

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

CIVIL ACTION NO.: HBC 377 of 2017

BETWEEN : PRANIL GOUNDAR
PLAINTIFF

AND : SUSHEEL DUTT
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. N. Sharma [Nilesh Sharma Lawyers]
DEFENDANT : Mr. S. Gosai with Mr. L. Baleilevuka [Jiten Reddy Lawyers]
RULING BY : Master Ms Vandhana Lal
DELIVERED ON : **05 July 2023**

ASSESSMENT OF DAMAGES

Application

1. This is the Plaintiff's application for assessment of damages in respect of his claim for defamation and for unpaid salary and outstanding advances to the Defendant and use of Plaintiff's chattels.

Evidence

2. The Plaintiff's evidence is summarized as follows:

He is a registered tax agent. [His certificate was tendered as an exhibit marked "A".] He states he can sign form of tax return to the tax office and be able to prepare financial statements for tax purposes.

In 2014 he registered a business under his name but was not able to operate as he was not registered.

He completed education in June 2015.

Whilst waiting for his tax registration, the Plaintiff claims the Defendant approached him to collaborate and start a chartered accounting firm. According to the Plaintiff, the Defendant promised to provide financial support.

He informed the Defendant he had chattels to commence operation office tables; chairs shelving; a printer and two drawers.

The business was registered under the Defendant's name as he had licence for chartered accountancy. The business name was "Parker's Business Solution Fiji". This was for accountancy tax audit.

According to the Plaintiff, he was on a salary of \$30,000 per annum and the will run operation in Fiji. Whilst the Defendant will be in New Zealand and will overview and review the documents.

Emails were exchange between then but no agreement was executed.

According to the Plaintiff, he received head of agreement and the employment letter on 14th September 2015. In his cross examination he admitted no agreement was executed as he was awaiting original document.

The firm was not operational until 01st October 2015 as in September they were setting it up. The Plaintiff claims he was only person looking after the business and he would attend to marketing to get clients.

He stayed in the business till 27th November 2017. He claims that during course of the operation of the business, he noticed the Defendant was not participating in the operation of the business as the Defendant failed to provide financial support for working capital. He also alleges that the Defendant recruited staff without consulting the Plaintiff.

According to him he had advised the Defendant not to expand the business in Labasa however the Defendant went ahead to set up the business. The Defendant sought Plaintiff's assistance which the Plaintiff refused.

The Plaintiff claims that he was financially supporting the business by taking personal loan and had to sell his personal assets to have the operation run successfully.

He stated he has evidence that he gave advance to the business, and referred to the receipts issued by one Akhlaq Khan who was a senior accountant. [The receipts were only marked for identification 1-12]

The Plaintiff also claims he made direct deposits into the company's bank account with Bank of South Pacific. He referred to a bank statement and mentioned two deposits made: 05th July 2017 for \$1,200 and 18th July 2017 for \$55.

The Plaintiff further stated that the Defendant failed provide working capital as a result the business failed to pay salary/wages for 2016 until November 2017.

According to the Plaintiff, he only managed to recover - \$15,700.

In November 2017, he emailed to the Defendant. He mentioned about the financial issues for 2015/2016 with list of advance and reconciliation of money owed to him. He also mentioned about the outstanding salary for 2016/2017.

According to him, he sent following documents with the email:

- Financial account for 2016;

- Comparative of 2015;
- Profit and loss account for Labasa office
- Reconciliation of advance owed to the Plaintiff
- Monthly rent of asset used by the company owned to the Plaintiff

According to the Plaintiff, when he had sent the email the outstanding salary was \$42,000 out of this Susheel has only paid \$2,000.

The Plaintiff further stated there was a Facebook post in 2017 on Fiji Exposed page about an audit done by Susheel for function of Savusavu Town Council. The Plaintiff was made aware of this by another person.

He spoke to Susheel about this but did not receive any respond.

The Plaintiff claims that the Defendant failed to disclose to him the Defendant's prior legal issues being a conviction in New Zealand.

According to the Plaintiff the post had this name written on it stating corrupt accountant. The post shaped picture and link in profile picture.

The Plaintiff claims he received calls from clients to identify what had happened as a result Parker lost clients and had trouble in getting new clients.

The Plaintiff further claims that in 2016 he brought in \$173,000 worth of income to the business.

The Plaintiff alleges that on 14th December 2017 the Defendant went to the Plaintiff's parent's residence and discussed with his father that the Plaintiff used the business for personal use and was not managing the business and he had lied to Susheel about the operation of the business.

According to the Plaintiff, the Defendant owes him \$40,000 for outstanding salaries from 2016 till 2017; \$68,000 as advance given; usage of assets at \$550 per month for 03 months.

He claims his reputation was damaged and has affected the operation of his business as clients were reluctant to engage business with him.

In January 2018 after leaving Parker, he started his own business by name of Alliance International.

