit paragraph 2 of the statement of claim.*
3. *That the Defendants admit paragraph 3 of the Statement of claim.*
4. *That the Defendants deny paragraph 4 of the Statement of Claim and puts the Plaintiff to strict proof of the allegations contained therein.*
5. *That as to paragraph 5 of the Statement of Claim the Defendants deny the allegation contained therein and the 1st Defendant had no contact with the Plaintiff as claimed by the Plaintiff.*

6. *That as to paragraph 6 of the Statement of Claim, the Defendants strongly deny the same and further state that the Plaintiff was explained thoroughly in Hindustani language and also given proper legal advice as well.*
7. *That the Defendants admit paragraph 7 of the Statement of Claim.*
8. *That the Defendants deny paragraph 8 of the Statement of Claim and further state that the Plaintiff had requested the Defendants to release all the documents to Jai Singh who was going to send all necessary documents to his grandmother Prem Wati Nath in Canada for execution and witnessing by an independent Solicitor.*
9. *That the 2nd Defendant admits paragraph 9 of the Statement of Claim.*
10. *That the Defendants strongly deny paragraph 10 of the Statement of Claim and further state that the Plaintiff never paid any such amount of money into the 1st defendant's Trust Account but the Plaintiff had informed the Defendants that she had intended to [so] an illegal dealing with the seller and the 2nd Defendant refused to entertain such request and advised the Plaintiff that such dealing was illegal and as such transaction will not be entertained by the said law firm.*
11. *That the Defendants strongly deny paragraph 11 and puts the Plaintiff to strict proof of the allegations contained therein.*
12. *That the Defendants deny the contents in paragraph 12 and 13 of the Statement of Claim and further puts the Plaintiff to strict proof the same.*
13. *That the Defendants deny the contents in paragraph 14 of the Statement of Claim, and further state that no such monies were deposited into 1st Defendant's Trust Account. The 2nd Defendant further states that the Plaintiff and one Police Officer Tuitai arrested Jai Singh and brought him to 1st Defendant's office and requested to prepare an Acknowledgment of Debt. The 2nd Defendant prepared the said document and gave it to the Plaintiff and the said Police Officer.*
14. *That the Defendants strongly deny paragraph 15 and put the Plaintiff to strict proof of the allegation and further states that after we refused to entertain the Plaintiff's illegal dealing she started dealing directly with Jai Singh regarding the payment of the said purchase price.*
15. *That the Defendants strongly deny paragraph 16 of the Statement of Claim and put the Plaintiff to strict proof of the allegations and further states that the 2nd Defendant only drafted the said documents.*
16. *That the Defendants are unaware of the allegations contained in paragraph 17 of the Statement of Claim and therefore cannot admit or deny the same.*

17. That the Defendants deny the contents in paragraph 18 and strongly deny and say as follows:

- (a) That the said contents is false and mischievous
- (b) That the said content is misleading, false and frivolous and vexatious.
- (c) That the said content is impish and bogus.
- (d) That the said content is false and mischievous.
- (e) That the Defendants never misled the Plaintiff and puts her to strict proof of the allegations.

18. That the Defendants strongly deny paragraph 19 of the Statement of Claim and puts the Plaintiff to strict proof of the allegations and further states as follows:-

- (f) Denies falsely stating to the Plaintiff that the Sale price has increased from \$12,000.00 as alleged or at all.
- (g) Denies falsely stating to the Plaintiff that the Transfer process was alive when in fact it was not so as alleged or at all.
- (h) Denies continuing to demand and receive monies from the Plaintiff in the face of an aborted Sale and Purchase Agreement as alleged or at all.

19. That the Defendants strongly deny paragraph 20 of the Statement of Claim and puts the Plaintiff to strict proof of the allegations and says as follows:

- (i) That it was the Plaintiff who insisted to include Jai Singh in the said dealings and she also approved that the latter to be an agent on behalf of his grandmother Prema Wati Nath. In addition, the Defendants only acted for the purchaser in the said transaction.
- (j) That the Defendants deny Failing to advise the Plaintiff to seek independent legal advice in the 1st instance when acting for the Vendor and/or her nominee as alleged or at all.
- (k) That the Defendants deny Failing to explain any of the documents proffered to the Plaintiff in a language capable of being understood by the

Plaintiff as alleged or at all and further says that the 2nd Defendant had explained the transaction in Hindustani language which was fully understood by the Plaintiff.

- (l) That the said contents are impish, bogus, mischievous and false and put the Plaintiff to strict proof of the allegations.*
- (m) That the Defendants deny continuing to demand Plaintiff and receive purchase monies in the face of an aborted transfer as alleged or at all.*
- (n) That the Defendants deny receiving any monies in the trust account and as such no receipt can be issued as a matter of common sense.*
- (o) That the Defendants completely deny the allegations contained and put the Plaintiff to strict proof of the same.*
- (p) That the Defendants completely deny the allegations contained and put the Plaintiff to strict proof of the same.*
- (q) That the Defendants completely deny the allegations contained and put the Plaintiff to strict proof of the same.*

20. That the Defendants strongly deny paragraph's 21 and 22 of the Statement of Claim and put the Plaintiff to strict proof of the same."

Reply to Statement of Defence

[05] In reply to the statement of defence file by the defendants, the plaintiff states that:

"

- 1. In reply to paragraph 5 of the Statement of Defence the Plaintiff says that whilst the 1st Defendant, did not physically attend to her, his staff attended to her.*
- 2. The Plaintiff takes issue with paragraph 6 of the Statement of Defence and requires the Defendants to disclose full particulars of the Defendants staff who are alleged to have explained to the Plaintiff the documents in questions in the Hindustani language.*
- 3. The Plaintiff categorically denies the allegations in paragraph 8 of the Statement of Defence and further says that it was the Defendants acting as Prema Wati's solicitor who undertook to attend to all transfer matters.*
- 4. The Plaintiff categorically denies the allegations in paragraph 10 of the Statement of Defence and further says that she is an illiterate widow and has no grasp of*

legal or illegal conveyancing and at all material time wholly relied on the Defendants projected honesty and integrity which proved otherwise.

5. *The Plaintiff, further in answer to paragraph 10 of the Statement of Defence says that the 2nd Defendant acting as a servant and agent of the 1st Defendant insisted on cash payments every time and in response to the Plaintiff's request for an Official Trust Account receipt was advised that a hand written receipt was better than a formal receipt.*

The 2nd Defendant did not at any time explain the contents of the hand written receipts.

6. *The Plaintiff joins issue with paragraph 11 of the Statement of Defence.*
7. *The Plaintiff joins issue with paragraph 12 of the Statement of Defence.*
8. *In answer to paragraph 13 of the Statement of Defence the Plaintiff repeats all monies were handed to the Defendants by way of cash and the Defendants failed to issue the appropriate Trust Account receipt.*
9. *Further in answer to the rest of the allegations in paragraph 13 of the Statement of Defence the Plaintiff says as follows:*

- (a) *On or about the month of October, 2011 the Defendants advised the Plaintiff that the sale had fallen through where upon the Plaintiff asked for a full refund from the Defendants.*

- (b) *The Defendants response was that they were Prema Wati's lawyers and they could not go against her and no monies could be refunded to her.*

- (c) *The Plaintiff there upon reported the matter to the Police against the Defendants by way of a complaint against the Defendants for obtaining certain monies by deception.*

- (d) *The Lautoka Police sent one officer Tui Tai to investigate and this officer brought the Plaintiff and one Jai Singh (Prema Wati's grandson) to the Defendants for a confrontation.*

- (e) *The Defendants falsely told the said officer that the matter was settled and for the police investigation to be closed. The Defendants proffered the Plaintiff with a document which she later came to know was an acknowledgement of Debt from Jai Singh.*

- (f) *The Plaintiff did not instruct or authorize the Defendants to draw up the aforesaid documents.*

- (g) *The Defendants then told the Plaintiff to take the aforesaid documents to another Law Firm, namely Natasha Khan & Associates and they will advise the said law firm further on the matter. The Plaintiff did as advised by the Defendants.*
10. *The Plaintiff categorically denies the allegations in paragraph 14 of the Statement of Defence and further says that there was no illegal dealing as she relied at all material times on the advice of the Defendants and this is reflected by the receipts issued by the 2nd Defendant.*
11. *The Plaintiff in answer to paragraph 15 of the Statement of Defence repeats the contents of paragraph 9 of her Reply Statement of Defence herein.*
12. *The Plaintiff joins issue with the Defendants in response to paragraph 16 of the Statement of Defence and further says that it was the Defendants who advised her to see Natasha Khan & Associates.*
13. *The Plaintiff joins issue with the Defendants in respect of paragraph 17 of the Statement of Defence.*
14. *The Plaintiff joins issue with the Defendants in respect of paragraph 18 of the Statement of Defence.*
15. *In answer to paragraph 19 of the Statement of Defence the Plaintiff says as follows:*
- (i) *The Plaintiff categorically denies the allegations in sub paragraph (i) of the Statement of Defence. The Plaintiff was informed by the Defendants that the said Jai Singh was in occupation of the property to be sold and also the agent in Fiji for the said Prema Wati and there was no question of the Plaintiff's approval or otherwise.*
- (ii) *The Plaintiff in response to sub paragraph (j) of the Statement of Defence joins issue with the Defendants.*
- (iii) *The Plaintiff denies that the 2nd Defendant correctly explained the contents of the material documents to her as alleged in sub paragraph (k) of the Statement of Defence.*
- (iv) *The Plaintiff joins issue with the Defendants in response to sub paragraphs (l) to (g) inclusive of the Statement of Defence.*

The PTC

[06] The Minutes of Pre-Trial Conference agreed between the plaintiff and the defendants pursuant to Order 34 Rule 2 (4) contain the agreed facts and the agreed issues.

The Agreed Facts

[07] The agreed facts are as follows:

1. Messrs **Iqbal Khan & Associates** prepared the **Sale and Purchase Agreement** dated 10th February, 2011 between the Plaintiff and one Prema Wati Nath.
2. The subject matter of the sale was Housing Authority sublease No. 189554; being a residential property situate in Lautoka.
3. The sale price was \$12,000.00 (Twelve Thousand Dollars).
4. **The Defendants** prepared the actual transfer document dated the 15th April 2011.
5. The **Plaintiff paid** certain monies **at the office of the Defendants**.
6. No consent was granted by the Housing Authority to the sale.
7. The Plaintiff complained to the Lautoka Police about the dealing with Prema Wati Nath and the Defendants.
8. **The Defendants** prepared the **acknowledgement of Debt and Undertaking** for one Jai Singh to the Plaintiff dated 31st October 2011.”
[Emphasis provided]

The Agreed Issues

[08] The following agreed issues have been raised by the parties for determination by the court:

1. Whether Prema Wati Nath had cancelled the sale as at 7th February, 2011 and whether the Defendants knew of this fact.
2. Whether the Defendants completed the transfer to the Plaintiff.
3. Did the Defendant act for one party only that is, the Plaintiff or did they act for both parties that is the Vendor and the Purchaser.
4. The amount of fees paid by the Plaintiff to the Defendants.
5. The amount of fees paid by the Vendor, Prema Wati Nath and/or her grandson Jai Singh to the Defendants.
6. How was confirmation of sale details received by the Defendants from either Prema Wati Nath [or] and the Plaintiff?
7. The name or names of Parties who confirmed the sale details.
8. How was the Sale and Purchase agreement and Transfer documents despatched to Prema Wati Nath.
9. When were the Sale and Purchase agreement and Transfer document despatched to Prema Wati Nath.
10. Was the Transfer documents submitted to Housing Authority for grant of consent and if so, when was it done.
11. What was the follow up with Housing Authority on the consent issue of the Sale and Purchase agreement and the Transfer.
12. Was there any stamp duty paid on the Sale and Purchase agreement and the Transfer.

