

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 359 of 2015

BETWEEN : **THE TRUSTEES FOR ARYA PRATINIDHI SABAHA OF FIJI** a religious body registered under the Religious Bodies Registration Act Cap 68 having its head office at Suva.

PLAINTIFF

AND : **TRUSTEES OF BULA FIJI TOURISM EXCHANGE** an incorporated trust under the Charitable Trust Act and having its registered office at 56 Grantham Road, Suva.

DEFENDANT

Counsel : **Mr. Maharaj V. for the Plaintiff**
No Appearance for the Defendant

Date of Hearing : **25th June, 2018**

Date of Judgment : **25th June, 2018**

JUDGMENT

INTRODUCTION

1. This is assessment of damages for judgment entered on default against the Defendant. The counsel for the Defendants did not appear at this hearing. The Defendants were tenants of the Plaintiff and they had only handed over the vacant possession 13th February, 2018. After vacating premises the Defendants had cleared the arrears of rent up to the time period of their tenancy agreement. The tenancy agreement was only till 31.7.2015. So no rentals were paid from that day to the date of handing over the property for 30 months and 13 days.
2. One of the trustees of the Plaintiff gave evidence and he was not cross-examined by the Defendants. His evidence is not challenged. He said that the premises was earlier rented to the Defendants for \$7,155.55 per mansum, till 31.7.2015. The Plaintiff did not receive any rentals for the said premises from 31.7.2015 to 13.2.2018. After the handing over of the vacant possession the Plaintiff had received 5 offers for rent of premises and presently a commercial entity is paying the same rent \$7,155.55 per month (see P1). The

Plaintiff is seeking mesne profit for the said premises from 31.7.2015 to 13.2.2018 on the basis of present monthly rental. This was the same rental paid by the Defendants.

After successful tender a tenancy agreement was entered with the consent of the Director of Lands, with present tenants for a monthly rent of \$7,155.55.

ANALYSIS

3. The Plaintiff is claiming from the Defendant for the holding over of the property after the expiration of their term.

4. Under 'Tenant's liability by holding over' (Woodfall R.34 (September 1995) it is stated (19.011)

'The tenant is liable for failure to give complete possession of the premises at the end of the tenancy even where a sub-tenant wrongfully holds over and refuses to quit. The tenant is liable for the period as such holding over, but not for a whole year's rent. The landlord may, however, discharge the original tenant by accepting the sub tenant as his immediate tenant.'
(footnotes omitted)

5. There is no evidence produced that the Plaintiff had accepted any other person as immediate tenant of the premises before 13.2.2018. The Defendants finally granted the premises to the Plaintiff and also paid arrears of rent after the handing over for the period ended 31.7.2015.

6. Woodfall (19.012) under 'Liability for mesne, profit and other losses' stated

'If the tenant holds over after the termination of his tenancy, he is liable to pay mesne profits. The expression mesne profits is the name given to damages for trespass where the trespasser is a former tenant of the land owner. The liability to pay mesne profit arises even where the landlord has in fact suffered no loss.(e.g. because he would not have relet or occupied the property during the period of trespass).

The amount of the mesne profits for which the trespass is liable is an amount equivalent to the ordinary letting value of the property in question. This is so even if the landlord would not have let the property in question during the period of trespass. The same rule applies where the tenant is not

in physical occupation of the property because it had been sub-let under long leases..... Accordingly the liability of the trespass to pay damages is in the nature of restitution for unjust enrichment.' (footnotes omitted)

7. The Plaintiff was able to rent the same premises within a short time from the handing over of the property for the same rental paid by the Defendant. So the mesne profit liable to the Defendants is rental payable for the period from 31.7.2015 to 13.2.2018. It is 30 months and 13 days. The monthly loss is 7,155.55 and total mesne profit is $(\$7,155.55 \times 30)$ months and 13 days (i.e. $\$7,155.55/28 \times 13 = (\$3,321.96)$). The total mesne profit is \$217,988.72.

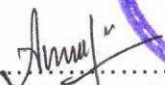

CONCLUSION

8. The Plaintiff at the hearing had proved mesne profit of \$217,988.72. The cost of this action is summarily assessed at \$3,000.

FINAL ORDERS

- a. The Plaintiff is granted a sum of \$217,988.72 as mesne profit to be paid by the Defendants.
- b. The cost of this action is summarily assessed at \$3,000 to be paid by the Defendants within 21 days.

Dated at Suva this 25th day of June, 2018



Justice Deepthi Amaratunga
High Court, Suva