

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 147 of 2019

BETWEEN

PACIFIC HARBOUR RESORT CO LTD a company incorporated in Japan and having its principle office at No. 8-29, Nishi Nakajima, 5-chrome, Yogogawa-Ku, Osaka City and its registered office at L2, Provident Plaza One, 33 Ellery Street, Suva in Fiji as a Foreign Company.

PLAINTIFF

AND

RYAN RICHARD MACDONALD of Villa 82, Sevua Circle, Riverside Drive, Pacific Harbour.

FIRST DEFENDANT

AND

THE COMMISIONER OF POLICE having its headquarters at Vinod Patel Buildings, Ratu Dovi Road, Laucala Beach Estate, Nasinu.

SECOND DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI having its principal office at
Suvavou House, Victoria Parade, Suva.

THIRD DEFENDANT

Counsel : Ms. Narayan P. for the plaintiff
Mr. Skiba K. for the 1st Defendant
Ms. Singh P. for the 2nd & 3rd Defendants

Date of Hearing : 13th August, 2019

Date of Judgment : 30th August, 2019

JUDGMENT

[1] The plaintiff filed this writ of summons seeking the following orders against the 1st defendant:

- (a) That the 1st defendant by himself or through his servants and/or agents be restrained from obstructing the plaintiff's appointed registered bailiff completing the levy of distress for rent at the rental premises being Villa 82 situated at Sevua Circle, Riverside Drive, Pacific Harbour;
- (b) The 2nd and 3rd defendants through its officers assist the plaintiff's registered bailiff in completing the levy for distress and ensure that no harm is caused to the plaintiff's bailiff;
- (c) Special damages in the sum of \$6,600.00 together with monthly rental arrears of \$600.00 from the date of the filing of the writ of summons to judgment date;
- (d) Interest on special damages against the 1st defendant;

- (e) General damages against the 1st defendant;
- (f) Interest on general damages against the 1st defendant; and
- (g) Costs including solicitor-client costs against the 1st defendant.

- [2] In this action the writ of summons and the statement of claim were filed in 16th May, 2019 and these pleadings were served on the 1st defendant on 21st May, 2019. The acknowledgement of service was filed by the then solicitors of the 1st defendant on 06th June, 2019. The 1st defendant did not file intention to defend. The plaintiff then filed summons before the learned Master of the High Court and the matter was allocated to me for formal prof.
- [3] When the matter was first called before me on 27th July, 2019 it was fixed for hearing on 13th August, 2019. On 13th August, 2019 at 08.44am Howards Lawyers filed Notice of Appointment of Solicitors informing court that they have been appointed to act as solicitors for the 1st defendant. Although Bale Law has appeared for the 1st defendant there is no appointment of Bale Law as solicitors for the defendant.
- [4] When the matter was taken up for hearing Mr. Skiba from Howards Lawyers appeared for the 1st defendant and sought an adjournment of the hearing to file an affidavit. The learned counsel also informed court that the 1st defendant would pay \$200.00 as costs to the plaintiff which was objected to by the learned counsel for the plaintiff on the grounds that the plaintiff's witness specially flew from Japan to give evidence and the 1st defendant had enough time to inform court in advance if he had any difficulty. The learned counsel for the 1st defendant informed court that the 1st defendant's mother passed away but did not tell the court exactly when and how long it took for the funeral rites.
- [5] From the service of the writ of summons and the statement of claim the 1st defendant had over two months to file the notice of intention to defend and the statement of defence but he had shown no interest in defending the action.
- [6] The plaintiff tendered evidence through the witness by way of an affidavit. The villa situated at the property comprised in CT 14823, which is the subject matter of this action, was given to the 1st defendant for a monthly rental of \$600.00. The plaintiff alleges although the 1st defendant agreed to pay \$600.00 per month as rent and to keep the villa and the surrounding area clean he failed to do both those things.
- [7] Since the 1st defendant failed to pay the rent the plaintiff served the 1st defendant with distress for rent and after five days of the service the bailiff went to the premises but the

1st defendant had not allowed the bailiff to enter the property. Subsequently, the 1st defendant through his solicitors had informed the plaintiff that he was prepared to pay \$300.00 as rent and that he would provide security for the villas. The plaintiff's position is that this suggestion was preposterous and disrespectful.

[8] The plaintiff claims \$21,827.23 by way of special damages with interest at the rate of 4% per annum. The particulars of this claim are as follows:

- (a) \$4200.00 as claimed in Distress for Rent;
- (b) \$9,000.00 rent for the period from June 2018 to August 2019; and
- (c) \$8,627.23 as costs on solicitor-client basis.

[9] Although the plaintiff claimed \$8627.23 as costs on solicitor-client basis there is no evidence to the effect that it in fact incurred that amount as costs. However, taking into consideration the facts of the case the court awards \$5000.00 as costs.

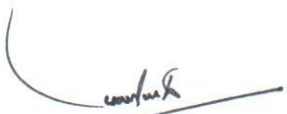
[10] The plaintiff also claimed \$10,000.00 as general damages. However, there is no evidence as to the nature of the damage alleged to have been caused to the plaintiff for the court to calculate the general damages. Therefore, general damages cannot be awarded.

ORDERS

1. The 1st defendant is ordered to pay the plaintiff \$13,200.00 with interest at the rate of 4% from the date of the judgment until the entire sum is paid in full.
2. The 1st defendant is also ordered to pay the plaintiff \$5,000.00 as costs (summarily assessed) of these proceedings.



30th August, 2019


Lyone Seneviratne
JUDGE