13. Original of Housing Authority Lease No. 189554, when and how in custody of Defendants.
14. Original of Housing Authority Lease No. 189954, when and how released to Prema Wati Nath.
15. When and How transfer aborted by Prema Wati Nath and if so when and how communicated to the Defendants.
16. Did the Defendants give Notice of failed Transfer to the Plaintiff and if so how and when.
17. What if any, remedial steps taken by the Defendants to complete transfer.
18. Amount of fees charged for transfer and paid by the Plaintiff.
19. Refund of fees if any, for the failed Transfer.
20. Amount of monies paid by the Plaintiff in the Defendants office.
21. The role if any played by the Defendants in the purported loan payments by the Plaintiff to one Jai Singh.
22. Under whose instructions and the basis for the Defendants to draw a[n] Acknowledgement of Debt and Undertaking by one Jai Singh.
23. Did the Defendants have the said undertaking stamped and if so when.
24. The fees if any charged by the Defendants for the drawing up and execution of the said Acknowledgment of Debt and Undertaking.
25. Was the said Acknowledgement of debt and undertaking explained to the Plaintiff and if so by whom.

26. The nature of the police enquiry with the Defendants and the Defendants response if any to the police enquiry.
27. Did the Defendants commit fraud against the Plaintiff.
28. Did the Defendants make false representation to the Plaintiff in the matter of the transfer.
29. Were the Defendants Negligent in handling the transfer for and on behalf of the Plaintiff.
30. Did the Defendants at any material time place themselves in a position of conflict vis-a-vis the interests of the Plaintiff and if so what if any steps taken to remedy the potential or actual conflict of interest.
31. In the event it is adjudged that the Defendants are liable to the Plaintiff then the measure of damages.
32. Costs to the successful Party and whether on the Higher Scale.

The Evidence

Plaintiff

[09] The plaintiff called five witnesses in support of her claim.

PW1

[10] Shaveena Kumari (PW1) in her evidence in chief states:

- a. *“My husband died in 2003. Education class 3. I don’t understand English. I am the plaintiff in this action. (Plaintiff points to 2nd defendant as Mr Iqbal Khan). I am claiming damages against them. Janend Kumar’s my brother. He is a taxi driver. He looked for a house. He (Jay Singh) told Janend he is selling a house for his grandmother-price was \$12,000. I met Janend. She wanted it quickly. Jay*

Singh asked to go to Iqbal Khan & Associate. My lawyer was Vijay Naidu. They told me Vijay Naidu is charging high. We all went to Iqbal Khan. The person I met introduced me as Iqbal Khan. I did not talk to the first defendant. I was dealing with the 2nd defendant, Shah Newaz Khan. All the time I met 2nd defendant. Every occasion I went to Iqbal Khan's office I met with 2nd defendant.

- b. We paid city rates. I have phone number of Shah Newaz Khan. He gave me some documents. I don't know what time this was. I told Janend pay Jai Singh. Janend gave the receipt to me. Receipts showing \$350.00 city rates. Receipt-lawyer's fees \$350.00 paid to Janend Kumar. \$100 paid for transport. \$200 for sale and purchase agreement (SPA). \$120.00- Water Bills paid. \$366 paid-ground fee. \$700 for Lawyer's fee. Same day \$700.00 paid for lawyer's fee. He asked further \$300.00. I paid that amount. Further \$200.00 I paid. I paid in cash. I paid \$300 for caveat on 7/5/11. Also paid this to 2nd defendant. Total amount to \$1,350.00 – receipt. I paid it to 2nd defendant. He gave receipt within 2 or 3 days when asked. And also receipt for \$7000.00 dated 2/2/11. I paid in cash to 2nd defendant. Janend was there on that occasion. Writing appears as \$4,000.00. I paid \$7,000.00. \$2000 for Housing Authority Sublease. Again \$2,500 for sublease. \$23,000.00 – 6/4/11. I paid to 2nd defendant (\$12,000. & \$11,100.00) \$12,000 one payment. \$11,100.00 paid next day. I was told to collect the receipt later. \$11,100 written by 2nd defendant. I asked for previous receipt. Jai Singh was not there. Janend is not my friend (Receipts P/E-1).
- c. Prema Nath is not my family member. I paid all my money towards the purchase. He asked to return the receipts back. I did not give.
- d. 2nd defendant did not explain me in Hindi. SPA I signed at Iqbal Khan's office. My signature is there. I signed in front of 2nd defendant. He did not explain in Hindi. Mariyam Make Law-I don't know about it. I don't know where their signature is. I only signed in front of 2nd defendant SPA – P/E-2).
- e. Blue document- red stamp was there. P. Nath was written there. No one explained it to me, no one signed after me (PE- 3).
- f. Application for consent-my signature is at the bottom. P. Nath was written. I signed in front of 2nd defendant (PE-4).
- g. The Caveat (PE-5) – I signed in front of 2nd defendant. Not explained to me. No one signed in from of me. I never had possession of the property. I never occupied.

I was never maintaining the property. 2nd defendant lodged the caveat. Iqbal Khan & Associates lodged.

- h. I am buying the property for \$12,000.00. 2nd defendant asked me to pay \$37,000. He said price of the land has gone up. P. Nath I never met at Iqbal Khan's office. I never talked to her over the phone. 2nd defendant told me the sale was cancelled. P. Nath written a letter. I never saw that letter. I asked refund of the money I paid. I was informed to go to Natasha Khan: 2nd defendant lodged the Caveat.*
- i. P. Nath's P O Box No. 3896, Lautoka. I don't know anything about the box. 2nd defendant filed the caveat.*
- j. I never saw P. Nath at the property. I reported the matter to FICAC. They did not do anything. I went to police. We went to 2nd defendant. Jai Singh went inside the office. 2nd defendant did not ask me. They came out. I was given a blue paper and told me to take to Natasha Khan. I went to Natasha Khan with blue paper. 2nd defendant explained to me what that blue paper was (PE-6 Acknowledgement of Debt (Blue Paper)). Natasha Khan told me they will talk to Iqbal Khan & Associates. N. Khan called 2nd defendant. I did not give any documents to Natasha Khan's office. I never gave loan to Jai Singh. Janend and I went to Iqbal Khan's office. The money was not given to Jai Singh.*
- k. Jai Singh and 2nd defendant came to my house and drank grog. They were not my family members.*
- l. Provisional title-I don't know.*
- m. In May 2011, 2nd defendant told me he has given all the money that I gave to Jai Singh.*
- n. I want refund of all the money I paid. Also, General Damages, Indemnity costs of \$53,000. I also ask to refer the matter to DPP for criminal action.*

[11] Under cross-examination by the first defendant, PW1 states that:

- a. She gave instruction to issue writ against the first defendant.*
- b. She said she did not meet the first defendant. This is the first time she meets the first defendant.*
- c. She did not give instruction to the first defendant.*
- d. She did not give any loan. She told her lawyer that she wanted to buy a property.*
- e. She never knew Jai Singh prior to this. He is not her family member and said, 'no' to Jai Singh acknowledgement of Debt.*

- f. *She did not get any judgment of Lautoka Magistrate court. She was not informed of any decision.*
- g. *She said she claims \$37,000 in this court.*
- h. *Writ of summons filed in the Lautoka Magistrate court was marked as D1/E-1.*
- i. *Tab (3) – She paid the 2nd defendant. Receipt was given by Janend. Tab (5) Janend paid for transport (She didn't know what the transport) Tab 6 Janend paid. Tab 9-water bill, Janend paid. She said: 'yes' to the question that whatever money you paid to 2nd defendant you got receipts. Tab 10 - \$300 (Report for a transfer), Tab 11 - \$200 (report by Iqbal Khan & Associates), Tab 10 - \$300 (for caveat)-received receipt, Tab 13 – she paid that money. When suggested that it was signed by Jai Singh? She said: 'No.', Tab 14 \$4,000.00 – she said she paid \$7,000 – Jai did not sign, Tab 15 – Jai Singh signed? "No." Tab 16 – Jai Singh ask - \$12,000 & \$11,000 she paid the money. Tab 18 – SPA explained to you? No. You agreed to purchase for \$12,000? Yes. Tab 19 – you were explained the content of the document? \$12,000 appears. Tab 20 – explained to you? "No." I was only asked to sign. Tab 21 – caveat – explained to you? No. Explained to protect your interest? No.*

[12] PW1 was cross-examined by the second defendant (by himself). He cross-examined by himself. PW1 under cross-examination by the second defendant states:

- a. *You know me very well? No, your grandson and my grandson are school mates.*
- b. *You called me at my place several times? No.*
- c. *You came to my office with Jai Singh? I came. There were no documents.*
- d. *You wanted a black dealing? No. I don't know what the black dealing is.*
- e. *I sent you outside of my office? No, you informed me that the price has gone up.*
- f. *I told you to pay all the sum to Jai Singh? No, you told me to contact Natasha Khan & Associate and you are not my lawyer anymore.*
- g. *I never asked you to file action against Jai Singh in the Magistrates Court? You told me to file action against Jai Singh. Jai Singh was dealing with the solicitor. I did not give evidence in the Magistrates court. It was a consent judgment.*
- h. *You went to Police to lodge a complaint against Jai Singh? I wanted to make complaint against you and Jai Singh. You were called by Police a couple of times.*
- i. *Jai Singh was brought to our office? Yes.*
- j. *You were inside our office? No, I was sitting outside and they came out with the document. I was given a blue document and did not see whether it was signed by Jai Singh. I did not sign the blue paper. Transfer document, I signed. \$37,000 I paid to you personally. The property had some debt. It was claimed by Jai Singh.*

- k. *Jai Singh never made any money and I did not make any money? I don't know who signed the receipt. Jai Singh told me he did not take any money?*
- l. *Original receipts were given to you in front of me? Original receipts were not given. They gave handwritten paper. I was informed all receipts will be given.*
- m. *I never asked the receipts back? You asked paper writings. Who wrote all the receipts? I don't know who signed. Hand written receipts were heavier than the original receipts. It was a copy that I took.*

[13] Under re-examination, PW1 states that:

- a. *A loan to Jai Singh-The second defendant told me to go back to Natasha Khan with blue document. She (Natasha Khan) did not read the statement of claim to me.*
- b. *Natasha Khan told you she will talk to the second defendant about the demand you made? I don't know about that. Natasha Khan did not get any document signed by me to institute proceedings against Jai Singh.*
- c. *I saw the second defendant writing the receipts. Last payment \$4,100.00 was written by second defendant (PW1 pointing to the second defendant). I gave the money to the second defendant. I did see second defendant paying the money to Jai Singh.*
- d. *I did not ask the second defendant why he did not put in Iqbal Khan's Trust account.*
- e. *I know the second defendant as Mr Iqbal Khan, as a lawyer. The second defendant told me 'I am a solicitor', Mr Iqbal Khan. The lady sitting outside told me the second defendant is not a solicitor after making all the payment.*
- f. *I don't have Lease Document of Razak Road home.*
- g. *Black dealings- the second defendant told me the price of the property has gone up. Tuitai went to Iqbal Khan's office? Yes, it happened at Iqbal Khan's office.*

PW 2

[14] Torika Solicake Goreca, Deputy Registrar of Title (PW2) gave evidence for the plaintiff. She in her evidence states:

- a. *The documents have been executed overseas. Notary's seal is in red colour.*
- b. *Tab (1) – transfer from P. Wati (full address is given in the doc). It is in the correct format. Tab 35 – full address is given. P/Ex (7) & P/Ex (8)-Irregularity was there in the document.*

- c. *Red stamp of Stan Mark Scott – it is not a proper N/P’s seal. P. Wati’s Address is not given. The stamp has no full name and correct address.*
- d. *Tab 19 – transfer document of 15 April 2011 (Look at the back of it). It is not same as P/E (7) & (8). Physical address is not there. There is no P. Wati’s full name and address. No alternation could be made after filing. Alteration after filing will invalidate the document. We will accept the seal as correct.*
- e. *A person holding title can apply for provisional title. It must be advertised. After 14 days of the publication, we could issue provisional title. There has been no entry of application for provisional title for the property in dispute (P/E (9)). There could be criminal prosecution as a result. There is no record that P. Wati is residing in Canada.*

Cross-examination by the first defendant

- [15] During the cross-examination by the first defendant, PW2 states that the sale and purchase agreement bears notary public’s stamp. On the face of it we can’t say it is not correct. The transfer document (Tab-19) appears to be correct. We wouldn’t pick it up at the first instance. It has been the practice for a number of years that notary public’s seal must contain the name and address.
- [16] PW2 was not cross-examined by the second defendant. PW2’s evidence stands unchallenged as against the second defendant.
- [17] In re-examination, PW2 states that the notary public is from British Columbia. British Colombia is not in the seal. Surrey Canada is very large place. No street name or street number is given in the seal.