Determination

3. Following documents were marked for identification purposes only but not marked as exhibits:
 - *Receipts numbered 18106; 18108; 18109; 18110; 18111; 18114; 18117; 18119; 18120.*
 - *Email dated 31st July 2017.*
 - *Document titled "Income Earned through Pranil clients by Parker Business Solutions Fiji during the period of Employment."*
4. Objections were upheld and since the Plaintiff has not called any further witness to verify these documents the same will not be considered whilst making a determination.
5. General rule is that special damages must be pleaded if not evidence cannot be given a trial.
6. Claims for exemplary or provisional damages must be specifically pleaded with facts on which a party relies on and assertion should be made in the body of the claim and not just in the prayer - Halsbury's Law of England Vol 12 (1) "Damages" 4th Ed (Revised) at page 554.

7. A Plaintiff alleging damages has been suffered has the burden of proving not only that he has suffered the damage but also its extent or amount [Halsbury's supra at page 556].

Claim for Unpaid Salary

8. The Plaintiff alleges that he was not paid salary from July 2016 onwards in his oral evidence he states that he earned \$30,000 per annum and submitted a letter dated 05th October 2015 signed by the Defendant to confirm this.
9. However, the said terms and condition of employment was not signed by the Plaintiff.
10. The Plaintiff has failed to itemize how he had \$40,000 outstanding as salary owed to him by the Defendant. Neither has he presented any evidence to say what total income he received between November 2015 till his last day of employment.
11. Hence the claim for \$40,000 as unpaid salaries is not allowed.

Outstanding Advances to the Defendant in sum of \$16,084.

12. Again, the Plaintiff failed to support his claim with sufficient evidence particularizing when these advances were made; how were they made and how much (if any) the Defendant had repaid.
13. Hence the claim for outstanding advances is refused.

Damages of \$14,300 for use of Plaintiffs chattels.

14. The head of agreement and letter dated 05th October 2015 [Plaintiff's exhibits 5] does not mention anything about agreement of Plaintiff using his chattels and will be paid money for the use of the same.
15. Neither in his claim he mentioned about arrangement for payment of \$500 per month for the use of chattels.

16. Hence the claim for damages for \$14,300 for use of Plaintiff's Chattels is refused.

Damages for slander; bringing Plaintiff's name in disrepute; loss of revenue; exemplary damages; punitive damages.

17. Gatley on Libel and Slander 12th Edition at paragraph 3.6 explains:

"Defamation published by spoken word or in some other transitory form is slander and with four exceptions, the cause of action is not complete unless there is "special" damage, ie. Some actual, temporal loss. The four exceptional cases are:

- (i) Where the words impute a crime for which the claimant can be made to suffer physically by way of punishment*
- (ii) Where the words were calculated to disparage the claimant in any office, profession calling, trade or business held or carried on by him at the time of publication;*
- (iii) Where the words impute to the claimant a contagious or infectious disease.*
- (iv) By the slander of Women Act where the words impute adultery or unchastity to a woman or girl."*

18. Gatley (supra) at paragraph 6.1 on page 187 outlines the general principle of publication:

"No civil action can be maintained libel or slander unless the words complained of have been published.

In order to constitute publication the matter must be published by the defendant to (communicated to) a third party that is to say at least one person other than the claimant."

19. *“It is damage done to character in the opinion of other men, and not in a party's self-estimation which constitutes the material element in an action for libel or slander”* per Bigelow J. in *Shethl v Van Deusen* (1859) 79 Mass. R 304 at 305.
20. The matter should be communicated in such manner that it may convey the defamatory meaning.
21. The Plaintiff claims the Defendant uttered some words to one Putra Goundar on 14th December 2017 about the Plaintiff accusing him of being fraud and using of Defendant's money for personal use.
22. In this case there is no evidence by Patra Goundar of what exactly the Defendant said to him and if the words uttered were defamatory of the Plaintiff.
23. If any words uttered was limited publication to the Plaintiff's father only and there is no evidence of damages suffered by the Plaintiff as a result of any “defamatory” words uttered by the Defendant to the Plaintiff's father.
24. Hence, I refuse to award the Plaintiff damages for slander.
25. The publication on Facebook was not proven fully by the Plaintiff hence the email was not marked as an exhibit.
26. Furthermore, the publication was not by the Defendant and there is lack of evidence that the Plaintiff actually lost disrepute and revenue due to the publication.
27. Hence the remaining claims for damages for bringing Plaintiff's name in disrepute and damages for loss of revenue are refused along with exemplary and punitive damages.

Orders

28. No award is made for the Plaintiff for damages claimed being special damage for unpaid salaries of \$40,000, special damages for outstanding advances of \$16,084; special damages for use of chattels being \$14,300; damages for slander; damages for bringing Plaintiff's name in disrepute; loss of revenue; Exemplary damages and punitive damages.
29. Parties to bear own cost.



Vandhana Lal [Ms]
Master
At Suva.

05 July 2023

TO:

- 1. Suva High Court Civil File No. HBC 377 of 2017;**
- 2. Nilesh Sharma Lawyers, Solicitors for the Plaintiff;**
- 3. Jiten Reddy Lawyers, Solicitors for the Defendant.**