

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. **HBC 210** of 2020

BETWEEN : **RADHESHWAR PRAKASH DEO** aka **RADHESHWAR** of 1 Sage Close
Canberra, Australia as the Executor and Trustee of the Estate of **RAM DEO**
and as the Administrator of the Estate of **PADMA WATI RAM DEO**
deceased's.

PLAINTIFF

AND : **FORMSCAFF (FIJI) PTE LIMITED** a limited liability company registered in
Suva.

DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Maharaj V.** for the Plaintiff

Mr. Chand A. for the Defendant

DATE OF JUDGMENT: 12th June, 2025

JUDGMENT

[Specific Performance and Damages]

Introduction

- (1) The Plaintiff filed the Amended Statement of Claim on 07th December 2023 and sought for the following orders:
 - a) AN ORDER for Specific Performance against the Defendant;
 - b) A JUDGMENT against the Defendant for SPECIAL DAMAGES for rental income losses;
 - c) GENERAL DAMAGES against the Defendant to be assessed by this Honourable Court;
 - d) Cost of this action;
 - e) Interest on the balance purchase price of \$530,000.00 at the rate of 6% and/or such rate as the Court determines pursuant to Law Reform (MISCELLANEOUS PROVISIONS) (DEATH & INTEREST ACT) 1935 until judgment.
- (2) The Defendant filed its Amended Statement of Defence and Counterclaim on 20th December 2023. The Defendant denies each and every prayers sought by the Plaintiff in its claim together with interests.
- (3) Further, the Defence cites Two (2) substantive reasons;
 - (i) Suicide committed by a Tenant resulting in haunted house on the said property and the house became haunted, AND
 - (ii) Covid-2019 for its decision to cancel the Sale and Purchase Agreement.
- (4) The Defendant sought for Declaratory Orders with interest in his Counter claim.
- (5) The Agreed Pre-trial Conference Minutes sets out hereunder the main issues for determination by this Court:
 - i) Whether the Sale and Purchase Agreement is binding?

- ii) Whether the Defendant ought to specifically perform the Sale and Purchase Agreement in terms of Letters of Settlement dated 10 March 2020 and 01 May 2020?
 - iii) Whether the Plaintiff had breached the Sale and Purchase Agreement by not disclosing to the Defendant that someone had committed suicide in the property?
 - iv) Whether \$20,000 deposit is refundable to the Defendant? It is noted that Covid 19 which had been pleaded by the Defendant in his Statement of Defence one of the two grounds for refusing to settle was not identified as an issue for determination in the PTC Minutes.
- (6) The Plaintiff denied that the Contract was cancelled on valid grounds and contended that the Contract remained intact on foot and binding. The Plaintiff denied that the Defendant is entitled to a refund of its deposit of \$20,000.
- (7) At the hearing, the Plaintiff and the Defendant called one witness each to testify what traumatized between the parties to the proceedings.
- (8) Subsequently, the Plaintiff filed its reply to the Defendants Statement of Defence and counterclaim accordingly.

Determination

- (9) The Plaintiff is seeking for the Specific Performance of the Sale and Purchase Agreement dated 19th September 2019, whereby, the Plaintiff agreed to sell and the Defendant agreed to buy the property contained in Certificate of Title No. 11094 being Lot 16 on DP 2315.
- (10) The Defendant being the purchaser upon Execution of the Sale and Purchase Agreement paid a deposit sum of \$20,000 to MC Lawyers Trust Account in terms of clause 1(a) of the Sale and Purchase Agreement.
- (11) Other terms of the Sale and Purchase Agreement was:
- (a) Full property price of \$550,000,
 - (b) To be sold on 'as is where is' basis,
 - (c) Settlement to take place within 30 days
 - (d) Possession to be granted to Purchaser on the date of settlement
 - (e) Time was of essence of the Agreement and if the purchaser defaulted then the vendor could sue the purchaser.
- (12) The Sale and Purchase Agreement was stamped, transfer was executed on 19th September 2019, stamp duty was paid by the purchaser (Defendant) and the Capital Gains tax Certificate (CGT) was obtained on 04th March 2020. Hence, the deal between the parties was in fact sealed in 2019.