PW 3

- [18] Janend Kumar (PW3) was the third witness for the plaintiff. He in his evidence states:
 - a. *Shaveena Kumari is my cousin. In 2011, I was driving taxi. She asked me to look for a house. I took her to Jai Singh, Razak Road. He said his grandmother wanted to sell her house for \$12,000. Jai Singh confirmed the price.*

- b. *We went to Iqbal Khan's office (Witness pointing to the 2nd defendant as Iqbal Khan's lawyer). They told me he's the lawyer. I did not meet Iqbal Khan.*
- c. *Jai Singh went inside the office. Newaz Khan told Shaveena to clear town rates and water bills. Before the agreement, the bills were paid, \$364 for town rate. I paid to Jai Singh in cash. It was informed to clear the city rate (Tab-4)*
- d. *I did not know Jai Singh in 2010. I paid it to Jai Singh. He asked the money. I paid, he gave me the receipt. \$100 paid for transport to Jai Singh. I gave the receipt to Shaveena Kumari (SK) and \$300 for sale and purchase agreement.*
- e. *On 27/1/11, Shaveena did not sign. \$100 was paid for water bill. Shaveena was not living on Razak Road.*
- f. *Ground rent of \$366.00- I gave to Jai Singh. \$700.00 for lawyer's fee to Jai Singh. I gave all the receipts to Shaveena.*
- g. *I accompany Shaveena to 2nd defendant's office. She got the receipt after 2 days.*
- h. *In May 2011, the 2nd defendant told Shaveena that SPA was cancelled. The 2nd defendant told me Iqbal Khan cannot act for Shaveena as they are Jai Singh's lawyer.*
- i. *They told me Vijay Naidu lawyers charge too much and we told him we have paid for lawyer. The 2nd defendant suggested lodging a caveat. I paid \$300 for that. The 2nd defendant gave the receipt (Tab 21).*
- j. *Shaveena was not living at Razak road.*
- k. *I took Shaveena to FICAC and to police. Police officer Tuitai took us (Shaveena and me) to 2nd defendant's office. We were sitting outside the building. I did not meet P. Wati. I did not know she's in Canada. They gave Shaveena a blue paper. I was told by Iqbal Khan's associate to take the document to Natasha Khan.*
- l. *Shaveena did not give loan to Jai Singh.*

Cross-examination by the 1st defendant

[19] In cross-examination by the 1st defendant, PW3 sates:

- a. *I gave money to the 2nd defendant for the land in cash in two instalments- 1st - \$1,300. I can't recall the date I was in Iqbal Khan's Associates' office, 2nd - \$7,000 something. I can't recall. Shaveena paid not me. I paid to Jai Singh.*
- b. *Shaveena got money from the sale of her house. I was drawing money from bank to pay Jai Singh. I accompany her to withdraw money from her account. \$37,000*

was paid by Shaveena. Shaveena did ask for receipt. She was told to pick the receipt later. She picked the receipt later.

- c. I went to Iqbal Khan's office 2 or 3 times for the receipts. I was told this is the office of Iqbal Khan Associate. There was no sign board. I was shown the 2nd defendant as Iqbal Khan. A boy – Junior told he is Iqbal Khan.*
- d. The 2nd defendant told me he is Iqbal Khan and introduced him as a lawyer.*

Cross-examination by the 2nd defendant

[20] PW3 was cross-examined by the 2nd defendant as well. Under cross-examination by the 2nd defendant PW3 states:

- a. 1st day, I went to Iqbal Khan's office. We inquired when you told me you are a lawyer.*
- b. When asked that you tell you paid \$37,000, he replied: Yes.*
- c. I paid to Jai Singh got receipt.*
- d. Shaveena receives the receipts two days later. Shaveena paid all the money to you (2nd defendant).*
- e. To the suggestion that on 28/2/11 I gave document, PW3 said: No, none of the documents was given to us.*
- f. First time when we visit, you (2nd defendant) told me that you are Mr. Iqbal Khan and that \$12,000 was agreed.*
- g. Later you told me that the price was gone up.*
- h. PW3 said: No, when it was put to him that you wanted black dealing – under the table. He further said that you are a lawyer how we can do that.*
- i. Q: I acted for Shaveena Kumari? A: We were informed they (you) are acting for Jai Singh.*
- j. Separate receipts were issued for legal fees. Jai Singh did not tell legal fees was paid or not.*
- k. He said: You have taken the money. You must act for us. I did not see you writing a receipt.*

Re-examination

[21] I did not know about the Trust Account. We were told the SPA was cancelled. Iqbal Khan started crying. All the money was paid to 2nd defendant. We don't

know where the money had gone. We wanted to buy the house for \$12,000. It was the 2nd defendant who came with the blue paper for \$37,000. I did not tell anything about under the table dealing.

PW 4

[22] Amit Ashish Raj, Manager Lending, Housing Authority, Lautoka was the fourth witness for the plaintiff (PW4). PW4 in his evidence states:

- a. *I am in charge of the file No. 189954 (P. Wati) (P/E 10).*
- b. *Tab 26 – we received it. No envelope. No entry when the letter was received. It was on the file before 15/4/11.*
- c. *Iqbal Khan & Associate had applied for consent for transfer. Tab 20 – consent-we have a copy on the file on 16/4/11. Letter dated 15/4/11 (receipt 951016) that the receipt number \$110 fee had been paid. (Receipt shown) it is issued from our office. We accept we received the document on 15/4/17. The transfer document is post-dated, a Saturday.*
- d. *Tab-25 – a letter from Iqbal Khan & Associate, signed by Newaz Khan.*
- e. *The original document seeking consent is in our file (P/E-11).*
- f. *The dealing has been cancelled by a Phone call from Iqbal Khan & Associates. No date when the phone call was made.*
- g. *The SPA (Tab-18) is dated 10/2/11 and cancellation is dated 7/2/11. The cancellation has been done before the sale and purchase agreement. All 3 documents were dated after 7/2/11. After cancellation they can't execute the Transfer (P/E-12 & 13).*

Cross-examination by the first defendant

[23] Under cross-examination by the 1st defendant, PW4 states that cheque of \$110 was signed by Iqbal Khan & Associates. I can't say when the cancellation was made orally.

Cross-examination by the 2nd defendant

[24] All documents must have a date. The cancellation should have been done by the person who obtained the consent.

Re-examination

- [25] PW4 in his re-examination states that the original letter has come from Iqbal Khan's associate (Tab-19). The original transfer document has not been dated. Consent is valid for 3 months. (Original transfer tendered as P/E-13). In this case consent was not granted.

PW 5

- [26] The last witness for the plaintiff was Narend Michael (PW5). PW5 in his evidence states that:

- a. *J. Singh aka Junior of Razak Road, I know him more than 35 years. (Witness identifies J. Singh). On a Monday I was waiting outside. Mr Iqbal Khan approached J. Singh three times. He was very angry and frustrated at that time. He told him he want to go with him. The judge wants him in his chambers. Also I asked him to accompany in his van. On 18/7/17, I met J. Singh inside of a vehicle. I told him I am going to meet Haroon Ali Shah. We went to Haroon Ali Shah's office in his vehicle. He told me he has got a high court case and needs some clarification. At the office he wanted to ask about subpoena.*
- b. *(BOD – Tab 13 – 17 shown) He was shown all the documents. J. Singh denied signing those documents. He showed his signature. He said other signatures are not his he signed twice on a piece of paper and showed to us. (The piece of paper shown identified and marked as P/E-13).*
- c. *J. Singh was also shown a blue paper (P/E-6). He denied signing that document. He denied taking \$37,000 from Shaveena Kumari. He said he signed a paper in front of Mr Khan (2nd defendant-pointing out to 2nd defendant) and a police officer was waiting outside. He said he was threatened that he will be taken later to police station if he refused to sign. He told Mr H.A Shah he received \$17,000 on three separate occasions. (1st & 2nd & \$5000 each next payment \$7000). He did not tell he received money from Newaz Khan not from Shaveena Kumari.*

Cross-examination by 1st defendant

- [27] During cross-examination by the 1st defendant, PW5 states that: You (1st defendant) did ask me to come to your office. There was no conversation. You

(1st defendant) said you will take them to judge's chambers. I am not telling lie. I was not convicted for dishonesty. That was for robbery with violence 17 years ago. I volunteered to go to Haroon Ali Shah. At that time I did not know he is defendant's witness. He showed the subpoena to Mr Zoyab Mohammed. I don't know whether it was recorded or not by Mr Zoyab. I heard the conversation between them. Sample signature signed in front of Mr Zoyab. J. Singh did not show anything else. Mr Zoyab showed the receipts. He (J. Singh) accepted that he signed three times while he received the money. (Tab 13-17 shown) I was not watching the figures, only the documents. I did not persuade him to change the story. Q: *You threatened J. Singh?* A: *It is not true. If so, he would have gone to Police.* He stays with me. He works with me. (PE -15 shown) – It was signed in my presence. I did not sign this. It was written by Mr Zoyab Mohammed.

Cross-examination by 2nd defendant

[28] In the cross-examination by the 2nd defendant, PW5 states:

- a. *"Q: On 18/7/17, you and J Singh went to your Lawyer's office? A: Yes.*
- b. *I did not have any conversation. All the time I did not know he (J. Singh) will be the defence witness. Jaswant Singh is him (J. Singh). At lawyer's office, I came to know about this case. Shaveena Kumari was not mentioned there.*
- c. *Q: You took him to our lawyer? A: Not correct. Q: You were already aware of the case? A: Not correct.*
- d. *J. Singh told me he did not sign the documents. I did not look at any of the receipts. I did not know what document was shown to Mr Zoyab Mohammed. After returning the document, J. Singh denied. I do not know which document.*
- e. *I did not see handwritten receipts. J. Singh signed 2 times in front of me (original of PE-15).*
- f. *(of blue paper) I did not sight the document shown to J. Singh and he denied.*
- g. *I know J. Singh for 35 years, since his birth. He is my nephew. Relationship is up and down. J. Singh respect me. He told me about the subpoena or the case at Lawyers office. During the conversation, I heard J. Singh (admitting) receiving \$5,000, \$5000 and \$7000. I was told he was given a loan by Newaz Khan (2nd defendant).*
- h. *Q: J. Singh never said he is under threat by Mr Iqbal Khan? A: That is what J. Singh said to me.*

- i. *I have no authority over J. Singh.*
- j. *It is absolutely not true that I persuaded J. Singh to change the story.*
- k. *It is not correct that I took him to lawyers office after hearing very well of the case."*

Re-examination

- [29] During the re-examination PW5 states that: "The subpoena was shown on 21/7/17. I was present at the Lawyer's office on the day. I saw J. Singh signing two signatures. J. Singh was telling about a lot of receipts and he denied (Tab 24 as P/E-16, Tab 25 as P/E-17 and Tab 28 as P/E-18).
- [30] In addition, the plaintiff in support of her claim exhibited some 26 documents out of the Agreed Bundle of Documents namely:

PLAINTIFF'S LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION OF EXHIBIT TENDERED</u>
<i>PE1</i>	<i>Tab 3-17</i>
-	<i>1st Receipt from Jai Singh to Janend Kumar dated 24/1/2011 (Receipt No. 11478) for City Rates - \$364.00</i>
-	<i>2nd Receipt from Jai Singh to Janend Kumar dated 25/01/10 (Receipt No. 11479) for Lawyers Fee - \$350.00.</i>
-	<i>3rd Receipt from Jai Singh to Janend Kumar dated 25/1/2010 (Receipt No. 5005) for Transport - \$100.00.</i>
-	<i>4th Receipt from Jai Singh to Janend Kumar dated 27/1/2011 (Receipt No. 5006) for Sale & Purchase Agreement - \$200.00.</i>
-	<i>5th Receipt from Jai Singh to Janend Kumar dated 27/1/2011 (Receipt No. 5007) for Water Bill - \$120.00</i>
-	<i>6th Receipt from Jai Singh to Janend Kumar dated 27/1/2017 (Receipt</i>

