

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. 83 of 17**

**BETWEEN** : **DAVENDRA NAIDU** of Maruru, Ba, Fiji islands,  
Businessman.

**Plaintiff**

**AND** : **MAH ENTERPRISES LIMITED** having its registered office  
at Suite 12 Town Council Arcade, Main Street, Nadi, Fiji  
Islands.

**Defendant**

Appearances : Mr. Dayal for the Plaintiff  
No appearance for the Defendant

**J U D G E M E N T**

1. On 15 December 2017, the Plaintiff filed an ex-parte Summons in this Court seeking the following Orders:

- (i) That judgement be entered as claimed against the defendant in the sum of \$65,000
- (ii) That there be a declaration that the contract entered into on 11 October 2016 is void
- (iii) That there be abridgement of time in calling and fixing a hearing date in this matter
- (iv) Costs

2. The summons is filed pursuant to Order 19 Rule 7 of the High Court Rules 1988 and the inherent jurisdiction of the Court.

3. Order 19 Rule 7 states as follows:

Default of defence: other claims (O.19, r.7)

7.-(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the

Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may-

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

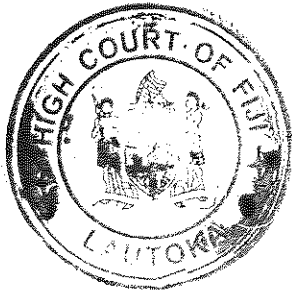
(3) An application under paragraph (1) must be by summons or motion.

4. The matter was first called before me on 21 December 2017. On that occasion, I granted 28 days to the Plaintiff to file an Affidavit in Chief of his evidence and then adjourned the case for formal proof on 05 April 2018.
5. Affidavit in Chief was filed on 18 January 2018.
6. The Writ of Summons and Statement of Claim were filed on 11 May 2017.
7. The defendant has not filed any Acknowledgement of Service of Statement of Defence, hence the application before me.
8. What I gather from the documents annexed to the Plaintiff's Affidavit in Chief are the following:
  - (i) The Seashell Resort Momi Bay was undergoing some major renovations
  - (ii) There were some structures in the Resort which it no longer required for its operation
  - (iii) Amongst these unwanted" structures were two small houses
  - (iv) The Plaintiff was interested in these houses and was willing to purchase them
  - (v) There was a written contract between the Plaintiff and the Defendant.
  - (vi) The contract pertained to the Plaintiff's purchase of two houses in question.
  - (vii) The deal was that the Plaintiff would pay \$65,000 for the two houses and then demolish and remove them at his own costs.
  - (viii) However, the demolition of the structures could not begin unless the Department of Environment had issued a Demolition Certificate.
  - (ix) The onus was on the Defendant to apply for and obtain the said Demolition Certificate
  - (x) The Plaintiff duly paid the \$65,000 in question (this is not in dispute according to letters from the Defendant).

- (xi) However, the Plaintiff would wait for quite some time for the Demolition Certificate but to no avail.
- (xii) The Plaintiff would become frustrated after a few months of waiting and demanding for the Certificate. He eventually wrote to the Defendant to rescind the Agreement and demand reimbursement.
- (xiii) The Defendant would reply saying that as far as it was concerned, the Plaintiff was not entitled to the return of the money.
- (xiv) Meanwhile, the Department of Environment did issue a Demolition Certificate but at a time when the Plaintiff appeared to have lost interest in the Agreement.
- (xv) The Defendant, meanwhile, has offered the contract to someone else.

9. Against that background, and considering that the Defendant has not filed an Acknowledgement of Service or Statement of Defence, I Order restitution to the Plaintiff of the sum of FJD\$65,000-00 (Sixty Five Thousand Dollars only). I make no award on interest.

10. I also Order costs which I summarily assess at \$2,000-00 (Two thousand dollars only).



A handwritten signature in black ink, appearing to be "Anare Tuilevuka".

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Anare Tuilevuka

**JUDGE**

04 May 2018.