- (13) However, according to the Defendant, the settlement lapsed in 2020 due to unforeseen circumstance, still the parties on mutual understanding continued with the Sale of the property.
- (14) The Defendant's two (2) grounds mainly Covid 19 and the property being a haunted house due to commission of suicide are not valid grounds in law to seek the cancellation of the Sale and Purchase Agreement. The Sale and Purchase Agreement executed between the parties clearly and specifically stated that the property was being sold on 'as is where is basis' and the Defendant as purchaser 'acknowledged that it has caused the said property to be inspected and the same is being purchased solely in reliance upon its own Judgment and not due to any representation or warranty made by the vendor or any agent of the vendor.'
- (15) I find no provision within the Sale and Purchase Agreement pertaining to the performance of the parties' obligations in the event of any natural disaster or more septicly an outbreak of Covid 19. On the other side of the coin, if Covid 19 was a valid ground to wriggle out of Sale and Purchase contract, the Defendant still failed to disclose any documentary evidence including Bank Statements or company financials to substantiate that the Defendants Company would not have been able to service the loan. However, the Defence witness instead said that 2019 was one of the best years for his company financially."
- (16) In terms of no-disclosure of 'haunted house', there is no concrete evidence before this Court to establish that the property was a 'haunted house' instead whatever the Defendant told the Court in terms of commission of suicide and haunted house was simply hearsay evidence. Further, the Plaintiff in his evidence confirmed that he was unaware of any suicide and he and his family were in occupation of the said property.
- (17) It cannot be denied and disputed that the settlement was agreed to by all parties including the Vendor, the purchaser and its financier, BSP to take place on 11th May 2020 at 2.30p, [Exhibit 58 refers].
- (18) To confirm this settlement, Defence Counsel, Amrit Chand Lawyers wrote to the settlement clerk of Mitchell Keil on 07th May 2020 advising that they were ready for settlement on Monday 11th May 2020 at 2.30pm.
- (19) However, on 11th May 2020 at 11.47am, Mr. Nilesh Prasad of Mitchell Keil Lawyers wrote an email to Amrit Chand Lawyers advising him that **'Formscaff has cancelled this transaction'** and BSP Bank was advised accordingly. (Document No. 58 within the Bundle of Documents).
- (20) It was only two [02] days before the settlement date of 11th May 2020 that the Defendant [Purchaser] decided not to proceed with the settlement. The defendant admitted in his evidence under oath that he was in Breach of the said Agreement.
- (21) The Plaintiff refused to accept the repudiation of the contract and therefore was entitled to hold that the contract was still on foot.
- (22) Reference is made to the case of:

Foran vs Wright (1989) 168 CLR 385 which was cited with approval in the Supreme Court of Fiji in **Stephens vs Chandra** (Civil App CBV 0010 of 2010) which stated:

"Repudiation by way of Anticipatory Breach by party to a contract does not put an end to the Contract unless the other party accepts the repudiation and rescinds the Contract. Although he may do so, the other party does not have to accept repudiation. He May continue to treat the Contract as on foot and hold the party guilty of repudiation of the performance of his obligations."

- (23) The evidence before Court confirms that the vendor had performed all he was required to do under the Sale and Purchase Agreement and has not received any Notice of non-compliance on his part from the purchaser in terms of the Sales and Purchase Agreement.
- (24) The purchaser's failure to settle is a **fundamental breach of the contract** and therefore the Vendor herein is entitled to the remedies under the Sales and Purchase Contract including inter-alia specific performance under the Sales and Purchase Agreement accordingly.
- (25) Reference is also made to the case of **Aron Adarsh Jivaratnam vs Gaya Prasad** CBV 0005 of 2020, where the Supreme Court said at paragraph 61;

'The Petitioners as Purchasers are therefore entitled to remedies including inter alia, specific performance, under Clause 9.4 of the Agreement.'