	No. 5008) for Ground Rent \$366.00.
-	7 th Receipt from Jai Singh to Janend Kumar dated 21/1/2011 (Receipt No. 5009) for Lawyers fee - \$700.00.
-	Receipt from Iqbal Khan & Associates to Shaveena Kumari dated 27/1/11 (Receipt No. 1226) for deposit transfer - \$300.00
-	Receipt form Iqbal Khan & Associates to Shaveena Kumari dated 28/1/11 (receipt No. 1230) for Transfer - \$200.00
-	Plain Receipt from Iqbal Khan & Associates to Shaveena Kumari dated 17/5/11 (Receipt No. 052) for costs of Caveat - \$300.00
-	Receipt issued by Shah Newaz Khan to Shaveena Kumari dated 31/1/11 \$1350.00 towards purchase price of Housing Authority Sub-Lease No. 189954.
-	Receipt handed by Shah Newaz Khan to Shaveena Kumari dated 2/2/11 \$7000.00 (\$4000.00) towards purchase price of H/A Sub lease No. 189954.
-	Receipt handed by Shah Newaz Khan to Shaveena Kumari dated 7/2/11 - \$2000.00 towards purchase price of H/A Sublease No. 189954.
-	Receipt handed by Shah Newaz Khan to Shaveena Kumari dated 25/2/11 - \$2300.00 towards purchase price of H/A Sublease No. 189954.
-	Receipt handed by Shah Newaz Khan to Shaveena Kumari dated 6/4/11 - \$23,100.00 towards purchase price of H/A Sublease No. 189954.
	Tab 18
PE2	Sale & Purchase Agreement dated 10/02/11 between Prema Wati Nath and Shaveena Kumari prepared by the Defendants.
	Tab 19

PE3	<i>Transfer from Prema Wati Nath to Shaveena Kumari dated 15/4/11.</i>
	Tab 20
PE4	<i>Housing Authority's Application for consent to Transfer dated 16/4/11.</i>
	Tab 21
PE5	<i>Caveat prepared by Defendant's for Shaveena Kumari dated 17/5/11.</i>
	Tab 27
PE6	<i>Acknowledgment of Debt & Undertaking dated 31/10/11 prepared by Iqbal Khan & Associates and signed by Jai Singh.</i>
PE7	<i>Transfer from Jaswant Singh to Prema Wati Nath (Tab 1).</i>
PE8	<i>Notice of Caveat Forbidding any dealings (Tab 31).</i>
PE9	<i>Recent Certified True Copy of Housing Authority Sub-lease No. 189954 (Tab 2).</i>
P10	<i>Transfer from Jaswant Singh to Prema Wati Nath (Tab 1)</i>
P11	<i>Original Application for Housing Authority Consent to Transfer.</i>
P12	<i>Letter dated 15/4/11 from Iqbal Khan & Associates to H/A, Lautoka for grant of consent. (Tab 25).</i>
P13	<i>Letter dated 7/2/11 allegedly from Prema Wati Nath to Registrar of Titles and copied to Legal Section H/A, Lautoka and the Director of Lands Dept, Lautoka (Tab 26).</i>
P14	<i>Original Transfer of Housing Authority Sub-lease No. 189954 undated.</i>
P15	<i>Specimen signatures of Jaswant Singh 18/7/17.</i>
P16	<i>Affidavit of Shaveena Kumari in support of Application to admit by way of Affidavit hearsay Evidence (Tab 24)</i>
P17	<i>Notice of Admit Facts (Tab 28)</i>
P18	<i>Interrogatories (Tab 29)</i>
P19	<i>Response to the Interrogatories filed on 5th July 2017 (Tab 30)</i>

<i>P20</i>	<i>Notice of Caveat Forbidding any dealing (Tab 31)</i>
<i>P21</i>	<i>Affidavit of Shaveena Kumari filed on 19th July 2017 (Tab 32)</i>
<i>P22</i>	<i>Request for Provisional Title (Tab 33)</i>
<i>P23</i>	<i>Letter dated 11/7/17 from Fazilat Shah Legal to Iqbal Khan & Associates (Tab 34)</i>
<i>P24</i>	<i>Pink File for client: Shaveena Kumari with entries.</i>
<i>P25</i>	<i>Procedural Outline of How to Apply for a Provisional Title.</i>
<i>P26</i>	<i>Blue Document: Request for Provisional Title.</i>
<i>DE1</i>	<i>Writ of Summons filed in Magistrate's Court, Order dated 21/11/12. JDS dated 2/7/13, O/Commitment.</i>

Defendants' Evidence

- [31] At the close of the plaintiff's case, the court called for defence evidence. Then first the defendant sought a five-minute break. The court accordingly adjourned the proceedings for five minutes.
- [32] When the court resumed the proceedings after the break, the first defendant who is a legal practitioner advised the court that he is calling no witnesses.
- [33] However, the second defendant informed the court that he wishes to give evidence and call one witness in support of his case. The second defendant called two witnesses namely, Shah Newaz Khan, the second defendant (*DW1*) and Jai Singh (*DW2*).

DW 1

- [34] *DW1* is a clerk for Iqbal Khan & Associates for 13 years. He first worked for Prasad, Chaudhry & Associates; and thereafter for Haroon Ali Shah. Currently he is the chief clerk for Iqbal Khan & Associates. He has 42 years of paralegal service. He does documents. That is his scope of work. He in evidence states that:

- a. *“Shaveena Kumari is a client of Iqbal Khan & Associates for 10 years. She came to me sometimes in January 2011 accompanied by J. Singh & Parvin Kumar. J. Singh same witness as last witness for plaintiff to transfer the property of P. Wati Nath to Shaveena Kumari.*
- b. *J. Singh is the grandson of P. Wati.*
- c. *It is a Housing Authority property at Razak Road. I was representing Shaveena Kumari considering \$12,000 in documents.*
- d. *SPA & transfer document, P/E-2 & P/E-3 shown and he confirms). P. Wati is in Canada. J. Singh & Shaveena are the seller & the buyer.*
- e. *I attended to all the procedures. In 2011, I prepared, executed, witnessed and lodged for consent from Housing Authority (H/A). SPA and Transfer are in correct form.*
- f. *(P/E-3) shown and DW1 says correct) P. Wati did not sign in my office. I gave it to J. Singh to get it signed by Prema Wati Nath. After receiving I lodged for consent at Housing Authority (P/E-4 shown. DW1 says correct).*
- g. *Upon inquiry, I was informed that consent was stopped.*
- h. *Original Housing Authority document was not provided to me only certified copy was provided (P/E-4) shown. DW1 says correct). J. Singh provided the documents.*
- i. *They insisted us they wanted a black dealing under the table. They wanted to pay cash without mentioning the actual amount.*
- j. *Since the consent was stopped I was not aware of other cash dealing apart from \$12,000. When I gave the document for P. Wati’s signature, Shaveena was present. Four weeks later I received the document back.*
- k. *After 1 ½ weeks, I was told the consent was stopped by P. Wati. I inquired Housing Authority. They said the consent has been stopped.*
- l. *I called Shaveena and J. Singh. Shaveena came. They said they will take the vendor’s signature. J. Singh and Shaveena came back. I informed. Shaveena was shocked and said she had already paid \$37,000.*
- m. *The other day only purchaser came. I advised to put a caveat.*
- n. *I (am) only aware of one receipt of \$1,300, which I witnessed (BOD Tab 13 shown. DW1 says correct). All the payments were already made to J. Singh.*
- o. *J. Singh stopped calling to my office.*

- p. *Shaveena went to police and reported the matter. She came with police officer Tuitai. They asked me an acknowledgement of debt. I prepared that. They mumbled-both the buyer and seller and the police officer (Acknowledgement of Debt (AoD) for \$37,000 (PE-6) shown. DW1 say correct). J. Singh signed and Gita witnessed. Shaveena wanted it (AoD) for \$37,000 as a loan. J. Singh signed the AoD in my present. Shaveena was also present. I never threatened J. Singh to sign. Nobody threatened anybody.*
- q. *P.O Box was true.*
- r. *Shaveena gave instructions to put a caveat.*
- s. *A copy of AoD was given to Shaveena. I was aware of the action Shaveena took. She took to Natasha Khan. Writ of summons and judgment was obtained to be paid \$750 a month. It is a consent judgment.*
- t. *Purchase money is to be paid into Trust account of Iqbal Khan's associate. Trust account did not receive any money in respect of the property. We received some costs and issued receipts. Tab 11 & 12 – yes, fees from Shaveena (Caveat deposit \$1,000) \$300 only paid. No other payment was received either by me or Iqbal Khan & associates.*
- u. *Exchange of money was between Shaveena and J. Singh and not before me.*
- v. *I received writ and statement of claim from High Court asking for \$37,000 for this she has obtained judgment against J. Singh.*
- w. *We subpoenaed J. Singh to be a witness for defence. It was served on him. The day it was served he came to my house at 6 pm. He brought a phone conversation in which Haroon Ali Shah threatening J. Singh. He denied receiving any money. He was threatened that he will be put in jail for 5 years. He was frightened. I told him to come to court and tell the truth.*
- x. *I took an oath- not even one cent from Shaveena Kumari. I seek costs from plaintiff's solicitor.*
- y. *(Tab 14-17 shown). I am not aware of it at all. There is not my signature. Not even my name appears.*
- z. *I never had conversation with Michael about J. Singh."*

Cross-examination by plaintiff

[35] DW1 was cross-examined by the plaintiff. In his cross-examination, DW1 states:-

- a. *"I am a senior law clerk with 42 years of experience.*
- b. *I attended Shaveena and took instructions in January 2011. I have the file in relation to Shaveena. It's there (with me). 1st day-8/2/11 (date of opening the file). I have seen the documents on 9/2/11 (SPA & transfer).*
- c. *I don't have written instructions. No signed authority from Shaveena.*
- d. *I answered the interrogatories on 28/1/11.*
- e. *The transfer document has been dated by vendor's solicitors. Solicitor's name is not there.*
- f. *Both parties signed on 10/2/11.*
- g. *I made a mistake. The file was opened on 27/1/11.*
- h. *Q: You are lying? A: Not lying.*
- i. *27/1/11- Jai Singh tendered some document. I admit there is alteration in the month.*
- j. *Q: The file note date looks like 27/2/11? A: No, 2 has been changed into one (1).*
- k. *18/4/1- 2nd entry (caveat application).*
- l. *9/2/11-document given to J. Singh for execution. It was land sale declaration. It came to us after 3 weeks. That was only date J. Singh gave document.*
- m. *Q: (Did you send) any letters addressing closing the sale document? A: No.*
- n. *Q: Any letter addressing to P. Wati. A: There was an error. I rectified and sent it to P. Wati on 28/1/11. I must have prepared before sending. (Plaintiff's counsel point out the 2nd defendant's outside note).*
- o. *(Outside of his folder) It was written by the girl at the office. Some of the writing are mine. (DW1 reads 15/4 and 2nd entry, lodgement of consent.) I am not sure. The girl did it. There is no endorsement by Shaveena.*
- p. *Q: You gave the documents to Shaveena for signature and now you say the girl gave the document? A: Yes.*
- q. *(DW1 taking a letter out of his file dated 28/1/11) Q: who signed it? A: I signed it. Q: It was to be signed? A: No. Q: It was in the middle of the file? A: Somewhere in the file.*
- r. *Q: Box No. 28969 Lautoka whose is it? A: I do not know whose number is that.*
- s. *Q: Why another Box number 3869 for caveat? A: Shaveena gave the Box number.*
- t. *Q: According to our search (P/E33) that Box number (3869 corresponds a Galadevi Church? A: I am not aware.*
- u. *Q: P. Wati lives in Canada? A: Yes.*

- v. Q: Why did you accept a postal address in Lautoka? A: But it was given to me. I was communicating over the phone. I've never written to her.
- w. Q: Did you have power of attorney of Jai Singh? A: It was oral authority. Anything oral.
- x. Q: When did you talk to P. Wati? A: Never.
- y. No power of attorney for J. Singh given by P Wati who owns the property? A: Yes. They told me to apply for certified copy. J. Singh gave me the certified copy. I am not sure the date of the instructions. It was in January 2011. I prepared. It was signed. I don't agree there are a number of irregularities (plaintiff's counsel referred to the answer to interrogatories, 3.11). I did not have the lease.
- z. Q: Where is your record of instructions for application for Provisional Title? A: They signed. It was together with other document.
- aa. Q: It is not dated on your file? A: I sent together with other document. No reference to provisional title application.
- bb. Q: Is it the Covering letter to P. Wati? A: Yes (Witness reads).
- cc. PW2 admits there is no reference to Provisional Title Application. Provisional Title application was not published in the newspaper.
- dd. Q: Provisional Title application miraculously appears in your file? A: No.
- ee. The provisional title application is attested by same Notary who did transfer document. I am not sure J. Singh forged NP's signature.
- ff. (Tab 35 shown (original) I can see NP's stamp. I can see embossed "British Colombia" (Society of NP, Canada's email-Tab 24 (page 10) was also shown).
- gg. Q: Your stamp does not have all 3 components? A: Yes. (The procedure for applying for provisional title was marked as P/E-25).
- hh. DW1 Accepts that the Notary Public Body, Canada says Stan Mark Scott was never a NP in Canada.
- ii. Q: The SPA (Tab 18) was for \$12,000? A: Yes. We did not received money. Not one cent.
- jj. Q: Shaveena. gave money to you? A: Incorrect. (Tab 13 -31/1/11) The Witnessing signature is mine. Yes, as a loan.
- kk. You would give receipt later? Incorrect. J. Singh receiving money as a loan from Shaveena.
- ll. Q: Where is the file for that? A: No file for the loan.
- mm. That's your writing? Incorrect.

