

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 138 of 2021

Nagaraju Thaandu
Plaintiff

v

Rajnal Rohmesh Kumar
First defendant

Parmeshni Lata
Second defendant

Counsel: Mr Roopesh Singh for the plaintiff
Mr N. Nambiar for the first and second defendants

Date of Judgment: 9th September, 2022

Judgment

1. The plaintiff, in his statement of claim claims a sum of \$242,179.00 he lent and advanced to the first and second defendants. The first and second defendants filed statements of defence and the plaintiff filed reply.

Interlocutory summons for summary judgment

2. On 16th September, 2021, the plaintiff filed interlocutory summons for summary judgment together with a supporting affidavit.
3. The plaintiff, in his affidavit in support states that the second defendant is the sole Director and shareholder of Aper Motors Pte Ltd, (the company). The first defendant made representations to assist the defendants to start a business venture in Fiji by importing second hand motor vehicles and selling. He lent and advanced a total sum of \$242, 179.00 to the first and second defendants between 20th September, 2018, and 18th November, 2018 as follows:
4. The plaintiff states that the defendants defaulted in payment. In March, 2020, when the first defendant was in India, he executed an Agreement acknowledging in writing to refund the sums borrowed by 8th May, 2020. The first defendant told him that he held a Power of Attorney for the second defendant and also executed the India Agreement, as the second defendants' Attorneys. The first defendant, in the Agreement confirmed that he was a Director of the company, when he was not. On 13th and 27th May, 2020, the first defendant held a meeting of the company and held himself out as the Managing Director of the company. The second defendant was aware that the plaintiff lent the sum of \$242,179.00 and confirmed verbally that the defendants would return the sum.
5. On 30th November, 2022, and 25th February, 2022, the plaintiff was represented by Mr Roopesh Singh and the defendants by Mr N. Nambiar. On 30th November, 2022, both counsel stated that parties agreed to enter judgment on liability in terms of the interlocutory summons for summary judgment and the quantum to be assessed. 25th February, 2022, I made Order as follows:

Defendants agree that they are liable to the Plaintiff and the quantum is to be determined.

Hearing on 29th April 2022 at 10am.

6. The only issue before me is the quantum of the debt, as the defendants admitted liability.
7. I have examined the Agreement between the plaintiff and the first defendant of 11th March, 2020, as attached to the plaintiff's supporting affidavit. I refer to the following clauses:

(The first defendant) has decided to launch a venture in the name of APER MOTORS at Fiji country and raised a capital of 700,000 FJDs for which has arranged INR 75,00,000 (seventy five lakhs Indian Rupees) which has been converted as 242179.4 FJD in DEBT finance mode to add to the capital funding of (the first defendant) on 8th Nov 2018

(The plaintiff) collectively made 242179.4 as a supportive Fund to the raised capital fund of (The first defendant)

As per the mutual discussion, it was decided that the capital invested (the first defendant) will be returned by adding 30% premium or fixed interest to the capital fund.

(The first defendant) took the responsibility of running the business in Fiji in the name of APER MOTORS.

(The first defendant) is an active Director who took POA (Power of Attorney) from the Managing Director (Ms. Parameshni Lata) of APER MOTORS and executing the project since its inception. (The first defendant) is solely looking after all the business and accounting operations of APER MOTORS.

Out of all, in any case, as per the agreed terms, (the first defendant) is liable to pay back on or before 8th May 2020, either through business revenue or through personal liability, a cumulative principle investment payment 242179.4 FJDs which is (approximately INR 75 lakhs) and with interest of 72.653.0 FJDs (approximately INR 22522269.0) which is the total payment of 314832.4 FJDs which is INR 01,20,12,12047.4) irrespective of any profit or loss of the business(es) that are initiated and executed.

Failing of (the first defendant) in the repayment of the debt investment mentioned above, in any case (the plaintiff) is authorized to take necessary legal actions in India or FIJI or in both the countries... (emphasis added)

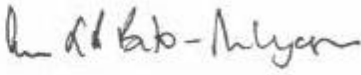
8. In my view, the amount claimed by the plaintiff is a liquidated demand, a specific sum of money due and payable under the Agreement.

9. The plaintiff is entitled to judgment against the first and second defendants in a sum of \$242,179.00 together with interest at 30% per annum from 8th May,2020, (as provided in the Agreement) till payment in full.

10. **Orders**

- a. The first and second defendants shall pay the plaintiff a sum of 242,179.00 together with interest at 30 % per annum from 8th May,2020, till payment in full.
- b. The first and second defendants shall pay the plaintiff a sum of 2000.00, as costs summarily assessed to the plaintiff.




A.L.B. Brito-Mutunayagam
Judge
9th September,2022