- (26) I find that the allegations made by the Defendant against the Plaintiff such as:

1. failure to obtain the amended Capital Gains on Tax Certificate; [by compliance with the section 130 of the Income Tax Act 2015 vendors solicitors had given on undertaking [Exhibit 37] to FRCS that the assessment Capital Gain Tax upon completion of the settlement they would pay.
2. Defendant was ready and willing to settle.

In his amended statement of defence, the Defendant pleaded, there were many buyers wanting to buy the said property following the refusal if the Defendant to settle.

So, it was obvious defendant was not ready to buy the property.

The Defendant in his evidence in examination in chief admitted that he was legally in default of the sales and purchase agreement.

Evidence reveals that the Plaintiff was always ready and willing to settle the sale with the Defendant at the time of settlement. It is the defendant who refused to settle.

The Plaintiff has further obtained vacant possession of the property for settlement as per the sales and purchase agreement.

3. The date of the settlement of 11th May 2020,
4. Its inability to view the property,
5. That it had advised the Plaintiff before the letter written from the Plaintiff's solicitors of 01st May 2020 of its intention to cancel the Agreement or that the Plaintiff is not registered as the administrator of the deceased's estate of Padma Wati Ram Deo on the title [Exhibit 23] are without merit, unsubstantiated by the Defendant and must fail and therefore accordingly dismissed.

In Conclusion

- (27) Evidence reveals that the vendor [Plaintiff] had carried out and performed all that he was required to do in terms of the sales and purchase agreement.
- (28) There is no evidence that the vendor had received any notice of non-compliance from the purchaser [Defendant] in terms of the sales and purchase agreement.
- (29) The Defendant's conduct in the proceedings by withdrawing from the executed sales and purchase agreement and failing to honour the contract was simply based on somewhat an afterthought and on unreasonable grounds.
- (30) I find that the Purchaser's [Defendant's] failure to complete the settlement as per the executed sales and purchase agreement is a fundamental breach of the contract between the parties to the proceedings.
- (31) The Sale and Purchase Agreement executed herein remains binding.
- (32) The Defendant to specifically perform the Sale and Purchase Agreement in terms of the Letters of Settlement dated 10 March 2020 and 01 May 2020.
- (33) The sum of \$20,000 deposit is non-refundable to the Defendant. It is noted that Covid 19 which had been pleaded by the Defendant in his Statement of Defence as one of the two grounds for refusing to settle was not identified as an issue for determination in the PTC Minutes.

- (34) I find that the Plaintiff has proved his case on the balance of probabilities.
- (35) Hence the vendor [Plaintiff] is entitled to remedies and relief under the contract including inter-alia, specific performance under the Agreement which the vendor [Plaintiff] now seeks orders for.

Counter – Claim

- (36) The Defendant claimed:
- (i) that the Plaintiff had failed to disclose full information about the property since suicide was committed in the dwelling,
 - (ii) Further due to Covid-19 pandemic, the Defendant could not afford to purchase the said property.
 - (iii) He made a decision to rescind the contract.
 - (iv) The Defendant through its solicitors had advised the vendor [Plaintiff] and/or its solicitors that the Defendant will not proceed with the Contract,
 - (v) The allege notice of settlement was issued after the notice of cancellation of the Sales and Purchase Agreement was provided to the Plaintiff's solicitors on valid reasonable grounds for settlement, and
 - (vi) The Defendant paid a sum of \$20,000 deposit into MC Lawyers Trust Account together with the stamp duty of \$16,500.
- (37) The Defendant now claims the payment of stamp duty and says is entitled to the refund of deposit of \$20,000 together with interest and costs.
- (38) The Defence witness's examination in chief confirms that when he was asked if he was in default of the Sales and Purchase Agreement as alleged by the Plaintiff? He answered in affirmative that 'Yes, legally, I am in default!'
- (39) I find that the two grounds and/or reasons shown by the defendant for not proceeding with the purchase of the Plaintiff's property as described within the Sales and Purchase Agreement, 'Covid-19 and haunted house' are not valid grounds in law to cancel the sale and purchase Agreement. There was no provision in the Sale and Purchase Agreement pertaining to the performance of the parties' obligations in the event of any natural disaster or more specifically an outbreak of Covid-19. Further the Defendant has not shown any documentary evidence to substantiate and disclose that his company would not have been able to service the loan. As to complaint and issue of haunted house, this is based on hearsay evidence and is accordingly dismissed.
- (40) Hence, the Counter-claim of the Defendant is refused and accordingly dismissed in its entirety.