- mn. You got the money? Incorrect. J Singh was there.
- oo. Shaveena educated up to class 3? That's a lie.
- pp. You asked money from Shaveena? Incorrect. It is not my handwriting. I am not sure which loan.
- qq. Why you alleged loan after 10 months? I just prepared.
- rr. Who was your client? Shaveena.
- ss. The Agreement was prepared by you? Yes. All three were present.
- tt. I admit AoD is signed by one party.
- uu. The transfer was cancelled that's why she was shocked and she had paid \$37,000? Shaveena was wrong.
- vv. You were very sure of the amount \$37,000? Shaveena told.
- ww. You know J. Singh very well. He is self-employed. You know criminal charged on J. Singh? Not aware.
- xx. You wanted to protect Shaveena? Yes.
- yy. You are aware of the letter of cancellation (Tab 26)? Not aware of it. Housing Authority informed of it. I went to Housing Authority.
- zz. You failed miserably to advise Shaveena? I advised.
- aaa. Your documents are dated after that cancellation? These documents are dated by NP. Shaveena came to our office and signed on a Saturday.
- bbb. The letter date 15/8/11 is yours? Yes.
- ccc. Tab 20 (Original P/E-11) to be completed by P. Wati. Postal address P O Box 870 Lautoka? Yes.
- ddd. I did not act for both parties. P. O address there is an error. There was no loan agreement between Shaveena and J. Singh.
- eee. Tab no. (3) City rates – I did not ask city rates. Paid by us. \$350 lawyer's fee – I never received. \$200 for SPA. That's ours, we issued receipts but no invoice issued. Tab 9- \$700 not came to our office. Tab 10-\$300 I received, yes. Tab 13 - 17 Received for caveat (Plaintiff's counsel reads the Caveat recital).
- fff. She (Shaveena) was not in possession of the property. She told she is giving time. There is no written instruction for the caveat. There is no invoice for \$300.
- ggg. Each time do you issue receipts? No.
- hhh. You got \$11,100 & \$12,000)? I did not receive. I never got \$23,000. It's incorrect.
- iii. You prepared the document for Shaveena? Incorrect.

jjj. You sent Shaveena to Natasha Khan? Incorrect.

kkk. You spoke to Natasha Khan? Incorrect. I advised her.

lll. Any money you received should have been paid to Trust account? I did not receive any money from Shaveena.

mmm. You did have authority from P. Wati to deal with J. Singh? No.

nnn. You had a duty of care to Shaveena? I have done.

ooo. She lost \$37,000.00. According to Handwriting Expert signatures that appear on your document are not Prema Wati Nath's signature? I was not aware.

ppp. You have not challenged it? No. I don't know Prem Wati's signature. Shaveena did not tell us to sue J. Singh. I explained her in Hindi.

qqq. Why did you put caveat if you did not receive a single cent? I helped her. She cried. We tried our best to help her.

rrr. With lots of oversight, lack of due diligence and irregularities you still maintain you were trying to help Shaveena? Yes

sss. You, Tuitai and Jai Singh went inside of your office? Incorrect.

ttt. You are not aware Shaveena went to FICAC? No. (Request for provisional title tendered marked as P/E 26)

uuu. Do you have the date of entry when Shaveena's document came to your office? No.

vvv. P. Wati wrote cancellation letter to Housing authority? We did not challenge the cancellation. I am not aware she signed the document after cancellation."

Re-examination

- [36] In his re-examination DW1 states that: "File was opened in January 2011, AOP prepared on 31/10/11. Entry details are not noted in my file. I remember the date after 5 years. On 8/1/12, I gave the document for execution to J. Singh, transfer and consent document. I wasn't aware of the requirement of Canada regarding NP's signature. P. Wati's letter to Housing authority-I never found out the letter. Hand writing dated 9/5/16. There is no date of received by Housing Authority. I don't have written instructions from Shaveena. Shaveena paid only the costs. She did not pay me the consideration. Consent was not granted by Housing Authority. That's why I did not lodge the application for provisional title. Tab 38 is a handwritten receipt. I did not receive the money that was brought by Jai

Singh. After the sale was stopped I knew Shaveena paid the consideration. I put a caveat to protect Shaveena's interest. After that AoD was prepared. Receipts were given for legal fees. I have not concocted to take money out of Shaveena. Shaveena was with us when I prepared the AoD.

DW 2

[37] Jai Singh was the second witness (DW2) for the defendants. His evidence is that:

- a. *"Shaveena - I know her now. I have not seen her in 2011 but know by the name. In 2012 she sued me for a loan. The loan was not given to me it was arranged by Newaz Khan.*
- b. *You agreed with her claim of \$37,000 unlawfully? Yes, I also told the court about it. I agreed to the principal sum with interest (D/E-1).*
- c. *Summons was given to me before the court date. I agreed with the statement of claim. Magistrate court ordered to pay. After the order, you did not pay? Ordered to pay \$300. I stopped paying. I realized the claim was wrong. I was told by the Magistrate to pay whether I received the money or not. Magistrate made the order.
I do not agree with the claim. I did not get that money. I was ordered to pay. I paid the money she's a solicitor.*
- d. *You signed a document? That was the document that went to court. I signed it. I dispute the document. I did not take the amount but I am willing to pay Shaveena.*
- e. *I got Imprisonment for not paying-30 days. But they did not take me. I have not paid \$37,000. I still owe \$37,000 to Shaveena. Iqbal Khan & Associate's office- I never went for transfer of a property. (Tab 15-17 shown). Tab 13 – not my signature. I signed only on blue paper. (Typed document). (AoD shown) I signed this and based on this Shaveena filed action.*
- f. *You were summoned to give evidence on 31/7/17. After receiving the summons, I went to Fazilat's office. Some people were talking about the document. My uncle was there for a different purpose. I showed the summons to the lawyer. I was informed about the summons that is their case. I was shown a receipt. My uncle,*

Narend, he was in front of counsel. I was told I need to go to the court. I took the document to Natasha Khan & associates."

Cross examination by the plaintiff

[38] Under cross-examination DW2 states:

- a. "I did not go to Iqbal Khan & Associates for the sale of the property.*
- b. My father is in New Zealand. My grandmother is in Canada. She comes to Fiji. In 2012, she came. I had to deal with Newaz Khan for sale of the property. The sale talks never took place.*
- c. The signature in Tab 3 (getting money from Shaveena) is not my signature. Money in Tab 4 –Tab 6 I never received.*
- d. There was no sale and purchase agreement.*
- e. The loan was arranged by Newaz Khan to purchase a Tractor in 2011, I am self-employed. I am bankrupt. I only paid \$500 in respect of judgment, 2 or 3 months.*
- f. You went to Iqbal Khan's office regarding the sale of your grandmother's property? No.*
- g. The second defendant gave me \$17,000 in 3 instalments (1st \$5000, 2nd \$5000, 3rd \$7,000).*
- h. The second defendant gave you a document to sign? Yes.*
- i. The document we signed earlier that was taken to the Magistrate court.*
- j. I never gave these documents (Tab 18, 19 & 20) (my grandmother's documents). I never sighted these documents.*
- k. When I sign the blue document (AoD) the police officer was there. I agreed because I was told: your received \$17,000. If you signed Shaveena will give more money.*
- l. I am not aware of second defendant's \$20,000. I did not receive the amount stated in AoD. The additional fund was provided by Newaz Khan.*
- m. Iqbal Khan & Associates is not my lawyer.*
- n. Newaz told me he has not taken the money. I had not planned to get money from Newaz Khan. I never forged my grandmother's signature. All documents are with my grandmother."*

Re-examination

[39] In re-examination, DW 2 states that: "I received \$17,000. I can't recall the date. There is no document for that. I had the document but destroyed in the cyclone. Q: \$47,000 loan from Newaz Khan yet you agreed in the document that you owe money to Shaveena. A: Newaz Khan only knows Shaveena. I am disclosing my income to the official receiver. I am also making some payment. Debt owed to Shaveena, they came to my residence. I do minor repairs to the vehicle. Sometimes I do construction work. I received money from Newaz Khan for buying a tractor and other things. We went together to buy things. I signed AoD. Shaveena is not staying with me. I know Shaveena when only AoD was made by Newaz Khan. The house I am staying in is a family home. It's under my grandparents."

Interrogatories

[40] On 3 July 2017, I granted leave to the plaintiff to issue interrogatories on the defendants. The interrogatories and the defendants' responses are as follows:-

Interrogatories	Defendants' Responses
(i) Was Prema Wati Nath present in the office of the 1 st Defendant on the 15 th April, 2011?	<u>THAT AS TO PARAGRAPH (i) OF THE SAID INTERROGATORIES</u> I say that the said <u>PREMA WATI NATH</u> was not present in the office of the 1 st Defendant on the 15 th day of April 2011.
(ii) How was the Sale and Purchase Agreement dated 10 th February, 2011 between the plaintiff and Prema Wati Nath sent to Prema Wati Nath for her indorsement?	<u>THAT AS TO PARAGRAPH (ii) OF THE SAID INTERROGATORIES</u> I say that the Sale and Purchase Agreement was given to one <u>JAI SINGH</u> who is the grandson of the said <u>PREMA WATI NATH</u> for execution by the Vendor.
(iii) When was the Sale and Purchase Agreement dated 10 th February, 2011 sent to Prema Wati Nath for her	<u>THAT AS TO PARARAGAPH (iii), (iv) AND (v) OF THE SAID INTERROGATORIES</u> I say that all the

indorsement?	relevant transfer documents were given to one <u>JAI SINGH</u> who is the grandson of the said <u>PREMA WATI NATH</u> for execution by the Vendor on the 28 th day of January 2011.
(iv) When was the transfer dated 15 th April, 2011 between the Plaintiff and Prema Wati Nath sent to Prema Wati Nath for her indorsement?	
(v) How was the transfer dated 15 th April 2011 between the Plaintiff and Prema Wati Nath sent to Prema Wati Nath?	
(vi) When was the Sale and Purchase Agreement dated 10 th February, 2011 between the Plaintiff and Prema Wati Nath received back into the office of the 1 st Defendant?	<u>THAT AS TO PARAGRAPH (vi) AND (vii) OF THE SAID INTERROGATORIES</u> I say that the said Sale and Purchase Agreement and Transfer documents were received into the office of the 1 st Defendant after 4 weeks from 28 th day of January 2011.
(vii) When was the transfer document dated 15 th April 2011, between the Plaintiff and Pre Wati Nath received into the office of the 1 st Defendant?	
(viii) What is the address for service of the Sale and Purchase Agreement dated 10 th February 2011, on Prema Wati Nath of Surrey, Canada?	<u>THAT AS TO PARAGRAPH (viii) AND (ix) OF THE SAID INTERROGATORIES</u> I say that the documents were given to the said <u>JAI SINGH</u> who is the grandson of the <u>PREM WATI NATH</u> and the said <u>JAI SINGH</u> had addressed the envelope to

