

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 67 of 2015

BETWEEN

DEO CONSTRUCTION DEVELOPMENT COMPANY LIMITED

a duly registered limited liability company having its
registered office at Lot 11, Industrial Sub Division,
Denarau Island, Nadi, Fiji.

PLAINTIFF

AND

ANANTH AVIRAM REDDY of Lautoka, Engineer/Law Graduate and
Businessman.

DEFENDANT

Counsel : Mr. Narayan A. (Jnr) for the Plaintiff

Date of Hearing : 28th March 2024

Date of Judgment : 16th April 2024

JUDGMENT

(Formal Proof)

- [1] In this matter the plaintiff and the defendant entered in to a sale and purchase agreement dated 15th August 2012 (the agreement) in respect of the property comprised in Certificate of title No. 35901 being Lot 17 on Deposited Plan 9060 on the piece of land known as “Buabua” containing 1000sqm in the District of Nadi, in the Island of Vitilevu (the property).
- [2] The defendant purchased the property for FJ\$1,000,000.00 (One Million Fijian Dollars) and the transfer was registered on 11th November 2012. The Revenue and Customs Authority charged the plaintiff FJ\$130,434.78 as Value Added Tax (VAT) and FJ\$ 26,086.96 Twenty Six Thousand Eighty Six Fijian Dollars and Ninety Six Cents) as a penalty which was paid by the plaintiff.
- [3] The plaintiff’s position is that under the agreement it was the responsibility of the defendant to pay VAT and the penalty.
- [4] The plaintiff in the amended statement of claim seeks the following orders against the defendant:
- [i] The sum of FJ\$130,434.78 (One Hundred Thirty Thousand Four Hundred Thirty Four Fijian Dollars and Seventy Eight Cents);
 - [ii] Interest of the sum of (One Hundred Thirty Thousand Four Hundred Thirty Four Fijian Dollars and Seventy Eight Cents) from

14th October, 2014 to the satisfaction of the sum claimed at the rate of 13% per annum pursuant to the Law Reforms (Miscellaneous Provisions)(Death and Interest) Act;

- [iii] The sum of FJ\$26086.96 (Twenty Six Thousand Eighty Six Fijian Dollars and Ninety Six Cents);
- [iv] Interest on the sum of FJ\$26086.96 (Twenty Six Thousand Eighty Six Fijian Dollars and Ninety Six Cents) from 14th October, 2014 to the satisfaction of the sum claimed at the rate of 13% per annum pursuant to the Law Reforms (Miscellaneous Provisions)(Death and Interest) Act;
- [v] Damages;
- [vi] Post judgment interest on any monetary judgment in favour of the plaintiff at the rate of 4% per annum until the satisfaction thereof; and
- [vii] Costs of this action on a full Solicitor/Client indemnity basis.

[5] The defendant in his amended statement of defence states;

- (a) VAT was not applicable to be paid by the defendant as the Tax department incorrectly stated that the defendant was not registered for VAT when the defendant was in fact registered for VAT.
- (b) At all material times the plaintiff represented to the defendant that VAT would not be applicable and the defendant acted to his detriment on reliance of that misrepresentation by the plaintiff.
- (c) The property which was the subject of the sale was a going concern and hence VAT was not applicable.
- (d) At all material times, the plaintiff failed to issue the defendant an invoice for the VAT amount payable as required under section 41 of the Value Added Tax Act 191.

- (e) Clause 4.1 of the agreement required the purchaser (defendant) to pay the purchase price of \$1,000,000.00 plus VAT (if applicable) at settlement or as the vendor may direct. The plaintiff directed that the purchase price be paid on the date of settlement. Accordingly, the defendant paid the purchase price at settlement by way of bank cheque and does not owe the plaintiff any further amount.
- (f) The Fiji Revenue and Customs Service as the competent tax authority in Fiji had assessed VAT as being \$869,565.22 and the VAT amount as \$130,434.78. FRCS has correctly done so given that the Agreement describes the purchase price as being FJ\$1,000,000.00 plus VAT. Hence, whether VAT is applicable or not, FRCS took the purchase price as being VIP (Vat inclusive price). If the plaintiff aggrieved by FRCS decision, then it ought to have commenced an action for the court to review the Tax Decision by FRCS and not to sue the defendant after settlement is over.

[6] At the pre-trial conference the parties admitted the following facts:

1. The plaintiff is a limited liability company duly incorporated under the Companies Act having its registered office at Lot 11, Industrial Sub Division, Denarau, Nadi, Fiji which, inter alia, is engaged in the business of construction and development of land in Fiji.
2. The defendant is an engineer by profession, a law graduate and also a businessman.
3. At all material times the plaintiff was the registered proprietor of the residential property situated at Lot 17 Riverside Gardens, Denarau Island, Nadi as comprised in Certificate of Title No. 35901 described as being Lot 17 of Deposited Plan 9060 on the piece of land known as "Buabua" containing 1000sqm in the District of Nadi, in the Island of Vitilevu.

