

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 326 of 2020**

**BETWEEN : SAMBHU LAL CONSTRUCTION (FIJI) LIMITED**  
**Plaintiff**

**AND : MODERN ALUMINIUM & GLASS (FIJI) PTE LTD**  
**Defendant**

**(BY ORIGINAL ACTION)**

**And**

**BETWEEN : MODERN ALUMINIUM & GLASS (FIJI) PTE LTD**  
**Plaintiff/Appellant**

**AND : SAMBHU LAL CONSTRUCTION (FIJI) LTD**  
**First Defendant/First Respondent**

**AND : FIJI NATIONAL UNIVERSITY**  
**Second Defendant/Second Respondent**

**(BY COUNTER CLAIM)**

**Counsel : Mr S Singh for the Appellant**  
**No appearance for the First Respondent**  
**Mr R Prasad for the Second Respondent**

**Hearing : 2 July 2025**

**Judgment : 4 July 2025**

## **EX TEMPORE DECISION**

**(on appeal from Master's decision)**

- [1] On 28 April 2025, I granted leave to the Appellant, Modern Aluminium & Glass (Fiji) Pte Ltd (**Modern Aluminium**), to appeal from the Master's decision of 19 September 2024 striking out Modern Aluminium's counter claim against the Second Respondent. Fiji National University (**FNU**).
- [2] As leave has been granted, the High Court Rules 1988 require Modern Aluminium to file a notice of appeal and serve the notice on the respondents.<sup>1</sup> Order 59, rule 17 prescribes the process that must be followed upon filing the notice of appeal. It is anticipated that a hearing will be conducted.
- [3] A Notice of Appeal was filed by the Appellant here on 2 May and served on 13 May. The First Respondent no longer resists the appeal.<sup>2</sup> FNU continues to oppose leave and has filed detailed written submissions.
- [4] Mr. Prasad spoke to FNU's written submissions at the hearing. He argued, forcefully, that the letter of 7 January 2020 - discussed in my decision of 28 April 2025 - was not a guarantee. It was, as Mr. Prasad argues, simply a recommendation and not legally enforceable. He argues that there is no privity of contract between FNU and Modern Aluminium. Further, clause 38.3 of the main contract between FNU and the First Respondent, protects FNU.
- [5] Mr. Singh, for Modern Aluminium, relies on the tenets of a strike out application. Namely, that the strike out application should only have been granted by the Master in a clear case (which he argues the present case is not) and that the dispute over the treatment to be afforded to the letter of 7 January 2020, involves a question of fact which is more properly dealt with at trial.

---

<sup>1</sup> Order 59, rule 9(b).

<sup>2</sup> And, therefore, did not appear at the hearing.

[6] The substantive issue in this appeal is whether the learned Master erred in striking out Modern Aluminium's counter claim against FNU. I remind myself, as per paragraph [12] of my decision of 28 April 2025:

*Has Modern Aluminium shown the learned Master's decision to be 'clearly wrong or at least attended with sufficient doubt and causing some substantial injustice'? Leave may be granted if the applicant shows that the decision is so unreasonable or unjust so as to demonstrate error, or 'acted upon a wrong principle, or has neglected to take into account something relevant, or has taken into account something irrelevant'.*

[7] FNU identified four issues on appeal but the reality is that the critical dispute comes back to the letter of 7 January 2020. Does the letter confer a remedy for Modern Aluminium against FNU or is it simply a recommendation only as FNU claims?

[8] FNU argues that the contents of the letter '*contains no express promise, no operative words of guarantee, no consideration flowing to FNU, and no intention to create legal relations*'. The letter of 7 January 2020 reads, in part:

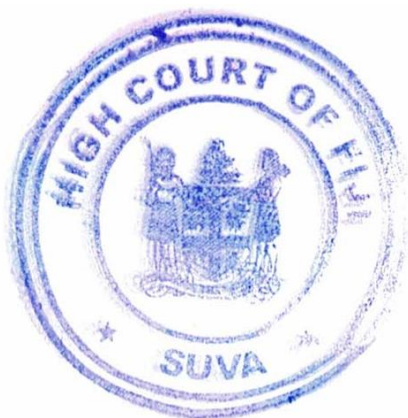
*Subject to the above the University will honour the contract and ensure conformance to the contract guidelines and timelines if and upon default of the main contractor.*

[9] The above words could be construed as FNU guaranteeing payment to Modern Aluminium in the event that the First Respondent defaults on the same. The intention of FNU and Modern Aluminium to create legal relations, could be construed by conduct and/or communications between the parties prior to the letter of 7 January 2020 being sent. There is also the question of industry practice. What is the purpose of these kinds of letters and how are they treated in the construction industry? These questions can only be answered after evidence has been led at trial. It may well eventuate that the trial judge dismisses Modern Aluminium's counter claim against FNU as having no factual and or legal basis. If that is the case, then FNU's remedy against Modern Aluminium will be in costs.

## Orders

[10] My orders are as follows:

- i. The appeal is allowed.
- ii. The learned Master's decision of 19 September 2024, striking out Modern Aluminium counter claim against FNU, is quashed as is the award of costs of \$1,500.00 against Modern Aluminium. The payment is to be reimbursed to Modern Aluminium if it has been paid.
- iii. Modern Aluminium is entitled to costs against FNU, summarily assessed in the amount of \$750.00, to be paid by FNU within one month of the date of judgment.



  
.....  
**D.K.L Tuiqereqere**  
**JUDGE**

### **Solicitors:**

Shelvin Singh Lawyers for the Counter Claim Plaintiff

AK Singh Law for the Counter Claim First Defendant

Legal In-House for Counter Claim Second Defendant