<p>(ix) What is the address for service of the transfer document dated 15th April 2011, on Prema Wati Nath of Surrey, Canada?</p>	<p><u>PREMA WATI NATH.</u></p>
<p>(xi) When did Prema Wati Nath sign the Sale and Purchase Agreement dated the 10th February, 2011?</p>	<p><u>THAT AS TO PARAGRAPH (xi) AND (xii) OF THE SAID INTERROGATORIES</u> I say that the relevant documents were signed by the Vendor on the 10th day of February 2011 as appears from the said document.</p>
<p>(xii) When did Prema Wati Nath sign the transfer document, dated 15th April 2011?</p>	
<p>(xiii) Was Prema Wati Nath present in the office of the 1st Defendant at any time between the month of January 2011 and December 2011?</p>	<p><u>THAT AS TO PARAGRAPH (xiii) OF THE SAID INTERROGATORIES</u> I say that the said <u>PREMA WATI NATH</u> was never present in the office of the 1st Defendant.</p>
<p>(xiv) How was the Original/Copy of Housing Authority Sublease No. 189954 received into the office of the Defendants?</p>	<p><u>THAT AS TO PARAGRAPH (xiv) OF THE SAID INTERROGATORIES</u> I say that the said copy of the Housing Authority Sublease No. 189954 was given to the 1st Defendant's office by the Plaintiff <u>SHAVEENA KUMARI</u> and <u>JAI SINGH</u> who is the lawful grandson of <u>PREMA WATI NATH.</u></p>

<p>(xv) Where is the Original Housing Authority Sublease No. 189954 now?</p>	<p><u>THAT AS TO PARAGRAPH (xv) OF THE SAID INTERROGATORIES</u> I say that we were informed by the Plaintiff and the said Jai Singh that the original Housing Authority Sublease No. 189954 was misplaced and they gave instructions to us to obtain a copy of the Provisional lease and the said application for Provisional lease was executed by <u>PREMA WATI NATH.</u></p>
<p>(xvi) If the Defendants do not have in their possession the Original of Housing Authority Sublease No. 189954 when did they part possession with the same?</p>	<p><u>THAT AS TO PARAGRAPH (xvi) OF THE SAID INTERROGATORIES</u> I say that we never parted with the said Housing Authority Lease No. 189954 and further say that the Plaintiff had advised us that the original Housing Authority Sublease No. 189954 was misplaced and gave instructions to us to apply for a Provisional lease and the said application for the Provisional lease was executed by the Vendor <u>PREMA WATI NATH.</u></p>
<p>(xvii) If the Defendants parted possession with the Original Housing Authority Sublease No. 189954, when did they do so and to whom was it released?</p>	<p><u>THAT AS TO PARAGRAPH (xvii) OF THE SAID INTERROGATORIES</u> I repeat that we never parted with the said lease because the original lease was never in our possession and we were given instructions by the Plaintiff and the said <u>JAI SINGH</u> to apply for a Provisional lease and which application was executed by the Vendor.</p>

[41] The first defendant exhibited one document (*D1/1*), which includes: Writ of Summons filed in Magistrate's Court, Order dated 21/11/12 and JDS dated 2/7/13 and Order of Commitment.

Discussion

[42] The plaintiff claims against the defendants the refund of \$37,000.00, the money she paid to the defendants in order to purchase a house and general and punitive damages. The claim is founded on fraud, false misrepresentation and professional negligence.

[43] In support of the claim, the plaintiff called five witnesses including the plaintiff and exhibited 26 documents.

[44] The first defendant who is a solicitor, operating as Iqbal Khan & Associates opted not to give evidence nor did he call any witness. However, he marked a document during the cross-examination of the plaintiff as *D1/E-1*.

[45] The second defendant who is a senior law clerk to Iqbal Khan & Associates gave evidence and called one witness; Jay Singh (*DW2*). The second defendant did not produce any document.

[46] I am grateful to counsel for their submissions. I was immensely assisted by their submissions.

[47] In January 2011, the plaintiff intended to purchase Housing Authority lease No. 189954, Lot 35 on DP No. 4128 (the Property) from one **PREMA WATI NATH** of Surrey, Canada (Prema). One Jai Singh, Prema's grandson was her agent in Fiji and he told the plaintiff to visit his solicitors, Iqbal Khan & Associates (first defendant) to draw up the necessary transfer papers. The plaintiff visited the first defendant's office and was attended to by the defendants. The plaintiff having agreed to a purchase price of \$12,000.00 for the property confirmed to the defendants to prepare the necessary Sale and Purchase Agreement (*SPA*) and transfer documents.

[48] To begin with, I must say that the plaintiff and her witnesses gave convincing evidence. The 56-year-old plaintiff was very calm when she gave evidence. She was consistent in her evidence and gave straightforward evidence. She was not

shaken during the extensive cross-examination by the defendants. She promptly answered the cross-examination questions. Further, the plaintiff's version was supported by documents she exhibited at the trial. The rest of the witnesses for the plaintiff also confirmed the plaintiff's evidence. The documents the plaintiff adduced remain unchallenged. For these reasons, I prefer to accept the plaintiff's evidence and the documents she produced.

[49] On the other hand, the second defendant was not consistent in his evidence. He has admitted the mistake he has done towards the sale and purchase agreement (SPA). His evidence was not even supported by the witness (DW2) he called to give evidence for the defendants. The second defendant's evidence contradicted *per se* (by itself) and *inter se* (between the witnesses). I, therefore, disregard the second defendant's evidence.

Primary issues

[50] I will now consider the primary issues in turn.

[51] Firstly, Whether the defendants acted for both the Vendor and the Purchaser.

[52] The plaintiff submits that there is over whelming evidence that the defendants acted for both the Vendor and the Purchaser. The same is supported by the following undisputed facts:

- (i) *Notations on the Jacket file of the defendants; that is Prema Wati Nath – being the first party noted (obviously a client).*
- (ii) *Prema Wati Nath's grandson Jai Singh's phone number on the Jacket.*
- (iii) *Absence of a[n] independent and different solicitor for Prema Wati Nath.*
- (iv) *Absence of any default provisions on the part of the Vendor in the Sale and Purchase agreement. This suggests a leaning towards the Vendor.*
- (v) *Singular date on the Sale and Purchase agreement that is, the 10 February, 2011.*

- (vi) *Second defendant's testimony that both Jai Singh and Shaveena Kumari came and gave instructions for Sale (albeit oral).*
- (vii) *Absence of written instructions from Shaveena Kumari, thereby not ruling out the firm possibility that Prema Wati Nath, the priority client.*
- (viii) *Singular date on the copy transfer submitted by the plaintiff.*
- (ix) *Singular date on the consent for the transfer that is 16 April 2011.*
- (x) *Plaintiff's testimony that second defendant stated "Iqbal Khan & Associates cannot do anything because they were Prema Wati Nath's lawyers, when plaintiff was advised that her monies were lost and plaintiff had requested second defendant to take legal action for recovery".*
- (xi) *The Application for Provisional Title. The second defendant has categorically stated, it accepted instructions from plaintiff and Jai Singh (see the answer to interrogatories).*
- (xii) *And most importantly, the absence of a certificate (clause) in the Sale and Purchase agreement that the Solicitors concerned are acting for one particular party alone and that the other party has been advised to seek independent legal advice.*

[53] The plaintiff said her lawyer was Vijay Naidu (Associates). The second defendant told her, Vijay Naidu is charging too much. By his touting, the second defendant had made the plaintiff as their client. The second defendant told the court, Shaveena Kumari (the plaintiff) is a client of Iqbal Khan & Associates for 10 years. He admitted that the plaintiff came to his office sometimes in January 2011 accompanied by J. Singh & Parvin Kumar. The defendants had accepted fees from the plaintiff for the services they rendered to the plaintiff (see P/E-1-(Tab 10 & 11 of PBD) the receipts issued to the plaintiff by Iqbal Khan & Associates). The second defendant said that he was representing the plaintiff. On top of the file cover maintained by the defendants, the second defendant had noted Jai Singh's contact number (see P/E-24). The second defendant admitted that he prepared the SPA and the transfer documents. The second defendant did

not get written instructions from either party. Further, the plaintiff gave evidence that when she asked for the refund of the money she paid, second defendant told her that "Iqbal Khan & Associates cannot do anything because they are Prema Wati Nath's lawyers. On the evidence and documents tendered in court, I find that the defendants had acted for both, the vendor (Prema Wati Nath) and the Purchaser (the plaintiff).

Whether documents were dispatched to Prema Wati Nath

- [54] The second primary admitted issue is whether the documents (SPA & transfer document and application for the provisional title) were dispatched to Prema Wati Nath (the vendor) for her signature.
- [55] The second defendant stated in evidence that he gave the documents to Jai Singh to be sent to Prema Wati Nath who is residing in Surrey, Canada. Jai Singh (DW2) the defendants' own witness denied receiving any documents from the second defendant for dispatching to Canada to be signed by Prema. The second defendant's response to the interrogatory is that he sent the documents on 28 January 2011 for execution by the vendor (Prema) in Canada and received into the office of the first defendant after 4 weeks from 28 January 2011. Whereas, the second defendant in evidence stated that he gave the documents to Jay Singh on 9 February 2011. Moreover, in the file note, the second defendant recorded that he gave the documents to Jai Singh for execution on 9 February 2011.
- [56] In this regards, counsel for the plaintiff brings the following things to my attention:
- (a) *No documents was ever despatched to Prema Wati Nath. second defendant's testimony that he gave documents to Jai Singh was denied by Jai Singh and Jai Singh was the second defendant's own witness.*
 - Second defendants testimony that he gave documents to Jai Singh on the 9 February, 2011 has completely been shattered by the fact that the documents would not have reached Canada by the 10th day of February, 2011 (see the date of dispatch on the Jacket file).*
 - (b) *Additionally, in his answer to the interrogatories, the second defendant has said that he despatched the documents on 28 January, 2011 and received it 28 days later.*

(c) *The second defendant was an untruthful witness. It is safe for the Court to find as a fact that the documents did not leave the defendants office.*

And further that all entries in the subject documents were done in the office of the defendants.

(d) *In view of the unchallenged evidence, that apart from Prema Wati Nath's signature in the Transfer document that is transfer from Jaswant Singh to Prema Wati Nath (Exhibit 3) all other P. Wati signatures is a forgery; it is safe to find as a fact that the subject documents never reached the real Prema Wati Nath.*

[57] The second defendant has given contradictory evidence about the despatch of the documents. Therefore, his evidence in this regards is implausible and cannot be accepted.

Whether the plaintiff paid monies in the defendants' office

[58] The third primary issue was whether the plaintiff paid monies in the defendants' office. The plaintiff said she gave all the monies to the second defendant. She denied giving any monies to Jai Singh. Jai Singh, the defendants' own witness (DW2) stated in his evidence that he did not receive any monies from the plaintiff. He (DW2) admitted that he got \$17,000 from the second defendant as a loan.

[59] Counsel for the plaintiff, regarding payment of money to the defendants, submits that:

(a) *No evidence that Mr Iftikar Iqbal Khan played any part in the alleged loan.*

(b) *The second defendant witnessed the first alleged payment and lastly, he prepared the Acknowledgement of Debt document for Jai Singh to sign.*

(c) *The loan theory has completely been negated by the second defendant's witness Jai Singh that he Jai Singh did not receive any monies from the plaintiff.*

(d) *The plaintiff was a credible witness. She said she did not give any monies to Jai Singh.*

(e) *This Honourable Court must find as a fact that the plaintiff did not give any monies to Jai Singh.*

[60] I accept the plaintiff's evidence as credible that she gave monies to the second defendant and not to Jai Singh.

Whether the Defendants commit fraud against the Plaintiff.

[61] The fourth primary issue is whether the defendants commit fraud against the plaintiff.

