

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

**Civil Action No. HBC 167 of 2017**

**BETWEEN** : **AVON INVESTMENTS LTD** a limited liability company  
duly incorporated in Fiji and having its registered office at 1<sup>st</sup>  
Plaza, 2<sup>nd</sup> Floor, Module 3 FNPB Building, Downtown  
Boulevard, Suva.

**PLAINTIFF**

**AND** : **PRIMETIME PROPERTIES LTD** a limited liability company  
having its registered office in Australia and its local agents as  
N. Mudaliar & Company, Suva.

**DEFENDANT**

**Coram** : **Banuve, J**

**Counsels** : **NANDS LAW for the Plaintiff**  
**O' DRISCOLL & CO for the Defendant.**

**Date of Hearing** : **12 August 2024**

**Date of Ruling** : **9 October 2025**

# RULING

## A. Introduction

1. The Plaintiff instituted these proceeding by way of Writ of Summons wherein the Plaintiff inter-alia sought the following relief;
  - A. Special Damages in the sum of \$220,000 (Two Hundred and Twenty Thousand Dollars) for upgrading, refurbishing, repairing and improving the said premises;
  - B. Damages for removing locks; and
  - C. Refund of security deposit of \$25,000.
2. The Plaintiff is a duly registered liability company having its registered office at Level 2, FNPF Boulevard, Ellery St, Suva.
3. The Defendant is a duly registered limited liability company having its registered office in Australia and its local agent is N. Mudaliar & Co of Suva.
4. On 21 July 2017, the Defendant filed a Statement of Defence and Amended Counter-Claim wherein it denies each and every allegation contained in the Statement of Claim, save for those specifically admitted. It further denies the particulars of the expenses and allege that the costs sought by the Plaintiff as exorbitant and are statute barred.
5. A preliminary limitation issue was raised by the Defendant pursuant to Order 33 (3) and (4) of the *High Court* Rules 1988 which purportedly would determine the issue in dispute between, the parties without resort to trial.
6. Order 33 vests the Court with the power to determine an issue of preliminary nature in a cause or matter before it
7. Order 33, rules (3) and (4) state;

3. *The Court may order any question or issue arising in a cause or matter, whether of fact or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be raised.*

4-(1) *In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.*

(2) *In any such action different questions or issues may be ordered to be tried at different modes or trial and one or more questions may be ordered to be tried before the o*

8. Both parties have filed written submissions in support of their respective position on the preliminary issue.
9. The Defendant's position is succinct. It states that the Plaintiff has acknowledged that its claim dates back to the beginning of its occupation of the Defendant's premises, as a tenant, at the Sabrina Building, Victoria Parade, Suva in late 2007 and early 2008.
10. If valid, the Plaintiff's claim would fall under section 4 of the *Limitation Act* [Cap 35], which states;

4-(1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-*

- (a) *actions founded on simple contract or on tort;*
- (b) *actions to enforce a recognizance;*
- (c) *actions to enforce an award, where the submission is not by an instrument under seal;*
- (d) *actions to recover any sum recoverable by virtue of any act, other than a penalty or forfeiture or sum by way of penalty or forfeiture.*

11. The Defendant relies on the cited provision and the fact that the case was filed approximately 3 years after the limitation period expired to submit that the Plaintiff's is time barred, and rather the Defendant's Counter-Claim does not fall afoul of this provision because it was filed in 2017 when the Plaintiff exited the premises as tenant.

12. In summary the Defendant submits;
- (i) The Plaintiff has acknowledged that its claim dates back to the beginning of its occupation of the Defendant's premises in the Sabrina Building, Victoria Parade, Suva and even to a time before it went into occupation, in late 2007 and early 2008.
  - (ii) The Plaintiff's claim would fall under section 4 of the *Limitation Act* [Cap 35].
  - (iii) The Defendant relies on the cited provision and the fact that the case was filed approximately 3 years after the limitation period expired, do the claim is statute barred, with the claim dating back approximately 9 years from when it filed its claim
  - (iv) The claim ought to be struck out and the Counter-Claim proceed.
13. The Plaintiff, in response, states that its claim is not statute barred as the cause of action accrued after the Plaintiff had vacated the Defendant's premises. On commencement of the tenancy the Plaintiff raised its concerns with the Defendant, the landlord, on the unsuitability of the premises for usage as a Restaurant, whereby the latter represented to the Plaintiff that it could under take works to upgrade the premises for commercial use.
14. Due to the Defendant's representation the Plaintiff spent a sum of \$220,000 (Two Hundred and Twenty Thousand Dollars) for upgrading, refurbishing and on improvements to the said property.
15. On 19 April 2017 the Plaintiff's lawyers served notice on the Defendant demanding that the stated sums expended by the Plaintiff be re-paid by the Defendant which the latter did not respond to.
16. In summary the Plaintiff states;
- (i) No cause of action of action could have arisen from the commencement of the tenancy in 2007 because the Plaintiff was the tenant in occupation of the subject premises over the subsequent 6 year period. No reasonable tenant would file for compensation whilst still a tenant.

- (ii) The award of damages for breach of contract is based on the compensatory principle *restitutio in integrum* . The Plaintiff was not able to remove the fixtures it had placed in the Defendant's premises to refurbish and upgrade it for commercial use, so it sought instead to be compensated for it for which a written demand dated 19 April 2017 was sent.
- (iii) In that regard the cause of action accrued from 19 April 2017 and therefore the limitation period of six years prescribed under section 4(1)(a) of the *Limitation Act* [Cap 35] commences from that date, meaning that the Plaintiff's claim is not statute barred.

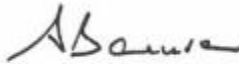
## **B. Analysis**

17. The Court is unable to make a determination on the issue as to when the action accrued for the purpose of section 4(1) of the *Limitation Act* [Cap 35], on affidavit evidence in relation to the commencement of tenancy, the agreement, if any, on the refurbishment and improvements carried out on the subject premises during the tenancy period and the terms of the demand notice. These are matters to be determined at trial .

### **ORDERS:**

- 1. The application to have the Writ of Summons and Statement of Claim filed on 7 June 2017 struck off pursuant to section 4 of the Limitation Act [Cap 35] is refused.**
- 2. No order as to costs.**



  
Savenaca Banuve  
Judge

**Dated this 09<sup>th</sup> day of October ,2025.**