

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 372 of 2018

Shabana Nazmeen Nisha

Plaintiff

v

Annal Vijay Sen

Counsel: Mr M. Yunus for the plaintiff

The defendant in person

Date of hearing: 27 July,2020

Date of Judgment: 6<sup>th</sup> October,2021

### **Judgment**

1. The plaintiff, trading as “786 Civil Contractors”, in her statement of claim states that on 5<sup>th</sup> March,2018, she loaned a sum of \$50,000.00 to the defendant. The defendant denies receiving the sum of \$50,000.00 as a loan. The plaintiff claims the sum of \$50,000.00, interest and damages.
2. The defendant, in his statement of defence states that he was a Partner in the plaintiff’s business “786 Civil Contractors” from 20<sup>th</sup> September,2017. He was promised 20% share of the gross income of the business on a monthly basis. The money given by the plaintiff was his share of the gross income. On “5<sup>th</sup> March,2018, and 15<sup>th</sup> April,2018”, he received cheques to the value of \$ 47,754.61 from the plaintiff, as a return on his investment of \$36,245.39 made from “26<sup>th</sup> May,2017, to 12<sup>th</sup> May,2018”.

3. The defendant states that he has suffered loss of employment, defamation of character and financial loss, as the plaintiff has not paid his 20% business share. He counterclaims for damages in a sum of \$200,000.00 and interest.
4. The plaintiff, in her reply and defence to counter claim denies the claim and that the defendant was a Partner in her business. She states that he approached her for employment as her Accountant, as he was unemployed.
5. The defendant in his reply denies receiving the money as a loan and states that the plaintiff betrayed, him as her business started growing.

6. ***The hearing***

a. *The plaintiff*

The plaintiff, a Director of “786 Civil Contractors” in evidence in chief said that on 5<sup>th</sup> March,2018, she gave the defendant a sum of \$ 50,000.00 by cheque as a loan on a verbal agreement. The loan was to be returned in a month. She produced her cheque bud. The defendant did not invest in “786 Civil Contractors”. She did not promise him a 20% share of income of her business. He was a good friend of her husband. On 16<sup>th</sup> April, 2018, she gave him \$20,000.00, of which \$12,000.00 was repayment of a loan taken and the balance was for a vehicle her husband purchased from him. She also paid him \$6500.00 for another vehicle. The vehicle was not transferred to her. She could not recall the reason a cheque for \$8500.00 was given to him as “REPAYMENTS” on 22<sup>nd</sup> December,2017. The defendant used to go with her husband sometimes to his worksites. He was neither employed nor paid by 786 Civil Contractors. She produced 7 deposit slips of monies, which were paid to him as loans.

In cross examination, she reiterated that \$12,000.00 of the sum of \$20,000.00 she gave the defendant, was repayment of a loan taken from him. The balance was for a vehicle purchased by her husband from him. The defendant put it to her that he had already sold that vehicle in December,2017, to another person as reflected in his Bank statement. The monies evidenced in the several deposit slips produced by the plaintiff were given to him as a loan, not wages, as she could not give him cash. He was paid FNPF.

She denied that the defendant had invested \$36,245.39 in “786 Civil Contractors”. He only gave her a loan of \$12,000.00. He paid \$10,000.00 to her husband. He had a deal with her husband.

In re-examination, the plaintiff said that she does not owe the defendant any monies.

b. *The defendant*

The defendant, in evidence in chief said that he invested in “786 Civil Contractors” on the basis that he would get a return of 20% of its gross income. He was an investor and employee of “786 Civil Contractors”. The plaintiff paid him \$84,000.00 commencing with a down payment of a sum of \$50,000.00 and \$20,000.00, in full and final settlement of his share. He was engaged with “786 Civil Contractors” from September,2017, to April, 2018. He gave his vehicles to the plaintiff and her husband for their use and business. He did not sell a vehicle to the plaintiff. He had sold the vehicle,(which the plaintiff said she bought from him in April, 2018) to another in December,2017. He counter claims for a sum of \$200,000.00, being his share of the \$1.5 million “Vomo Street” major project obtained by “786 Civil Contractors”, which was to start in May,2018. Before he could engage in that project, he was given his final settlement in April,2018.

In cross examination, it was put to him that he only made a deposit of \$12,000,00 to the plaintiff’s account on 7<sup>th</sup> December,2017. The defendant said that he deposited cash in the plaintiff’s husband’s account. It was also put to him that the bank statement he produced does not narrate that his vehicle was sold. The sum of \$50,000.00 given by the plaintiff comprised of his investment of \$20,000,00 and his business share of \$30,000.00.

***The determination***

7. The plaintiff claims a sum of \$50,000.00 which she states she loaned to the defendant on a verbal agreement. The defendant admits that he received the sum of \$50,000.00, but contends that sum was a return on his investment in the plaintiff’s business.
8. The onus was then on the defendant to establish that sum of \$50,000.00 was a return on his investment and not a loan.

9. The defendant said that that the plaintiff paid him \$84,000.00 with down payments of \$50,000.00 and \$ 20,000.00. He made payments in sums of \$12,000.00 and \$10,000.00 to the plaintiff and received \$ 20,000.00 as a final settlement of his share of income from her business.
10. It is not in dispute that the plaintiff gave the defendant a sum of \$20,000.00. The plaintiff said \$12,000.00 of the sum of \$20,000.00 was repayment of a loan she had taken from him. The balance was for a vehicle her husband purchased from the defendant.
11. The cheque buds produced by the defendant provides that \$12,000.00 was given to “786 Civil Contractors” and \$10,000.000 to another party. In cross examination, the defendant admitted that the sum of \$10,000.00 was paid to the plaintiff’s husband.
12. In my view, the payment made by the defendant to the plaintiff’s husband does not arise for consideration. The business registration name certificate provides that “786 Civil Contractors” was the plaintiff’s registered business name.
13. I accept the evidence of the plaintiff that the sum of \$ 12,000.00 was a repayment of a loan she had taken from the defendant. I do not find the evidence of the defendant credible. There is no cogent evidence to establish that the money claimed by the plaintiff was a return on investment. The defendant was an employee of “786 Civil Contractors”. He was paid FNPF.
14. In my judgment, the evidence establishes that the plaintiff gave the defendant the sum of \$50,000.00 as a loan, as evidenced in the contemporaneous entry made in the plaintiff’s corresponding cheque bud. The plaintiff’s cheque bud of 5<sup>th</sup> March, 2018, states that the sum of \$50,000.00 was given as a “**LOAN DOWN PAYMENT**”.(emphasis added).
15. The plaintiff’s claim succeeds.

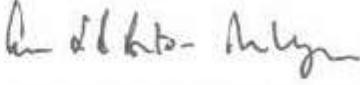
*The counterclaim*

16. The defendant said that the plaintiff promised him a share in her project with the Fiji Roads Authority, (FRA). He relied on letters written by the plaintiff to the FRA on the scope of the work. He said that he signed the tender on behalf of the plaintiff.
17. The defendant did not adduce any evidence in support of his contention.
18. In any event, I have found that he was not an investor in the plaintiff's business.
19. The counter claim fails.

20. **Orders**

- a. The defendant shall pay the plaintiff a sum of \$ 50,000,00 with interest at the rate of 3% from 15<sup>th</sup> January,2019,(date of service of writ) to 27 July,2020,(date of hearing).
- b. The counterclaim of the defendant is declined.
- c. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$1000.00.



  
A.L.B. Brito-Mutunayagam  
JUDGE  
6<sup>th</sup> October, 2021