[62] In her submission, the plaintiff highlights the evidence as follows:

- (i) *The first defendant personally has not attended to the plaintiff but all that has taken place happened in the office of the first defendant and with the active participation of the second defendant and the in house solicitors.*
- (ii) *Jai Singh may have had a fraudulent intent when he agreed to sell the subject property at \$12,000.00. It is not denied that the price was quite low for the subject property.*
- (iii) *When Jai Singh sowed the seeds of this fraud, the second defendant willingly and readily adopted the plan and put into motion a modus operandi, but not for the astute investigative work by the plaintiff's solicitors; would have remained undetected and certain to cause a permanent loss to the plaintiff.*
- (iv) *Jai Singh had no authority from Prema Wati Nath to transact any business for and on behalf of Prema Wati Nath. He had no power of Attorney and no written agential authority. In fact, he had nothing.*
The fact that he was the grandson of Prema Wati Nath has no meaning when it comes to dealing with Land.
- (v) *The second defendant fertilised the first seeds of fraud against the plaintiff by telling her to settle the water, electricity, city rates and the ground rental. He could not and should have instructed the plaintiff so, for the following reasons:*
 - (a) *No confirmation from Prema Wati Nath of the sale.*
 - (b) *No memorandum in writing at this initial stage as to give effect to Land Dealings.*
 - (c) *No prior consent of the Head Lessor. That is the Housing Authority.*
 - (d) *Unless there is an intention to the contrary by way of a written agreement between the parties; it is always the conveyancing practice that the Vendor must clear all the utilities together with rental and rates.*

Payment to Second Defendant

- (vi) The second defendant on his part asked for and received purchase monies from the plaintiff.

The plaintiff's evidence together with the evidence of Janend Kumar (PW2) is clear proof of the same.

The second defendant's denial was shallow unconvincing.

(vii) The second defendant falsely produced a receipt to the plaintiff and by this receipt, he tried to create the impression that it was a loan (see the receipt for \$1,350.00 (PE-1). He even witnessed this receipt.

(viii) And it is patent that the second defendant has misled court on a very critical issue.

He has failed to tell the court whether he witnessed the actual exchange of monies.

And also failed to tell the Court as to which party from the three that is Shaveena Kumari, Shah Newaz Khan and Jai Singh drew up the hand written receipt.

(ix) The second defendant's witnessing the first hand written receipt bring up the lie in the face of the second defendant not having witnessed the actual exchange of monies from Shaveena Kumari to Jai Singh.

(x) At this juncture, the Court is being asked to pay particular attention to the Handwriting of the receipts. The characters are too similar for the receipts not to have been authorized by the same individual.

(xi) The second defendant in order to compound his lies had denied witnessing any exchange of monies from Shaveena Kumari to Jai Singh as well as denying being the author of the receipts.

(xii) If one takes a clinical look at the overall evidence, then the position of the three principal players in the matter of the handwritten receipts is as follows:

(a) **Shaveena Kumari** – no evidence that she wrote the receipts and no suggestion was made by the defendants to that effect.

(b) **Jai Singh** – The plaintiff and Janend Kumar (PW2) testified that Jai Singh gave receipts for the payments made by Janend Kumar to Jai Singh.

As far as the handwritten receipts are concerned. Shaveena Kumari testified that the second Defendant gave it to her.

She did not give any monies to Jai Singh and Jai Singh has confirmed this. All the monies were given to the second defendant.

Jai Singh has also said on Oath that he did not sign the receipts for Shaveena Kumari's payments and neither did he give Shaveena Kumari any receipt.

Shaveena Kumari said that whenever she was called to pay, the second defendant Jai Singh was not present, Jai Singh confirms this.

Hence, if the above are excluded as being authors of the receipts, it then leaves with only the second defendant.

- (c) **Shah Newaz Khan** – the second defendant admits to witnessing the handwritten receipt for \$1,350.00. Although he denies writing the said receipt he has offered no explanation as to who produced the receipt for his indorsement.

And by this indorsement, the second defendant has more or less conceded that his indorsement is false as no money exchange took place in his presence.

[63] Counsel for the plaintiff invites me to consider the following facts:

- (i) The first receipt for \$1,350.00, the second defendant is present with the receipt so as to put his signature on it.
- (ii) Jai Singh and Shaveena Kumari cannot be the authors.
- (iii) See the letters **JAI SINGH** at the beginning of the receipt is absolutely identical in all of the receipts.
- (iv) See the letter **F/N** is again identical in all the receipts.
- (v) See the letters **JASWANT SINGH** is again absolutely identical in all the receipts.

- (vi) See the \$ sign before the amounts. All are identical.
- (vii) See the letter in the word **Acknowledgement of Debt**. It is a perfect match in all the receipts.
- (viii) The clear evidence by Shaveena Kumari that the second defendant gave her all the receipts.
- (ix) The unchallenged evidence that the second defendant wrote the entry \$11,200.00 in the last receipt upon request to Shaveena Kumari to produce the last immediate receipt and which she did.

Question for Court: If Shaveena Kumari had paid the sum of \$23,100.00 on any particular day there should be one entry only, why break up one lump sum payment of \$23,100.00 into two payments.

The only reason is as provided by Shaveena Kumari.

- (x) It is respectfully submitted that all the receipts were authorised by the second defendant.
- (xi) It is also respectfully submitted that the second defendant received the bulk of the monies from the plaintiff.
- (xii) Jai Singh said that the second defendant had given him \$17,000.00 claiming it to be a loan. The loan aspect is difficult to digest there being a complete absence of any written memorandum to that effect. This was the second defendant's only witness and no challenge was made to the said testimony.

This payment was clearly made before the 31 October 2011 that is the date of the Acknowledgement of Debt.

It can safely be said, the monies came from Shaveena Kumari after receipt by the second defendant.

[64] Of the multiple acts of fraudulent conduct on the part of the defendants, the plaintiff submits that:

1. The fact that the second defendant has denied receiving any monies from the plaintiff and having been discredited reveals an intent to cheat the plaintiff.

2. All the documents generated from the Defendants office with Signature P. Wati is a forgery.

The Handwriting Experts report is a testament to that effect.

- (a) The Sale and Purchase Agreement dated 10th April, 2011 has been tainted with the forged signature of P. Wati.

Jai Singh denied receiving any documents from the second defendant for onward transmission to P. Wati and he was the second defendant's own witness.

Even assuming if Jai Singh had received the documents on 9 February, 2011, for onward transmission to Canada, surely it could have arrived back in Fiji for Shaveena Kumari to put her signature also on the 10 April, 2011.

The second defendant's testimony is to be viewed against his answers to the interrogatories wherein he says that he sent all the documents by Jai Singh on the 28 January, 2011 and received it back duly executed within 28 days. The two do not match.

- (b) The Notary Seal on the Sale and Purchase Agreement of 10 April, 2011 is a fake. The report from the Society of Notaries in British Columbia is evidence of that. And the nail in the coffin for the defendants is genuine Notary Seal exhibited in court.
- (c) The first defendant in his pleadings said that he had nothing to do with Shaveena Kumari. He gave no evidence.
- (d) Jai Singh has denied on oath any contact with the Sale and Purchase Agreement.
- (e) This leaves the second defendant only one who at all material times was the Chief Conveyancing Clerk in the first defendant's firm.

Thus it is more likely than not that the forgery was perpetrated by the second defendant. To use a standard higher than Balance of Probability, that is on a preponderance of probability, the conclusion is the same.

(f) The motive is all too clear:

(i) Having utilized the plaintiff's funds for his own use or for the benefit of Jai Singh as to part of; the second defendant needed to cover his fraudulent conduct.

What better way than to create fictitious documents to give it the appearance of properly executed documents.

(ii) Inherent in the above was to avoid detection. Prima facie the document looks innocuous. A deeper probe by the plaintiff has revealed the truth.

A failure by the plaintiff to establish the forgery would have led the defendants to clear from the run.

(iii) Jai Singh is a Bankrupt and the Caveat and the Acknowledgement of Debt are both hollow documents.

3. The second defendant has been:

(a) Hoist by his own petard.

The fake letter of P. Wati dated 7 February, 2011 and addressed to the Registrar of Titles and copied Authority has the same forged P. Wati letters as is contained in the Sale and Purchase; the Transfer and the consent to transfer form.

The Registrar of Titles did not get the original. The Housing Authority in Lautoka received a copy. There is no post mark or envelope which could establish an origin beyond Fiji.

The irresistible conclusion is that this too was authored by the second defendant.

(b) The motive is all too clear,

To give an impression at least to the plaintiff that the Sale was legitimately aborted by P. Wati in fact this was told by the second defendant to the plaintiff that is the day he had the plaintiff sign the Caveat (17 May, 2011).

Transfer

[65] On the evidence, I find that the transfer document prepared by the second defendant is a forged one. The signature of P. Wati, the owner of the property has been forged and that the Notary of Stan Mark Scott is a fake. There is no evidence that the transfer document was sent to Canada for execution by P.Wati. I further find that the document was forged by the second defendant who was the conveyancing clerk of the first defendant.

False Misrepresentation

[66] The SAP agreement says the consideration is \$12,000.00. The second defendant falsely told the plaintiff that the market price of the property has escalated and the vendor has increased the price to \$37,000.00. The second defendant stated that he did not have any contact with the vendor, P. Wati. By 15 April 2011, the plaintiff had paid the second defendant some \$35,750.00 and yet the second defendant stated in the transfer that the sum of \$12,000.00 was to be paid. The second defendant continued to ask for and receive money from the plaintiff on the purported transfer. I find that this is a clear misrepresentation by the second defendant to extract money from the illiterate plaintiff.

The Consent to Transfer Form

[67] The real P. Wati knew nothing of the sale of her property at Razak Road. She was not in Fiji on 16 April 2011, to co-sign with the plaintiff. The consent to transfer form dated 16 April 2011, had been sent to the Housing Authority on 15 April 2011, one day before the date of signature. There was no explanation for the advanced date. On the evidence and having been satisfied on the balance of

probability, I find that the signature of P. Wati that appears on the consent to transfer form is a forgery and that it was forged by the second defendant.

The Caveat

- [68] The plaintiff was not in occupation of the property in dispute. This was confirmed by DW2. In the Caveat, the second defendant falsely gave the caveatee's address as "Prema Wati Nath, P.O. Box 3986, Lautoka" and falsely stated that the plaintiff is occupying the property. The plaintiff had no *locus standi* to lodge a caveat as she was not in occupation. I, therefore, reject the second defendant's evidence that the caveat was put to protect the plaintiff's interest.

The Acknowledgement of Debt and Undertaking

- [69] The plaintiff did not give any money to Jai Singh. Jai Singh also said that he did not get any money from the plaintiff. He said he received \$17,000.00 from the second defendant as a loan.
- [70] The AoD was executed by the defendants when police officer Tuitai brought Jay Singh and the plaintiff to the defendants' office. The plaintiff lodged a complaint with the police about the money she paid to the second defendant. Because of the complaint she made to the police, the police would have arrested Jai Singh and brought him to the defendant's office. The plaintiff was asked to wait outside. Tuitai and Jai Singh went inside the defendants' office and after a while came out with blue paper (AoD), gave it the plaintiff and told her to take it to Natasha Khan & Associates, the solicitors conveniently chosen by the defendants.
- [71] The defendants submit Jai Singh signed the AoD voluntarily and he was not pressured to sign it and that it was signed in the presence of the police officer. The presence of the police officer itself would have given pressure to Jai Singh. He was under arrest in respect of the complaint the plaintiff had made and he was facing a criminal investigation. I cannot agree that Jai Singh signed the AoD voluntarily. I find that he signed it under pressure.
- [72] Definitely, the plaintiff would have implicated the defendants in her police complaint. That is why the police officer came to the defendants' office. On the

evidence, I find that the defendants designed the AoD to avoid criminal investigations against them. The defendants had used Jai Singh for this purpose.

[73] The plaintiff did not know what was in the AoD, for it was not explained to her. She simply took it to Natasha Khan & Associates with the hope that she can get her money back. The AoD was not executed at the request of the plaintiff. It was not stamped. It was hurriedly executed by the defendants to divert the criminal investigation and charges. The plaintiff did not give instructions to the defendants to prepare the AoD. The second defendant admitted that there was no file for the loan.