(i) *Specific Performance*

- (41) Accordingly, I grant an order for specific performance against the defendant as sought for by the Plaintiff in his Statement of Claim. The Defendant is ordered to specifically perform the Sales and Purchase Agreement in terms of the Letters of Settlement dated 10th March 2020 and 01st May 2020.

(ii) *Special Damages [Rental Income, losses and interest]*

- (42) According to the Plaintiff, vacant possession order of the property has been obtained for settlement purposes as per the executed sales and purchase agreement and is suffering losses and damages at the rate of \$1,000 per month with effect from the date of refusal to settle by the Defendant and confirms to do so. Whether rent is also included within the \$1,000 as sought for.
- (43) It is unclear how the Plaintiff has arrived at this figure of \$1,000 per month. There is no breakdown of figures in terms of how much losses and damages and rental has been incurred. This court cannot simply pluck a figure from the thin air and grant the order or judgment for special damages until the Court is satisfied in terms of the balance of the probabilities and/or actual and factual figures are furnished to Court in order to determine the same.
- (44) Therefore, at this stage of the proceedings, this court will proceed to grant an order for **special damages** against the Defendant, but to be assessed by the Court upon production of figures accordingly.

(iii) **General Damages**

- (45) There will be judgment entered for the Plaintiff against the Defendant for general damages to be assessed by this Honourable Court.

(iv) **Interest**

- (46) The Plaintiff has been kept out of the consideration sum of \$550,000 from the settlement date of 11th May 2020 to date. The Defendant's refusal to complete the sale of the said property and carry out the settlement meant that the Plaintiff has been deprived of getting a market price by selling the property to other buyers since the defendant admits at paragraph 5 of the amended statement of defence that the property is situated at a prime area in Suva in Vatuwaqa.
- (47) In the circumstances, the Plaintiff must be compensated for the last opportunity to make a profit by way of Interest.

- (48) Accordingly, I grant an order for the interest to be paid on the principle sum of \$550,000 from the expected date of the settlement of 11 May 2020 to be calculate and paid to the Plaintiff to the date of Judgment.

Costs

- (49) I have taken into consideration the submissions of the Plaintiffs counsel on the factors that need to be taken into consideration in terms of the including monies expended in Legal and other costs, such as hotel bills and air tickets. Further that the defendant has put before this Court a frivolous defence which was unsustainable in law and put the Plaintiff to unnecessary costs.
- (50) However, this Court has taken into consideration that the matter was commence in 2020 via Civil Action No. 210 of 2020 and that the final trial was completed on 02nd April 2024.
- (51) It is only appropriate just and fair that I grant a summarily assessed costs of \$5,000 against the Defendant to be paid to Plaintiff within 21 days timeframe.
- (52) Following are the orders of this Court.

Orders

Specific performance

- (53) An order for specific performance as sought for by the Plaintiff in his Statement of Claim is accordingly granted. The Defendant to specifically perform the Sales and Purchase agreement in terms of the Letters of settlement dated 10th March 2020 and 01st May 2020.

Special Damages

- (54) An order for special damages is granted but to be assessed upon production and evidence of figures.

General Damages

- (55) Judgment is entered for General Damages and to be assessed by this court on subsequent application.

Interest

- (56) There is an order for the Interest to be paid on the principle sum of \$550,000 as sought for herein.

Costs


- (57) Summarily assessed costs of \$5,000 is granted against the Defendant to be paid to the Plaintiff within 21 days timeframe.

Counter - claim

- (58) The Counter-claim of the Defendant is refused and accordingly dismissed in its entirety.

Dated at **Suva** this **12th** day of **June** , 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: **Vijay Maharaj Lawyers, Suva**
Amrit Chand Lawyers, Nabua