4. By an agreement in writing dated 15th August 2012, the defendant agreed to purchase the property subject to the terms and conditions provided therein (“the agreement”).
5. The agreement expressly required the defendant to pay the consideration sum of FJ\$1,000,000.00 [ONE MILLION DOLLARS] plus Value Added Tax (“VAT”) if applicable.
6. The agreement also required the plaintiff and defendant to execute and perform all acts, matters and things and take all necessary steps as may be necessary and/or requisite for the purpose of carrying into effect the matters set-out therein.
7. The transfer of the property from the plaintiff to the defendant was registered on 11th November 2012 on which date the defendant paid a sum of FJ\$1,000,000.00.
8. The Fiji Revenue and Customs Authority (which is now referred to as the Fiji Revenue and Customs Service) had subsequently assessed, levied and collected VAT from the plaintiff and had imposed and collected penalties in the sum of FJ\$26,086.96 arising out of the sale of the property to the defendant.
9. On 1st April 2015 the plaintiff demanded from the defendant the payment of the assessed VAT and penalties alluded to in (8) above which the defendant denies is owed and/or payable by him.

[7] In this matter the defendant had not appeared in court. However, a solicitor represented him for some time and he also withdrew as the solicitor for the defendant. The court has issued several notices of adjourned hearing but the defendant failed to appear and the court proceeded to hear the matter in his absence.

[8] The witness for the plaintiff Vimal Deo testified that he is the owner of the plaintiff company and tendered a letter of authority from the plaintiff company

(P1), Certificate of Registration of the plaintiff company (P2) and the Business Profile of the company (P3).

[9] He testified further that the plaintiff company owned the property described as Lot 17 Riverside Garden and tendered in evidence the Certificate of Title marked as P4. The plaintiff and the defendant have entered into two sale and purchase agreements and the 1st agreement (P5) is undated and the 2nd sale and purchase agreement (P6) had been entered into on 15th August 2012.

[10] In both agreements the defendant has agreed to pay \$1,000,000.00 plus VAT (if applicable). It is also important to note that at the pre-trial conference both parties have admitted that the defendant agreed to pay Value Added Tax (if applicable).

[11] At the pre-trial conference the defendant has admitted that on 11th November 2012 the property was registered in the name of the defendant (P7) and the defendant had paid the plaintiff \$1,000,000.00(P8).

[12] The defendant had objected to the assessment of Value Added Tax assessed by the Fiji Revenue and Customs Authority (as it was then), however, the FRCA decided to charge VAT and the plaintiff had paid the VAT and also the penalty(P9 & P10). Under the sale and purchase agreement the plaintiff is entitled to recover the VAT and the penalty from the defendant.

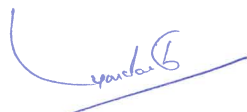
[13] In the statement of claim the plaintiff has also claimed damages but no evidence was adduced to prove damages.

ORDERS

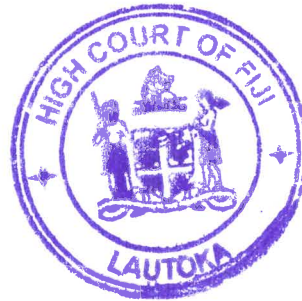
The defendant is ordered to pay the plaintiff;

1. FJ\$130,434.78 (One Hundred Thirty Thousand Four Hundred Thirty Four Fijian Dollars and Seventy Eight Cents);

2. Interest of the sum of (One Hundred Thirty Thousand Four Hundred Thirty Four Fijian Dollars and Seventy Eight Cents) from 14th October, 2014 to the satisfaction of the sum claimed at the rate of 13% per annum pursuant to the Law Reforms (Miscellaneous Provisions)(Death and Interest) Act;
3. FJ\$26086.96 (Twenty Six Thousand Eighty Six Fijian Dollars and Ninety Six Cents);
4. Interest on the sum of FJ\$26086.96 (Twenty Six Thousand Eighty Six Fijian Dollars and Ninety Six Cents) from 14th October, 2014 to the satisfaction of the sum claimed at the rate of 13% per annum pursuant to the Law Reforms (Miscellaneous Provisions)(Death and Interest) Act;
5. Post judgment interest on the amount awarded at the rate of 4% per annum until the entire sum is paid in full; and
6. Costs of this action on a full Solicitor/Client indemnity basis.


Lyone Seneviratne

JUDGE



16th April 2024