[74] Natasha Khan & Associates filed an action in the Magistrate's court against Jai Singh based on the AoD. Jai Singh appeared in the Magistrate's and admitted the claim and the court entered a consent judgment against Jai Singh in the sum of \$37,000.00, the same amount the plaintiff paid to the second defendant. He made payment of \$600.00 in two instalments. Thereafter he defaulted and filed a bankruptcy application to get rid of the payment. On the evidence, I find the Magistrate's court action against Jai Singh is a collusive action orchestrated by the defendants to circumvent the police enquiry and subsequent possible criminal charges against the defendants.

Professional negligence on the part of the defendants

[75] The defendants had acted for the plaintiff. The second defendant said that the plaintiff has been their client for 10 years.

[76] The defendant should not have advised the plaintiff to enter into a sale and purchase agreement in the first place without the original documents and without confirmation from real P. Wati. At least, they should have advised the plaintiff to wait until they receive a provisional title. The defendants did not follow proper procedures in applying a provisional title. They did not obtain real P. Wati's signature in the application for provisional title. PW2, Deputy Registrar of Title confirmed that: *the documents appear to have been executed overseas and the notary's seal is in red colour, which is not proper notary' seal in that there is no physical address of the notary. There is no entry [in our office] as to how the application for the provisional title came to the office. It was not published in the Gazette.*

[77] I, therefore, hold that the application for provisional title is a forged one and it has been forged to show that the defendants had done their professional duty. I can infer that it has been forged by the second defendant.

[78] The second defendant told the plaintiff that the real P. Wati had cancelled the transfer. The plaintiff then demanded the monies she had paid to the second defendant in respect of the sale. The caveat has prompted when the plaintiff demanded the money from the second defendant. The plaintiff was not entitled to lodge a caveat since she was not on the property which the caveat relates to.

[79] On the evidence, I find that the defendants were negligent in their professional duties towards the plaintiff, their client and gave wrong advice to the plaintiff, which caused loss to the plaintiff. I further find that the defendants' conduct amount to professional misconduct.

Conflict of Interest

[80] On the issue of conflict of interest, the plaintiff submits that:

The Defendants placed themselves in a conflict situation from the very beginning:

- (a) Attending to the plaintiff and Jai Singh.
- (b) Becoming involved in the false loan scheme.
- (c) Representing to the plaintiff that they could not sue Prema Wati Nath or Jai Singh as they were Prema Wati Nath's lawyers.
- (d) Allegedly applying for Provisional title on both the plaintiff's and Prema Wati Nath's instructions (see the answer to interrogatories).
- (e) No steps [are] taken whatsoever by the defendants to extricate themselves from a conflict situation and/or provide some remedial solutions to the plaintiff's predicament.
- (f) A glaring example is that of the defendant's readiness to procure the Acknowledgment of Debt.

If the defendants were truly acting for the plaintiff exclusively, they ought to have sued Jai Singh or alternatively advised the plaintiff not to give a loan; that is, if the loan claim has any validity.

- [81] I have already found that the defendants were the solicitors for the vendor (P.Wati/Jai Singh) and the purchaser (Shaveena). I agree with the plaintiff's submission that the defendants placed themselves in the conflicting situation by taking instructions from both parties.
- [82] As the solicitors for the plaintiff, the defendants had acted to the detriment of the plaintiffs. The defendant had proceeded with the sale and purchase agreement and the transfer without original documents. The defendants did not check whether Jai Singh had the power of attorney given by P. Wati (owner of the property) to deal with the property. The defendants had favourably acted for the vendor. They did not advise the plaintiff to not pay the money before the transfer is executed. Clause 3 (c) of the SPA states that: *the full purchase price shall be paid out to the Vendor only and upon after the settlement*. The second defendant had taken more than \$37,000.00 from the plaintiff before the settlement contrary to Cl. 3 (c).
- [83] Cl. 3 (b) of the SPA says: The purchaser shall deposit the sum of \$12,000.00 being the full purchase price into the trust account of MESSRS IQBAL KHAN & ASSOCIATES upon consent from Housing Authority. The second defendant got more than the purchase price even before consent from Housing Authority. Housing Authority never gave consent for the transfer. The plaintiff was the defendants' client. The defendants should have deposited all the monies they received from the plaintiff into their trust account.
- [84] It is notable that the SAP agreement prepared by the defendants does not contain a default clause. It is strange that the SAP agreement had been prepared without a default clause. It seems to me that the defendants had struck a black dealing under the table and put the blame on the innocent plaintiff.

Vicarious Liability

- [85] The second defendant was a senior clerk of the first defendant. This was not in dispute. There is no evidence that the first defendant was directly involved in the transfer dealing. The plaintiff did not see the first defendant in the defendants' office.

- [86] The plaintiff was dealing with the second defendant who identified himself as Iqbal Khan. The plaintiff (in court) pointed out the second defendant as Mr Iqbal Khan when she was asked to identify Mr Iqbal Khan.
- [87] Two receipts had been issued from Iqbal Khan & Associates (see PE-1). All the documents including the SAP agreement and the transfer document prepared by the second defendant bear *Iqbal Khan & Associates* seal.
- [88] The second defendant was at all material times acting as a servant and agent of the first defendant. Therefore, the first defendant is vicariously liable for the defalcations of his employee and the second defendant had acted in the course of his employment with the first defendant.

Relief

- [89] The plaintiff claims the sum of \$37,000.00 against the defendants. The handwritten cash receipts produced in court show the plaintiff had paid a little more of \$37,000.00. I allow this claim. The sum of \$37,000.00 must be repaid jointly and severally by both the defendants.

General and Punitive Damages

- [90] The defendants had planned a deliberate fraud against an unsuspecting lay client.
- [91] The defendants, as the solicitors for the plaintiff, were under a duty to provide efficient professional service, which the defendants had failed so to do. The plaintiff reposed her trust in the defendants who in turn not only betrayed her trust but also deceived her.
- [92] The SAP agreement required that the purchase price must be deposited into the Trust Account of Messrs Iqbal Khan & Associates upon consent from Housing Authority. Instead, the second defendant obtained the monies before consent was given by the Housing Authority and converted the monies for his own use without depositing it into the Trust Account.
- [93] The defendants had made forged documents to draw monies from the plaintiff.
- [94] Counsel for the plaintiff submits that the Court must reflect its disapproval of the defendants' offending conduct by awarding a measure of damages which sends

a clear message to all practitioners and further submits that the sum of \$75,000.00 is to be paid jointly and severally by both the defendants, which would set a bench mark.

- [95] I take all into my account. I am prepared to give \$20,000.00 as general damages and the further sum of \$30,000.00 as punitive damages for the deplorable conducts on the part of the defendants, totalling \$50,000.00. This sum is to be paid jointly and severally by both the defendants.

Costs

- [96] As a winning party the plaintiff is entitled to the costs of these proceedings.

- [97] Counsel for the plaintiff asks for costs on the full solicitor-client basis. She submits that the defendants have been put on notice of the *Calder Bank v. Calder Bank* rule. Further, she asks this Court to make a global costs award to take into account the extensive investigative work carried out to unravel the defendants' trickery. She submits that the court should consider an award of costs on an indemnity basis for the following reasons:

- (i) *At every step of the way before the trial and reception of evidence plaintiff's Counsel was absolutely fair and disclosed to the defendants the incriminating material namely; (a) The Report of the Notaries Public of British Columbia, Vancouver, Canada; (b) The Handwriting Experts Report and (c) The Report of the Post Master, Lautoka.*
- (ii) *Plaintiff's Counsel delivered to the defendants a Calder Bank v. Calder Bank Notice on 30 May, 2017 inviting the defendants to seek a second opinion on the said reports and in its absence to consider settling the Plaintiff's claim.*

The defendants conduct was both contumacious and arrogant, see their reply of 8 June, 2017.

At the very least, being a law firm, the defendants ought to have at their own expense provided a reasonable explanation as to the authorship of forged documents from their office. This they failed to.

- [98] This is a case involving fraud, misrepresentation and breach of trust. The plaintiff had obtained the Report of the Notary Public of British Columbia, Vancouver, Canada to establish that the seal of the notary (Stan Mark Scott) that is placed on the SAP agreement and the transfer documents is a fake. The

plaintiff also obtained the Handwriting Experts Report to prove that real P. Wati's signatures that appear in the documents prepared by the second defendant are forged.

- [99] I am satisfied that this is the proper case to order costs on an indemnity basis. So I do. Accordingly, the plaintiff is entitled to costs on an indemnity (full solicitor/client) basis to be assessed before the Master, in the default of agreement.

First defendant's representation of Second defendant

- [100] Second defendant submits that: the second defendant did not have the benefit of a solicitor when the first defendant being a solicitor was not allowed to represent the second defendant and hence first day [of the trial] the second defendant was not represented.

- [101] I noticed that the first defendant was representing and defending the second defendant. Both the defendants have filed a joint statement of defence. The second defendant was a senior law clerk at the first defendant's law firm (Iqbal Khan & Associates). The plaintiff claims damages against both the defendants for fraudulent, deceptive and misleading conduct. Then, I asked the first defendant whether a defendant can defend another defendant in the same proceedings. It is common sense that there will be a clear conflict of interest when a defendant is defending another defendant in the same action where both of them face the same allegations in the claim. This was brought to the notice of the first defendant long before the trial. Thereafter, the first defendant refrained from appearing for the second defendant. The second defendant had sufficient time to retain another solicitor to represent him but he failed so to do. He chose to defend himself throughout the proceedings until Messrs Samusamuvodre Sharma Law filed their notice of appointment of the second defendant on 3 August 2017.

First defendant's submission

- [102] In his submissions, the first defendant says he also adopts and relies on the submissions made by the second defendant. The first defendant submits that the plaintiff's claim against the first defendant is frivolous and vexatious and abuse of process. The first defendant did not make any application at the pre-trial stage

to strike the claim against him on the basis that it discloses no reasonable cause of action and that it is an abuse of process. The first defendant, having defended the action throughout until conclusion of the trial, make a submission that the claim of the plaintiff should be struck out on the ground that it is frivolous and vexatious and abuse of process. I find that his submission has no merits in it. There is sufficient evidence before the court to make the first defendant vicariously liable for the acts of the second defendant who was acting as an employee and agent of the first defendant.

[103] The first defendant also submits that the plaintiff had led evidence outside of her pleadings. It is incorrect. The plaintiff had led evidence to prove the agreed issues that are in the PTC minutes. Therefore, the question of leading evidence outside of the pleadings does not arise.

Conclusion

[104] For the reasons set out above, I, having been satisfied that the plaintiff has proved her case sufficiently, conclude that the defendants had acted for both the vendor and the purchaser in a conflicting situation and thereby committed a professional misconduct. The defendants had devised a plan to extract monies from the plaintiff on the forged documents, which is another professional misconduct.

[105] In relief, I give judgment in favour of the plaintiff. The defendants must jointly and severally refund the sum of \$37,000.00 to the plaintiff. Also, the defendants must jointly and severally pay general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00, totalling \$50,000.00. The plaintiff will be entitled to costs on an indemnity (full solicitor-client) basis to be assessed by the Master, in default of agreement.

Final Outcome

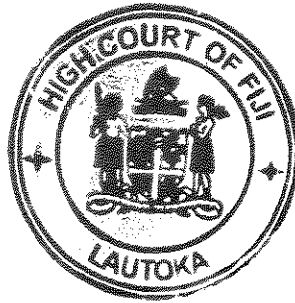
1. The defendants jointly and severally refund the sum of \$37,000.00 to the plaintiff.

2. The defendants jointly and severally pay general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00, totally \$50,000.00 to the plaintiff.
3. The defendants jointly and severally pay costs on an indemnity (full solicitor-client) basis to be assessed before the Master, if not agreed.

M.H. Mohamed Ajmeer
3/4/18

M.H. Mohamed Ajmeer

JUDGE



At Lautoka
3 April 2018

Solicitors:

For the plaintiff: M/s Fazilat Shah Legal, Barristers & Solicitors

The first defendant: appeared in-person

For the second defendant: M/s Samusamuvodre Sharma Law, Barristers & Solicitors